



COMPANY CONSTITUTION

ACTIV8 CAPITAL VENTURES PTY LTD
ACN: 649 208 506

COMPANY LIMITED BY SHARES

(Incorporated in Victoria)

SIGNED BY EACH OF THE MEMBERS:

Authorised Signatory

ACTIV8 HOLDINGS PTY LTD
ACN 618 200 249
ATF ACTIV8 TRUST

Authorised Signatory

Date Signed

20 / 05 / 2021

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SCHEDULE 1 – DIVISION 7A, ITAA 1936 LOAN ACKNOWLEDGMENT

CORPORATIONS ACT 2001
A COMPANY LIMITED BY SHARES
CONSTITUTION
OF

ACTIV8 CAPITAL VENTURES PTY LTD
ACN: 649 208 506

1. REPLACEABLE RULES

1.1 The replaceable rules contained in the Corporations Act 2001 do not apply to the Company.

2. INTERPRETATION

2.1 In this Constitution:

ASIC means the Australian Securities and Investments Commission;

Associate has the same meaning as in section 318 of ITAA 1936;

Business Day means a day on which banking institutions generally are open for business in the Jurisdiction;

Company means ACTIV8 CAPITAL VENTURES PTY LTD ACN: 649 208 506

Corporations Act 2001 means the *Corporations Act 2001*(Cth);

Constitution means the terms and conditions of this which is a contract between the members and the Company;

Directors means the persons appointed as directors of the Company from time to time or such number of them as have authority to act for the Company (including any alternate director duly acting as such) and where the context allows includes the person appointed as the sole director of the Company, and **Director** has a corresponding meaning;

Jurisdiction means the State or Territory in which the Company has been incorporated as shown on the cover page of this Constitution;

Member means the holder of one or more shares in the Company and any reference to a member includes a reference herein to a shareholder;

Seal means the common seal of the Company (where the use of a seal to execute agreements and deeds has been adopted by the Company);

Secretary means any person appointed to perform the duties of a secretary of the Company;

Shareholders Agreement means the shareholders agreement entered into between the Company and the members on or about the date of this Constitution (including an amended or replacement shareholder agreement adopted by the Company from the time to time); and

Tax Act means the *Income Tax Assessment Act 1936* (Cth) ('**ITAA1936**') or the *Income Tax Assessment Act 1997* (Cth) ('**ITAA 1997**');

- 2.2 The singular shall mean and include the plural and vice versa and a reference to one gender shall include the other gender.
- 2.3 References to any statutory enactment shall mean and be construed as references to that enactment as amended, modified and re-enacted from time to time.
- 2.4 Reference to a person includes a corporation or other body corporate, partnership, association, trustee of a trust estate, unincorporated association or any Government, Government authority, agency or instrumentality of whatsoever nature or kind and howsoever named or called and vice versa and includes the trustee, executor, administrator, successor in title and assignee of that person.
- 2.5 The contents page and headings used herein are for ease of reference only and shall not affect the interpretation of this Constitution.
- 2.6 Division 1 of Part 1.2 of the Corporations Act 2001 applies in relation to this Constitution and is deemed to be included herein.
- 2.7 An expression used in a particular Part or Division of the Corporations Act 2001 that is given by that Part or Division a special meaning for the purposes of that Part or Division has, in any clause of this Constitution that relates to a matter dealt with by that Part or Division, unless the contrary intention appears, the same meaning as contained in that Part or Division.

3. PROPRIETARY COMPANY

- 3.1 The Company is registered as a proprietary company and accordingly:
- (a) must be limited by shares;
 - (b) the number of members of the Company (counting joint holders of shares as one person and not counting an employee or former employee of the Company or any of its subsidiaries) is limited to fifty; and
 - (c) must not engage in any activity that would require the lodgment of a prospectus under the Corporations Act 2001 (excepting an offer of shares to existing members of the Company or employees of the Company or a subsidiary of the Company).

4. VARIATION OF RIGHTS OF SHARE CAPITAL

- 4.1 Subject to this Constitution, the Corporations Act 2001, the Shareholders Agreement and to any special rights attached to any shares for the time being issued all shares shall be under the absolute control of the Directors who may classify, allot, grant options over or otherwise dispose of or otherwise deal with the unissued shares:
- (a) to such person;
 - (b) on such terms and conditions;
 - (c) for such consideration and price;
 - (d) subject or not to the payment of any part of the amount thereof in cash;
 - (e) with full power vested in the Directors to make a call for any unpaid amount due on the issue price of a share; and

- (f) any shares may be issued with such preferential, deferred, qualified or special rights, privileges or conditions or restrictions including but not limited to dividends, voting rights or return of capital as the Directors may think fit.
- 4.2** If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound up, be varied with the consent in writing of the holders of three-quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class.
- 4.3** The provisions of this Constitution relating to general meetings apply so far as they are capable of application and with the necessary alterations being made, to every such separate meeting of classes of shareholders except that:
- (a) a quorum is constituted by two persons who, between them hold or represent by proxy one-third of the issued shares of that class; or
 - (b) where the Company has issued shares of that class to only one member, that member shall constitute a quorum; and
 - (c) any holder of shares of that class, present in person or by proxy, may demand a poll.
- 4.4** Subject to this clause 4.4 and clause 4.5 and the provisions of Sections 254A, 254J, 254K and 254L of the Corporations Act 2001, the Company may create preference Shares that are liable to be redeemed with the following rights:
- (a) a cumulative preferential dividend as determined by the Directors at the time of issue;
 - (b) a right to receive on the winding up of the Company an amount specified by the Directors (prior to the issue of the relevant preference share) in priority to any amount payable in respect of shares of any other class;
 - (c) no right to participate in the profits or assets of the Company except as provided in paragraphs (a) and (b) of this clause 4.4.
 - (d) the same rights as ordinary shareholders to receive notices, reports and audited accounts (where the Company is a 'large proprietary company' as defined in section 45A of the Corporations Act 2001) and attend general meetings of the Company;
 - (e) the right to vote at any meeting convened for the purpose of:
 - (i) reducing the capital of the Company; or
 - (ii) winding up the Company; or
 - (iii) authorising a sale of the whole of the property, business and undertaking of the Company; or
 - (iv) where a proposed resolution to be submitted at the meeting directly affects their rights and privileges; or

- (v) when the dividend on the preference share is wholly or partly more than 6 months in arrears.

4.5 The Company may at any time issue further preference shares ranking equally in all respects with preference shares already issued and the rights of the holders of issued preference shares shall be deemed not to have been varied by the further issue.

4.6 This clause 4 will not apply for as long as the Shareholders Agreement is in place (and will only come into effect if the Shareholders Agreement is terminated without any replacement shareholders agreement at that time that deals with the matters in this clause 4).

5. PAYMENTS BY WAY OF BROKERAGE OR COMMISSION

5.1 The Company may make payments by way of brokerage or commission as authorised by section 258C of the Corporations Act 2001, if:

- (a) the percentage or the amount of the brokerage or commission paid or agreed to be paid is disclosed to the members at the general meeting next following; and
- (b) the brokerage or commission does not exceed the rate of 10% of the total price at which the shares in respect of which the brokerage or commission is to be paid, are issued.

5.2 Payments by way of brokerage or commission may be satisfied by the payment of cash, by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.

5.3 For the avoidance of doubt, this clause 5 does not apply to any commission or brokerage payable to Activ8 Capital Management Pty Ltd as the investment manager of the Company.

6. SHARES HELD IN TRUST

6.1 Shares held by a member as trustee of a particular trust may be marked in the Register of Members of the Company in such a way as to identify them as being held in respect of that trust but no liability shall be created by any such marking and the Company shall not be affected with notice of any trust so recorded.

6.2 Notwithstanding the recording of a trustee capacity under clause 6.1, the Company is not bound by or compelled in any way to recognise or to investigate (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any share or unit of a share or the holding of any share upon any trust or and dealing by the trustee of such share or (except as otherwise provided by this Constitution or by law) any other right in respect of a share except an absolute right of legal ownership in the registered holder.

7. CERTIFICATES

7.1 A person whose name is entered as a member in the register of members may receive (at the sole discretion of the Company) a certificate in respect of the share or shares held, either under the seal of the Company (where the company has elected to adopt a common seal) or as signed by at least two directors (unless the Company is a sole director company in which case the sole director will sign the certificate) in accordance with the Corporations Act 2001 but, in respect of a share or shares held jointly by several persons, if the Company elects (at its sole discretion) to issue a share certificate the Company

is not bound to issue more than one certificate.

- 7.2** If the Company elects (at its sole discretion) to issue a share certificate, delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.
- 7.3** If the Company elects (at its sole discretion) to issue any share certificates, subject to this Constitution, the Company shall dispatch any appropriate share certificates within ten (10) Business Days of the issue of any of its Shares and within ten (10) Business Days after the date upon which a transfer of any of its shares is lodged with the Company.
- 7.4** Where a share certificate is lost, or destroyed, the Company may issue a duplicate certificate in accordance with the requirements of the Corporations Act 2001.

8. LIEN

- 8.1** The Company has a first and paramount lien on every share (other than fully paid shares) for all money (whether presently payable or not) called or payable at a fixed time in respect of that share.
- 8.2** The Company also has a first and paramount lien on all shares (other than fully paid shares) registered in the name of a sole holder for all money presently payable by him or his estate (if he has died) to the Company.
- 8.3** The Company's lien on a share extends to all dividends declared payable by the Directors in respect of that share.
- 8.4** Subject to clause 8.5 the Company may sell, in such manner as the Directors think fit, any shares on which the Company has a lien.
- 8.5** A share on which the Company has a lien shall not be sold unless:
- (a) a sum in respect of which the lien exists is presently payable; and
 - (b) the Company has, not less than fourteen (14) days before the date of the sale, given to the registered holder for the time being of the share, or the person entitled to the share by reason of the death or bankruptcy of the registered holder, a notice in writing setting out, and demanding payment of, such part of the amount in respect of which the lien exists as is presently payable.
- 8.6** For the purpose of giving effect to the sale of a share pursuant to this clause 8, the Directors may authorise any person to sign a transfer of the shares on behalf of the Company sold to a purchaser of the shares.
- 8.7** The Company shall register the purchaser as the holder of the shares comprised in any such transfer.
- 8.8** The title of the purchaser to the shares shall not be affected by any irregularity or invalidity in connection with the sale.
- 8.9** The proceeds of the sale of a share pursuant to this clause 8 shall be applied by the Company in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue (if any) shall (subject to any like lien for sums not presently payable that existed upon the shares before the sale) be paid to the person entitled to the shares just prior to the date of the sale.

9. CALLS ON SHARES

- 9.1** The Directors may make calls upon the members in respect of any unpaid money on the shares or otherwise may fix a time or times that specified amounts must be paid under the terms of issue of shares by the Company.
- 9.2** Each member shall, upon receiving at least ten (10) Business Days' notice specifying the time or times and place of payment, pay to the Company the amount called on his shares.
- 9.3** The Directors may revoke or postpone a call.
- 9.4** A call shall be deemed to have been made at the time when the resolution of the Directors authorising the call was passed and may be required to be paid by instalments.
- 9.5** The joint holders of a share are jointly and severally liable to pay all calls in respect of that share.
- 9.6** If a sum called in respect of a share is not paid before or on the day appointed for payment, then the person from whom the sum is due shall pay interest on the sum from the day appointed for payment of the sum to the time of actual payment at such rate as the Directors may determine but, not exceeding the rate charged by the Company's bankers on overdrafts of \$100,000 or more, and the Directors may waive payment of that interest wholly or in part.
- 9.7** Any amount that by the terms of issue of a share becomes payable on allotment or at a fixed date, will be deemed to be a call duly made by the Directors on the scheduled date for payment of the amount due (and the notice period specified in clause 9.2 will be deemed to have been provided to the member) and in case of non-payment, all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise, apply as if the sum had become payable by virtue of a call actually made and notified.
- 9.8** The Directors may on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment provided there are genuine commercial reasons for such differentiation.
- 9.9** The directors may:
- (a) accept from a shareholder the whole or a part of the amount unpaid on a share at any time irrespective of whether a call has been made;
 - (b) authorise payment by the Company of interest upon the whole or any part of an amount so accepted until the amount becomes payable at a rate (but not exceeding the rate specified in clause 9.10), as is agreed between the Directors and the Shareholder, but no amount so paid in advance of a call shall confer on the shareholder any additional right to participate in the profits of the Company.
- 9.10** For the purpose of clause 9.9 (b), the prescribed rate of interest is the 10% per annum.

10. FORFEITURE OF SHARES

- 10.1** If a member fails to pay a call by the day appointed for payment, the Directors may, at any time thereafter whilst the call remains unpaid, serve a notice on

the member demanding immediate payment of the call, together with any interest that has accrued.

- 10.2** The notice shall name a further day (not earlier than ten (10) Business Days from the date of the notice) on or before which the payment required by the notice is to be made and must state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be forfeited to the Company.
- 10.3** If the requirements of a notice served under clauses 10.1 and 10.2 are not complied with, any share in respect of which the notice has been given will immediately be forfeited to the Company and may be sold or otherwise disposed of on such terms and in such manner as the Directors may determine.
- 10.4** In the event of forfeiture of a share, all dividends declared in respect of the forfeited share but not paid before the forfeiture date will also be forfeited.
- 10.5** A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares, but remains liable to pay to the Company all money that, at the date of forfeiture, was payable by him to the Company in respect of the shares (including unpaid interest if the Directors so determine).
- 10.6** A statement in writing declaring that the person making the statement is a Director or a secretary of the Company, and that a share in the Company has been duly forfeited on a date stated in that statement, is prima facie evidence of the facts stated in that statement as against all persons claiming to be entitled to the share.
- 10.7** The Company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute a transfer of the share in favour of any person to whom the share is sold to.
- 10.8** Upon the execution of the transfer, the transferee shall be registered as the holder of the share.
- 10.9** The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.
- 10.10** The provisions of this Constitution as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, as if that sum had been payable by virtue of a call actually made and notified.

11. TRANSFER OF SHARES

- 11.1** A member must give written notice (**Transfer Notice**) to the Company of an intention to transfer shares (**Sale Shares**), specifying the number of shares to be sold and the price of each share which the member fixes (**Nominated Price**).
- 11.2** A Transfer Notice may include parcels of shares and a separate transfer notice shall be deemed to have been given by the proposed transferor for each parcel of shares. The Transfer Notice cannot be withdrawn without the approval of the Directors except as allowed by clause 11.8.
- 11.3** On receipt of the notice, the Company becomes the agent of the proposed transferor for the sale of the Sale Shares to a purchaser nominated by the Company. The transfer price is the Nominated Price.

- 11.4** The Company must make a written offer in respect of the Sale Shares to all other members of the Company holding shares of the same class, in the proportion to each member's respective proportionate holdings of that class of shares.
- 11.5** The Company's offer of the Sale Shares must state each of the following:
- (i) that if it is not accepted, at least partly, within 21 days after the receipt of the offer, it will be treated as having been declined; and
 - (ii) that if a member wants to purchase more than the number of shares specified in the offer, he or she must state how many additional shares he or she is willing to purchase at the price specified in the offer.
- 11.6** Shares not accepted within 21 days after the offer are to be used to meet any requests by members for additional shares. If there are not enough Sale Shares to do so, the shares that are not accepted are to be distributed to members making requests for additional shares in proportion to their holdings of the total number of shares of that class.
- 11.7** If any Sale Shares remain unsold after having complied with clauses 11.1 to 11.6, the company may offer those unsold shares to any member or other person selected by the Directors at the Nominated Price.
- 11.8** If all of the Sale Shares to be transferred are not accepted by members, the Company must nominate one or more purchasers to the proposed transferor within 30 days after receiving the transfer notice. Each purchaser must be willing to purchase the shares immediately for cash. On receipt of the Nominated Price, the proposed transferor must then transfer the relevant shares to the purchasers.
- 11.9** At the end of 42 days after the Company received the Transfer Notice, the proposed transferor is entitled to sell any shares for which a purchaser has not been found by the Company. The shares may be sold, within one month, to any person at a price that is not less than the Nominated Price stated in the transfer notice.
- 11.10** Clauses 11.1 to 11.9 shall not apply to any transfer of shares:
- (a) merely for the purpose of effectuating the appointment of a new trustee or to an Associate of the member;
 - (b) to a husband, wife, brother, sister, parent, child, adopted child, or grandchild of a member (and including de facto and same sex partners living together on a bona fide domestic basis);
 - (c) by a trustee to a beneficiary entitled thereto under a will;
 - (d) where all the members of the Company (excluding the Transferor) sign a resolution waiving all rights of entitlement they have under this clause;
 - (e) by one member holding all the issued shares in the Company,
- provided that it is proved to the satisfaction of the Directors (who may request documentary evidence) that the transfer genuinely falls within one of the above exceptions.
- 11.11** The Company in a general meeting may by special resolution make and from time to time vary the rules applicable to the transfer of shares pursuant to

11.1 to 11.10 (including by giving any member or class of members a preferential right to purchase the shares).

- 11.12** Subject to clause 11.1 to 11.10, a member may transfer all or any of his shares by instrument in writing in any usual or common form or in any other form that the Directors approve in writing from time to time.
- 11.13** An instrument of transfer referred to in clause 11.10 shall be executed by or on behalf of both the Transferor and the Transferee and must clearly identify the shares being transferred and the full name and address of the transferee.
- 11.14** A transferor of a share remains the holder of the share transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect of such share or shares.
- 11.15** The instrument of transfer must be left for registration at the registered office of the Company, accompanied by the original certificate of the shares to which it relates and such other information as the Directors properly require to show the right of the transferor to make the transfer, and thereupon the Company shall, subject to the powers vested in the Directors by this Constitution, register the Transferee as a shareholder.
- 11.16** The Directors may decline to register any transfer of shares, without giving any reason.
- 11.17** The registration of transfers may be suspended at such times and for such periods as the Directors from time to time determine but not exceeding in the whole thirty (30) days in any year.
- 11.18** This clause 11 will not apply for as long as the Shareholders Agreement is in place (and will only come into effect if the Shareholders Agreement is terminated without any replacement shareholders agreement at the time that deals with the matters in this clause 11).

12. CHANGE IN CONTROL OF MEMBER

- 12.1** Where there is a change in control of a shareholder, then that shareholder will, at the time of the change in control, be deemed to have offered all of its shares to the other shareholders in the manner provided for, mutatis mutandis, in clause 11 at a price determined in accordance with clause 11.7 to be the fair market value of the shares of that shareholder.
- 12.2** In this clause 12, **control**, **controlling** and **controlled** means effective control and includes (without limitation):
 - (f) in respect of a corporation that holds shares in the Company:
 - (i) having a relevant interest (within the meaning contained in sections 608 and 609 of the Corporations Act 2001) to more than 50% of the issued share capital of the corporation; or
 - (ii) the ability to procure the passing of ordinary resolutions by the shareholders of the corporation; or
 - (iii) the ability to control the appointment of a Director or Directors who are (alone or together) in a position to cast more than 50% of the maximum number of votes that may be cast at board meetings of the corporation;
 - (g) in respect of a trust estate which has units on issue:

- (i) having a relevant interest (within the meaning of sections 608 and 609 of the Corporations Act 2001 as if the Corporations Act 2001 applied to unit trusts) to more than 50% of the beneficial interest in the trust represented by units;
 - (ii) the ability to procure the passing of ordinary resolutions by the unitholders of the trust; or
 - (iii) the ability to procure or direct the making of decisions by the trustee of the trust;
- (h) in respect of a partnership or joint venture the ability to procure the passing of **ordinary resolutions** of the partnership or joint venture (as the case may be).

For the purposes of sub-clause 12.2, an ordinary resolution is a resolution passed by more than 50% of the persons attending and entitled to vote upon a resolution at a meeting of shareholders, unitholders, partners or co-joint venturers.

- 12.3** This clause 12 will not apply for as long as the Shareholders Agreement is in place (and this clause 12 will only come into effect if the Shareholders Agreement is terminated without any replacement shareholders agreement at the time that deals with the matters in this clause 12).

13. TRANSMISSION OF SHARES

- 13.1** In the case of the death of a member, the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder (and ultimately a beneficiary under the estate of the deceased holder), shall be the only persons recognised by the Company as having any title to his interest in the shares, but this clause does not release the estate of a deceased member or a joint holder from any liability in respect of a share that had been jointly held by him with other persons.
- 13.2** Subject to this Constitution and to the Bankruptcy Act 1966 (Cth), a person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such information being produced as is properly required by the Directors, elect either to be registered himself as holder of the share or to have some other person nominated by him registered as the holder of the share.
- 13.3** If the person becoming entitled elects to be registered himself, he shall deliver or send to the Company a notice in writing signed by him stating that he so elects.
- 13.4** If he elects to have another person registered, then he shall deliver or send to the Company a notice in writing signed by him stating the person who shall be registered by the Company as the holder of the shares.
- 13.5** Subject to the Shareholders Agreements, the limitations, restrictions and provisions of this Constitution relating to the right to transfer, and the registration and transfer of, shares are applicable to any such notice or transfer as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.
- 13.6** Where the registered holder of a share dies or becomes bankrupt, his personal representative or the trustee of his estate, as the case may be, is, upon the production of such information as is properly required by the Directors, entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the Company, or to voting or otherwise), as the registered holder would have been entitled to if he had not died or become bankrupt.
- 13.7** Where two or more persons are jointly entitled to any share in consequence of the death of the registered holder, they shall, for the purpose of this Constitution, be

deemed to be joint holders of the share.

14. OFFERS OF SHARES

- 14.1** Subject to this Constitution and to any resolution passed to the contrary that may be given by the Company in general meeting, all unissued shares of a particular class shall, before issue, be offered to the existing holders of shares of that same class in proportion as nearly as the circumstances allow, to the number of the shares of that class already held by them.
- 14.2** The offer shall be made by notice specifying the number of shares offered and limiting a time within which the offer, if not accepted, will be deemed to be declined.
- 14.3** After the expiration of that time or on being notified by the person to whom the offer is made that he declines to accept the shares offered, the Directors may issue those shares in such manner as they think fit.
- 14.4** Where, by reason of the proportion that shares proposed to be issued bear to the shares already held, some of the first-mentioned shares cannot be offered in accordance with clause 14.1, the Directors may issue the shares that cannot be so offered in such manner as they think fit.
- 14.5** This clause shall not apply to offers of unissued shares where the Company has only one member who is also the sole director.
- 14.6** This clause 14 will not apply for as long as the Shareholders Agreement is in place (and this clause 14 will only come into effect if the Shareholders Agreement is terminated without any replacement shareholders agreement at that time that deals with the matters in this clause 14).

15. CONFIDENTIALITY

- 15.1** Unless the Directors resolve otherwise and subject to the Corporations Act 2001, a member who is not a Director is not entitled to require or receive from the Directors or the Company any information concerning the business, trading or customers of the Company, or any trade secret, secret process or other confidential information belonging to or used by the Company.

16. GENERAL MEETINGS

- 16.1** Any director may convene a general meeting whenever that person thinks fit.
- 16.2** Members shall have such right to convene a general meeting as is prescribed in the Corporations Act 2001 from time to time.
- 16.3** The Directors must call a general meeting if called to do so in accordance with section 249D of the Corporations Act 2001.
- 16.4** A notice of a general meeting shall:
- (a) be served upon each person entitled to receive notice of the general meeting not less than twenty-one (21) days prior to the date of the general meeting, or such shorter period as is otherwise consented to by every member entitled to vote at that meeting; and
 - (b) specify the place, the day and the hour of meeting and contain a statement about the procedure for appointing a proxy; and
 - (c) shall state the general nature of the business to be transacted at the meeting; and
 - (d) if a special resolution is proposed at the meeting, the notice shall state the

terms of the proposed resolution.

- 16.5** The non-receipt of a notice of a general meeting by a shareholder or the accidental omission to give such a notice to a shareholder shall not invalidate any resolution passed at any such meeting.
- 16.6** This clause 16 will not apply for as long as the Shareholders Agreement is in place (and this clause 16 will only come into effect if the Shareholders Agreement is terminated without any replacement shareholders agreement at the time that deals with the matters in this clause 16).

17. PROCEEDINGS AT GENERAL MEETINGS

- 17.1** No business shall be transacted at any general meeting unless a quorum of members is present at all times during the meeting.
- 17.2** For the purpose of determining whether a quorum is present:
- (a) a person attending as a proxy, representing a corporation that is a member, shall be deemed to be a member;
 - (b) if a member has appointed more than one proxy or representative the Company will only count one of the proxies attending;
 - (c) if an individual is attending both as member and as a proxy or body corporate representative count them only once.
- 17.3** A quorum shall be two members entitled to vote or one member where the Company has only one member entitled to vote or otherwise one member where the Company only has one member.
- 17.4** If a quorum is not present within half an hour from the time appointed for the meeting:
- (a) the meeting will stand adjourned to such day, and at such time and place, as the Directors determine or, if no determination is made by the Directors, to the same day in the next week at the same time and place; and
 - (b) if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting then the meeting will be dissolved.
- 17.5** If the Directors have elected one of their number as Chairman of their meetings, he shall preside as Chairman at every general meeting unless and until he is changed by a subsequent election of a different Chairman.
- 17.6** Where a general meeting is held and:
- (a) a Chairman has not been elected as provided by clause 17.5; or
 - (b) the Chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the members shall elect one of their number to be Chairman of the meeting.
- 17.7** The Chairman may with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting unless the business left unfinished at the meeting from which the adjournment took place is first attended to.
- 17.8** When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

- 17.9** Except as provided by clause 17.8, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 17.10** At any general meeting, a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:
- (a) by the Chairman; or
 - (b) by at least five (5) members present in person or by proxy; or
 - (c) by a member or members present in person or by proxy and representing not less than 5% of the total voting rights of all the members having the right to vote at the meeting,

and unless a poll is demanded, a declaration by the Chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

- 17.11** The demand for a poll may be withdrawn.
- 17.12** If a poll is duly demanded, it shall be taken immediately, and the result of the poll will be recorded as the resolution of the members in attendance.
- 17.13** In the case of an equality of votes, whether of hands or on poll, the Chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall not have a casting vote.
- 17.14** Subject to any rights or restrictions for the time being attached to any class or classes of shares:
- (a) at meetings of members or classes of members each member entitled to vote may vote in person or by proxy or attorney; and
 - (b) on a show of hands every person present who is a member or a representative of a member has one vote, and on a poll every person present in person or by proxy or attorney has one vote for each share he holds.
- 17.15** In the case of joint holders, the vote of the holder whose name first appears in the register of members shall be counted to the exclusion of the votes of any other joint holder.
- 17.16** If a member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under a law relating to mental health, his committee or trustee or guardian as has the management of his estate may exercise any rights of the member in relation to a general meeting as if the committee, trustee or guardian were the member.
- 17.17** A member is not entitled to vote at a general meeting unless all calls and other sums presently payable by him in respect of shares in the Company have been paid.
- 17.18** An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- 17.19** Any such objection shall be referred to the Chairman of the meeting, whose decision is final.
- 17.20** A vote not disallowed pursuant to such an objection is valid for all purposes.
- 17.21** A member of the Company who is entitled to attend and cast a vote at a general

meeting may appoint a person as the member's proxy to attend and vote for the member at the meeting.

- 17.22** The appointment may specify the proportion or number of votes that the proxy may exercise.
- 17.23** Each member may appoint a proxy. If a member is entitled to cast two or more votes at the meeting, they may appoint two proxies. If the member appoints two proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, then each proxy may exercise half of the votes.
- 17.24** Any fractions resulting from the application of clauses 17.22 and 16.23 shall be disregarded.
- 17.25** An instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either executed by the company or under the hand of an officer or attorney duly authorised by such corporation.
- 17.26** An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
- 17.27** An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll and is entitled to vote on a show of hands.
- 17.28** An instrument appointing a proxy shall be in the following form or in a form that is as similar to the following form as the circumstances allow:

I/We () of () being a member/members of the above named Company, hereby appoint () of (), or, in his absence, () of () as my/our proxy to vote for me/us on my/our behalf at the *annual general meeting/ *general meeting of the Company to be held on the () day of () 20 and at any adjournment of that meeting.

This form is to be used *in favour of/ *against the resolution.

Signed this (xxx) day of (xxxx) 20

[*Strike out whichever is not desired.][# To be inserted if desired.]

- 17.29** An instrument appointing a proxy shall not be valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a copy of that power or authority (certified by anyone entitled to witness a statutory declaration in the State or Territory where the member resides), is or are deposited, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote.
- 17.30** A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, or the transfer of the share in respect of which the instrument or power is given, if no indication in writing of the death, unsoundness of mind, revocation or transfer has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.
- 17.31** The Chairman of a meeting may require a person acting as a proxy for a member to establish that he or she is the person named in the instrument of proxy or power of attorney. If the person cannot do so, he or she may be excluded from voting as proxy for the member.

- 17.32** A proxy or attorney has no power to act for a member at a general meeting at which the member is present in person or, in the case of a body corporate, a Director of the respective body corporate is present.
- 17.33** A proxy has no power to act for a member at a general meeting where the member is present by power of attorney.
- 17.34** A resolution in writing signed by all the members entitled to vote on the resolution and containing a statement that they are in favour of the resolution shall be as valid as if it had been passed at a duly convened meeting of members, and such circular resolution may consist of several documents in identical form each signed by one or more members.
- 17.35** If the Company has only one member and the member records in writing the member's decision to a particular effect then the signing of the record counts as the passing by the member of a resolution to that effect.
- 17.36** Unless the Directors resolve otherwise, individuals who are not members or Directors of the Company may only attend a general meeting if he or she is invited by a sole Director or where there are multiple Directors at least two Directors and in which case the individual shall only be an observer and not entitled to ask any questions.
- 17.37** This clause 17 will not apply for as long as the Shareholders Agreement is in place (and this clause 17 will only come into effect if the Shareholders Agreement is terminated without any replacement shareholders agreement at the time that deals with the matters in this clause 17).

18. APPOINTMENT, REMUNERATION AND REMOVAL OF DIRECTORS

- 18.1** The first Director or Directors of the Company are the person or persons named with their consent in the application for registration of the Company with the Australian Securities and Investments Commission ('ASIC').
- 18.2** Subject to sub-clause (c), there shall be no restriction on the number of Directors but the Company may by resolution in general meeting:
- (a) set a maximum number of directors;
 - (b) set a minimum number of directors;
 - (c) increase or reduce the maximum or minimum number of directors as so determined.
- 18.3** Until otherwise determined by the Company by resolution in general meeting, the minimum number of directors shall be one.
- 18.4** Every Director appointed under this Constitution shall hold office until they are removed by an ordinary resolution of the Company passed at a general meeting, removed by ordinary resolution of the Directors pursuant to this Constitution or until their office shall become vacant pursuant to this Constitution or pursuant to the Corporations Act 2001.
- 18.5** The Directors may remove a Director if he or she has not attended three (3) consecutive meetings of the Directors.
- 18.6** A Director may resign as a Director of the Company by giving a written notice of his resignation to the Company at its registered office.
- 18.7** Subject to the Corporations Act 2001, the Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing

Directors, but so that the total number of Directors does not at any time exceed the number determined in accordance with this Constitution.

- 18.8** Subject to this Constitution, a Director shall not be required to hold any share or shares in the capital of the Company.
- 18.9** The Directors shall be paid such remuneration as is from time to time determined and approved by the Company in general meeting by ordinary resolution of members.
- 18.10** The remuneration of the Directors shall be deemed to accrue from day to day.
- 18.11** The Directors may also be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Company or otherwise in connection with the business of the Company.
- 18.12** The Company may by ordinary resolution:
- (a) remove any Director before the expiration of his period of office, and may appoint another person in his stead;
 - (b) appoint a person as a Director.
- 18.13** In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act 2001, the office of a Director becomes vacant if the Director:
- (a) becomes bankrupt or under administration;
 - (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
 - (c) resigns his office by notice in writing to the Company;
 - (d) is absent without the consent of the Directors from meetings of the Directors held during a continuous period of six (6) months.
- 18.14** If a person is the only Director and the only member of the Company and that person:
- (a) dies or cannot manage the Company because of the person's mental incapacity and a legal personal representative or trustee is appointed to administer the person's estate or property, then that legal personal representative or trustee may appoint a person as the Director of the Company; or
 - (b) becomes a bankrupt or under administration then the trustee in bankruptcy appointed to that person's estate may appoint a person as the Director of the Company; or
 - (c) appoints, or terminates an appointment, of an alternate Director then the sole director must provide a written notice signed by him to the Company.
- 18.15** This clause 18 will not apply for as long as the Shareholders Agreement is in place (and this clause 18 will only come into effect if the Shareholders Agreement is terminated without any replacement shareholders agreement at the time that deals with the matters in this clause 18).

19. POWERS AND DUTIES OF DIRECTORS

- 19.1** Subject to the Corporations Act 2001 and to any other provision of this Constitution, the business of the Company shall be managed by the Directors, who may pay all

expenses in promoting and forming the Company, and may exercise all such powers of the Company as are not, by the Corporations Act 2001 or by this Constitution reserved to be exercised by the Company in general meeting. In the event that the Company is a wholly-owned subsidiary of a body corporate then the Directors are authorized, by this clause and in accordance with section 187 of the Corporations Act 2001, to act in the best interests of the holding company.

- 19.2** Without limiting the generality of clause 19.1, the Directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.
- 19.3** The Directors may by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.
- 19.4** A power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may either be specific as to the types of acts authorised to be undertaken by the attorney or may provide a general power to do anything that the directors on behalf of the Company may do.
- 19.5** All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two Directors except where the number of Directors is one then by that sole Director only or in such other manner as the Directors determine.
- 19.6** The Directors must ensure that the Company maintains a register of its members and a register of debenture holders (which includes any mortgages and charges) specifically affecting the company's property that is up to date.
- 19.7** The Directors must ensure that the Company maintains proper financial records and accounts that are up to date.
- 19.8** For the purposes of Division 7A of ITAA 1936, any loan or advance to, payment to or forgiveness of a debt (**'the loan'**) owed by, a member of the Company (or an Associate of a member) or a former member or former Associate of a member which would otherwise give rise to an assessable deemed dividend under Division 7A will be subject to this clause 18 as follows:
- (a) before the Company's lodgment day for its company tax return for the year in which the loan was advanced, a signed acknowledgment in the form of Schedule 1 must be executed by the Company and the member, former member, Associate or former Associate (as the case may be) the effect of which will be that the Company and the member or Associate agree that the terms and conditions of this clause 19 will apply;
 - (b) the loan, payment or forgiveness of debt will be an amount which must be repaid by the member or Associate to the Company pursuant to section 109N of ITAA 1936;
 - (c) the maximum term of the loan where it is unsecured will be seven (7) years;
 - (d) the maximum term of the loan will be twenty-five (25) years but only if the Company takes security by way of a registered mortgage over real property and the market value of the real property at the time the loan is made is at least 110% of the loan amount advanced;
 - (e) the interest rate payable for repayments in the income years after the income year in which the loan is made is at least equal to the Reserve Bank's "Indicator Lending Rates/Housing Loans/Variable/Banks/Standard" last published before

the start of the income year in which the repayment is to be made;

- (f) one or more loans made in the same income year which are not fully repaid before the Company's lodgment day for its company tax return for that income year and which have the same maximum term of either seven (7) or twenty-five (25) years must be amalgamated and minimum annual repayments calculated and made to the Company pursuant to section 109E(6) of ITAA 1936.

19.9 For the purposes of Subdivision EA, ITAA 1936:

- (a) if the Company is a corporate beneficiary under a trust estate ('**the Trust**'); and
- (b) the Company has an unpaid present entitlement to a distribution of either income or capital of the Trust and whether existing before or after the events in paragraph 18.7(c) arise; and
- (c) the trustee of the Trust instead provides a non-corporate member of the Company (or a non-corporate Associate of that member) with a loan, payment or forgives a debt and in the case of a payment, that payment is a discharge or reduction of a present entitlement of that non-corporate member or non-corporate Associate that is attributable to an unrealised gain of a capital or income nature; then:
- (d) if the loan is not fully repaid before the earlier to occur of the Trust's lodgment due date for its trust tax return or the Trust's actual lodgment day for its trust tax return, then the trustee of the Trust and the non-corporate member or non-corporate Associate must sign the loan acknowledgment contained in Schedule 1 before the earlier of the two days just mentioned and complete the details of the loan to be repaid by the member or Associate of the member.

19.10 This clause 19 will not apply to the extent of any inconsistency with Shareholders Agreement (including any inconsistency or conflict in respect of the powers and decisions of directors set out in this clause which require approval by special resolution of the members under the Shareholders Agreement).

20. PROCEEDINGS OF DIRECTORS

- 20.1** The Directors may meet together either in person or by teleconference, videolink or other form of instantaneous communication for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- 20.2** The Directors may pass a resolution without holding a meeting. The resolution must be signed by all Directors entitled to vote on it and must state that they are in favour of it. The resolution is valid from the time the last Director signs it and is taken to have been passed at that time.
- 20.3** A Director may at any time, and a secretary shall on the requisition of a Director, convene a meeting of the Directors by giving reasonable notice individually to each other Director.
- 20.4** Subject to this Constitution, questions arising at a meeting of Directors shall be decided by a majority of votes of Directors entitled to vote on the resolution and any such decision shall for all purposes be deemed a decision of the Directors.
- 20.5** In the case of an equality of votes, the Chairman of the meeting shall not have a casting vote.
- 20.6** Notwithstanding any rule of law to the contrary or the holding by a Director of any office in the Company or in any other Company or any other interest, a Director may:
 - (a) hold any office or place of profit in the Company or in any company in which

the Company may be a shareholder or otherwise interested;

- (b) in any capacity enter into a contract arrangement or understanding with the Company;
- (c) help to constitute a quorum and vote at any meeting of Directors convened to deal with any contract arrangement or understanding; or
- (d) affix the common seal to or otherwise sign pursuant to section 127(1) of the Corporations Act 2001 (Clth), any instrument in respect of any contract, arrangement or understanding.

20.7 No contract, arrangement or understanding shall be invalidated by reason that a Director who has voted in relation to the act or transaction may have a material personal interest in that act or transaction.

20.8 No Director shall be liable to account to the Company for any profit realised by him from any contract, arrangement or understanding.

20.9 A Director entering into a contract, arrangement or understanding must disclose their potential conflict of interest in that contract arrangement or understanding if an exception contained in section 191(2) does not apply but provided always that a failure to make or record that disclosure in the minutes or records of meetings will not invalidate the transaction, contract, arrangement or understanding.

20.10 Where a potential conflict of interest exists in a contract, arrangement or understanding, the Director with the potential conflict of interest must as soon as possible give the Company a notice at its registered office that discloses the potential conflict of interest. The notice must set out the nature and extent of the potential conflict of interest.

20.11 If a Director with a potential conflict of interest complies with the Corporations Act 2001 and this Constitution in disclosing a potential conflict of interest:

- (a) the Director may vote on whether the company enters into the contract, arrangement or understanding;
- (b) the contract, arrangement or understanding may be entered into;
- (c) the Director may participate in the execution of the contract, arrangement or understanding; and
- (d) the Director may vote on matters involving the contract.

20.12 At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is such number as is determined by the Directors and unless so determined, is two and a quorum must be present at all times during the meeting. The quorum for a director's meeting where there is only one Director, is one. If there is a vacancy or vacancies in the office of a Director or offices of Directors, the remaining Directors may act, but if the number of remaining Directors is insufficient to constitute a quorum at a meeting of Directors, then they may only act for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum.

20.13 The Directors shall elect one of their number as Chairman of their meetings and may determine the period for which he is to hold office provided that if the Chairman is not present within 10 minutes of the starting time for a meeting or otherwise is unwilling to act then the remaining Directors may appoint one of their number to act as Chairman at that particular meeting.

20.14 The Directors may resolve that certain matters are to be dealt with by a committee of Directors, with such committee meeting and adjourning its meetings, as it thinks proper or as subject to rules set down in the resolution creating the committee.

- 20.15** If all Directors have signed a document containing a statement that they are in favour of a resolution then a resolution in those terms shall be deemed to have been passed at a meeting of the Directors (assuming a majority of Directors are in favour of the resolution) held on the day on which the document was signed or if signed at different times or on different dates then when the document was signed by the last Director to sign.
- 20.16** For the purposes of clause 20.12, two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.
- 20.17** A reference in clause 20.13 to all the Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution.
- 20.18** All acts done by any meeting of the Directors or of a committee of Directors or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person, or that a person so appointed was disqualified is as valid as if the person had been duly appointed and was qualified to be a Director or to be a member of the committee.
- 20.19** If the Company has a sole director then a resolution or declaration which is signed and dated by that sole director has legal effect and binds the Company as if it had been signed and dated at a meeting of the board of Directors.
- 20.20** This clause 20 will not apply for as long as the Shareholders Agreement is in place (and this clause 20 will only come into effect if the Shareholders Agreement is terminated without any replacement shareholders agreement at the time that deals with the matters in this clause 20).

21. ALTERNATE DIRECTORS

- 21.1** A Director may appoint a person (whether a member of the Company or not) to be an alternate Director in his place during such period as he thinks fit and an ASIC Form 484 must be prepared and lodged with ASIC within 28 days of the effective date of the appointment of the alternate Director. An alternate Director may exercise any powers that the appointor may exercise and the exercise of any such power by the alternate Director shall be deemed to be the exercise of the power by the appointor.
- 21.2** The appointment of an alternate Director may be terminated at any time by the appointor notwithstanding that any period of the appointment of the alternate Director has not yet expired, and terminates in any event if the appointor vacates office as a Director.
- 21.3** An appointment, or the termination of an appointment, of an alternate Director shall be effected by a notice in writing signed by the Director who makes or made the appointment and served on the Company.
- 21.4** If the appointing Director requests the Company to give the alternate Director notice of Directors meetings, the Company must do so.
- 21.5** This clause 21 will not apply for as long as the Shareholders Agreement is in place (and this clause 21 will only come into effect if the Shareholders Agreement is terminated without any replacement shareholders agreement at the time that deals with the matters in this clause 21).

22. MANAGING DIRECTOR

- 22.1** The Directors may from time to time appoint one or more of their number to the office

of Managing Director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in a particular case, may revoke any such appointment.

22.2 A Director so appointed shall have his appointment automatically terminated if he ceases for any reason to be a Director.

22.3 A Managing Director shall, subject to the terms of any agreement entered into in a particular case, receive such remuneration (whether by way of salary, commission or participation in profits or by the issue of fully paid shares or the grant of options over unissued share capital, or partly in one way and partly in another) as the Directors determine.

22.4 The Directors may, upon such terms and conditions and with such restrictions as they think fit, confer upon a Managing Director any of the powers exercisable by them. Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Directors.

22.5 The Directors may at any time withdraw or vary any of the powers so conferred on a Managing Director.

23. SECRETARY

23.1 The Directors may, at any time, at their discretion, appoint any person as a Secretary.

23.2 The Directors may, at any time, at their discretion remove any person from the position of Secretary.

23.3 At any time (including at the time of appointing any person to the position of Secretary pursuant to 23.1) the Directors may set any terms and conditions with regard to the powers exercisable by the Secretary as well as any remuneration payable to the Secretary (and the Directors may from time to time resolve to vary such terms and conditions).

24. SEAL

24.1 The Directors may use a common seal of the Company and if so must provide for the safe custody of the seal.

24.2 A document to which the seal is affixed shall be signed:

- (a) by a Director and countersigned by another Director, the Secretary or some other person appointed for that purpose;
- (b) where the company has only one Director, by that Director if it is stated next to the signature that the person is the sole Director.

24.3 A Company may execute a document without using a seal if the document is signed by:

- (a) a Director and countersigned by another Director, the Secretary or some other person appointed for that purpose;
- (b) where the company has only one Director, by that Director, if it is stated next to the signature that the person is the sole Director.

25. INSPECTION OF RECORDS

25.1 Subject to the Corporations Act 2001, the Directors shall determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the

inspection of members other than Directors and a member other than a Director does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

- 25.2** This clause 25 will not apply for as long as the Shareholders Agreement is in place (and this clause 25 will only come into effect if the Shareholders Agreement is terminated without any replacement shareholders agreement at that time that deals with the matters in this clause 25).

26. DIVIDENDS AND RESERVES

- 26.1** Subject to clause 26.3, the Company in general meeting may resolve to issue a dividend, but only if, the Directors have recommended and authorised a dividend to be issued.
- 26.2** A dividend shall not exceed the amount recommended by the Directors and the Directors must not determine to pay a dividend unless they are satisfied that the preconditions contained in section 254T of the Corporations Act 2001 are met.
- 26.3** Where the Company has only one Director who is the sole member, then that Director may resolve to issue the dividend payable by the Company in his or her sole discretion.
- 26.4** The Directors may authorise the payment by the Company to the members of such interim dividends as appear to the Directors to be justified by the profits of the Company.
- 26.5** Interest is not payable by the Company in respect of any dividend.
- 26.6** The Directors may, before recommending any dividend, set aside out of the profits of the Company such sums as they think proper as reserves, to be applied at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied.
- 26.7** Pending any such application, the reserves may at the discretion of the Directors, be used in the business of the Company or be invested in such investments as the Directors think fit. The Directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.
- 26.8** Subject to the rights of persons (if any) entitled to shares with special rights as to dividends, all dividends shall be resolved to be issued and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid.
- 26.9** All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but, if any share is issued on terms providing that it will rank for dividend as from a particular date, that share ranks for dividend accordingly.
- 26.10** An amount paid or credited as paid on a share in advance of a call shall not be taken for the purposes of this clause to be paid or credited as paid on the share.
- 26.11** The Directors may deduct from any dividend payable to a member all sums of money (if any) presently payable by that member to the Company on account of calls or otherwise in relation to shares in the Company.
- 26.12** Where the Directors resolve to issue a dividend then they may direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, any other corporation, and the Directors shall give effect to such a resolution.

- 26.13** Where a difficulty arises in regard to such a distribution, the Directors may settle the matter as they consider expedient and fix the value for distribution of the specific assets or any part of those assets and may determine that cash payments will be made to any members on the basis of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as the Directors consider expedient.
- 26.14** Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque sent through the post directed to:
- (a) the address of the holder as shown in the register of members, or in the case of joint holders, to the address shown in the register of members as the address of the joint holder first named in the register; or
 - (b) to such other address as the holder or joint holders in writing direct.
- 26.15** Any one of two or more joint holders may give effectual receipts for any dividends, interest or other money payable in respect of the shares held by them as joint holders.
- 26.16** All dividends shall be dispatched simultaneously to the members so entitled to the dividend.
- 26.17** Until a dividend is claimed, the Company may use it for the Company's benefit in accordance with the Corporations Act 2001.
- 26.18** This clause 26 will not apply for as long as the Shareholders Agreement is in place (and this clause 26 will only come into effect if the Shareholders Agreement is terminated without any replacement shareholders agreement at the time that deals with the matters in this clause 26).

27. SHARE CAPITAL AND SHARE RIGHTS

- 27.1** Shares in the Company may be issued in the classes and with the rights and privileges and restrictions as the Directors may from time to time determine.
- 27.2** The share capital of the Company may be divided into any of the following classes or such other classes as the directors determine from time to time:
- (a) Ordinary;
 - (b) "A" Class;
- 27.3** The classes of shares in the Company will have the rights as specified in sub-clauses 27.4 and 27.5.
- 27.4** **Ordinary Class Shares** – subject to the rights attached to other classes herein, ordinary shares will have the following rights and restrictions:
- (a) to receive notice of, attend and vote at all general meetings of the Company in accordance with this Constitution and the Shareholders Agreement;
 - (b) to receive along with the other holders of ordinary shares and "A" Class Shares all dividends and distributions declared by the Directors in proportion to each member's shareholding in the Company; and
 - (c) upon a reduction of capital or upon a winding up of the Company the right to participate pari passu with the other holders of ordinary shares and "A" Class Shares in any surplus assets of the Company in proportion to each member's respective shareholding;

27.5 “A” Class Shares – subject to the rights attached to other classes herein, “A” Class shares will have the following rights and restrictions:

- (a) to receive notice of and attend all general meetings of the Company in accordance with this Constitution and Shareholders Agreement but no right to vote (either at general meeting, by circular resolution or in any other form) other than in respect of the following matters:
 - (i) the amendment of the Constitution or the adoption of a new Constitution;
 - (ii) the variation of the rights attaching to a particular class of Shares (members holding that class are required to pass a special resolution);
 - (iii) the approval of a selective buy-back undertaken by the Company or other capital reduction under the Corporations Act requiring a special resolution (other than in circumstances contemplated by clauses 13.2(a)(iii) or 14.2(b)(ii) of the Shareholders Agreement);
 - (iv) the sale of the whole or substantially all of the business of the Company;
 - (v) issuing new shares in the Company other than in accordance with this Constitution or the Shareholders Agreement;
 - (vi) creating a new class of shares other than in accordance with this Constitution or the Shareholders Agreement;
 - (vii) granting of an option to subscribe for shares other than in accordance with this Constitution or the Shareholders Agreement; and
 - (viii) termination of the Shareholders’ Agreement.
- (b) upon a reduction of capital or upon a winding up of the Company the right to participate pari passu with the other holders of ordinary shares and “A” Class Shares in any surplus assets of the Company in proportion to each member’s respective shareholding;
- (c) to receive along with the other holders of ordinary shares and “A” Class Shares all dividends and distributions declared by the Directors in proportion to each member’s respective shareholding in the Company.

27.6 For the purposes of clauses 27.4(b), 27.4(c), 27.5(b) and 27.5(c) and for as long as Ordinary Class Shares and “A” Shares are the only classes of shares issued in the Company, each member’s respective shareholding in the Company is to be calculated as the proportion (expressed as a fraction) which the number of shares held by a member bears to the total number of issued Ordinary Class Shares and “A” Class Shares in the Company.

27.7 For the avoidance of doubt, nothing in this Constitution will be construed as giving the holders of “A” Class Shares the right to vote on any matters other than those set out in clause 27.5(a).

28. DIVIDENDS ON CLASSES OF SHARES

28.1 Notwithstanding anything to the contrary in this Constitution, where at any time there is more than one class of share on issue, then:

- (a) any dividend or distribution of capitalised profits may be declared by the Company in general meeting in accordance with the rights of each of such classes, by one or more resolutions and generally as the Directors from time to time recommend at their discretion; and
- (b) all dividends whether interim or otherwise may be paid, and a distribution of capitalised profits made on the shares of any one or more class or classes of share to the exclusion of the shares of any other class or classes of share; and
- (c) if at any meeting dividends are declared or distributions made on more than one class, the dividend declared or distribution made on the shares of any such class may be at a higher or lower rate than, or at the same rate, as the dividend declared or distribution made on the shares of the other or others of such

classes, provided that the shares in any given class shall participate equally in any dividend declared or any distribution of capitalised profits made in respect of that class.

28.2 It shall be no objection to any resolution or resolutions which shall declare:

- (a) a dividend or distribution; or
- (b) the amount of a dividend or distribution,

on the shares of any class or classes that such resolution or resolutions were passed by virtue of the votes of the holders of the shares of the class or classes to receive the dividend or that such resolution or resolutions were opposed by the holders of the shares of the other class or classes of share.

28.3 This clause 28 will not apply for as long as the Shareholders Agreement is in place (and this clause 28 will only come into effect if the Shareholders Agreement is terminated without any replacement shareholders agreement at that time that deals with the matters in this clause 28).

29. CLASS MEETINGS

29.1 Nothing in this Constitution will prevent the rights of the holders (if any) of any class or classes of shares to have a class meeting pursuant to the provisions of the Corporations Act 2001 (Cth).

29.2 Despite clause 29.1, nothing in this Constitution confers any voting rights on the holders of "A" Class Shares other than those set out in clause 27.5(a).

30. CAPITALISATION OF PROFITS

30.1 Subject to clause 30.2 and 30.4, the Company in general meeting may resolve to capitalise profits and whether or not involving the issue of additional shares.

30.2 The Company must not pass a resolution under sub-clause 30.1 unless the resolution has been recommended by the Directors.

30.3 The Directors shall do all things necessary to give effect to the resolution and in particular, to the extent necessary to adjust the rights of the members among themselves, may:

- (a) issue fractional certificates or make cash payments in cases where shares or debentures become issuable in fractions; and
- (b) authorise any person to make, on behalf of all the members entitled to any further shares or debentures arising from the capitalisation, an agreement with the Company providing for:
 - (i) the issue of shares credited as fully paid up; or
 - (ii) for the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares,

and by the application of their respective proportions of the sum resolved to be capitalised and any agreement made under an authority referred to in paragraph (b) is effective and binding on all the members concerned.

30.4 Where the Company has a sole Director who is also the sole member then a resolution under sub-clause 30.1 may be passed by that sole Director by signing and dating the resolution.

31. NOTICES

- 31.1** A notice may be given by the Company to any member either by serving it on him personally or by sending it by post to him at his address as shown in the register of members (or otherwise to a different address supplied by him to the Company for this purpose) or by sending it to the facsimile number or electronic mail address (if any) nominated by the member or by any other means that the Constitution provides for.
- 31.2** Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and will be deemed to have been received, in the case of a notice of a meeting, three (3) days after the date of its posting and in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- 31.3** A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of that share.
- 31.4** A Notice may be given by the Company to a person entitled to a share in consequence of the death or bankruptcy of a member by serving it on him personally or by sending it to him by post addressed to him by name, or by the title of representative of the deceased or assignee of the bankrupt, or by any like description, at the address (if any) supplied for the purpose by the person or, if such an address has not been supplied, at the address at which the notice might have been sent if the death or bankruptcy had not occurred.
- 31.5** Notice of every general meeting shall be given in the manner authorised by this clause 31 to:
- (a) every member entitled to receive such notice in accordance with this Constitution;
 - (b) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting;
 - (c) the auditor (if any) for the time being of the Company; and
 - (d) each Director.
- 31.6** No other person is entitled to receive notices of general meetings.

32. WINDING UP

- 32.1** If the Company is wound up, the liquidator may, with the sanction of a special resolution, divide among the members in kind the whole or any part of the property of the Company and may for that purpose set such value as he considers fair upon any property to be so divided and may determine how the division is to be carried out as between the members or different classes of members subject to the rights or restrictions attached to such classes of shares.
- 32.2** The liquidator may, with the sanction of a special resolution, vest the whole or any part of any such property in trustees upon such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no member is compelled to accept any shares or other securities in respect of which there is any liability.
- 32.3** This clause 32 will not apply for as long as the Shareholders Agreement is in place (and this clause 32 will only come into effect if the Shareholders Agreement is terminated without any replacement shareholders agreement at the time that deals with the matters in this clause 32).

1.

33. INDEMNITY OF OFFICERS, AUDITORS OR AGENTS

33.1 Every person who is or has been an officer, auditor or agent of the Company shall be indemnified out of the property of the Company, to the maximum extent permitted by law, against any liability or expense incurred by that person in his or her capacity as officer, auditor or agent:

- (a) in defending any proceedings, whether civil or criminal:
 - (i) in which judgment is given in his favour; or
 - (ii) in which he is acquitted; or
 - (iii) which are withdrawn before judgment; or
 - (iv) in connection with any application, other than an interlocutory application, in relation to any such proceedings, in which relief is under the law granted to him by the Court.
- (b) in connection with any administrative proceedings relating to that person's position with the Company, except proceedings which give rise to civil or criminal proceedings against that person and in which judgment is not given in that person's favour or in which that person is not acquitted or which arise out of conduct involving bad faith.

33.2 Every person who is or has been an officer, auditor or agent of the Company shall be indemnified, to the maximum extent permitted by law, out of the assets of the Company against any liability to another person (other than the Company or its related bodies Corporate) unless the liability arises out of conduct involving lack of good faith.

33.3 The Company may prior to the resolution of such proceedings as are set out in clause 33.1, loan funds to an officer, auditor or agent of the Company for the sole purpose of defending those proceedings, provided that:

- (a) the loan shall not be made until the officer, auditor or agent has executed the acknowledgment contained in Schedule 1 setting out the amount of the loan and that the loan will then be subject to sub-clause 19.8 of this Constitution (if the borrower is a member, former member or Associate) or otherwise has entered into a written loan agreement on arm's length terms agreed by the Directors; and
- (b) the loan shall be repayable in accordance with the signed acknowledgment and subject to the complying loan terms contained in sub-clause 19.8 (or otherwise subject to a written loan agreement on arm's length terms agreed by the Directors) unless the relevant proceedings are withdrawn before judgment or the officer, auditor or agent:
 - (i) is acquitted of criminal charges; or
 - (ii) receives judgment in civil or administrative proceedings entirely in his favour; or
 - (iii) is granted relief under the Corporations Act 2001 in respect of such proceedings,

in which case the loan shall be waived pursuant to the indemnity granted under clause 33.1 and any payments already made in reduction of the loan shall be refunded without interest thereon.

33.4 The benefit of the indemnity provided by this clause 33 shall be a continuing indemnity in respect of any liability arising out of any act or omission occurring provided that the act or omission has occurred before any amendment or repeal of this clause 33 at general meeting.

33.5 Any person who may or does seek indemnity pursuant to this clause 33 must provide written notice to the Company of the circumstances giving rise to the claim or potential claim for indemnity, as soon as is reasonably practicable after becoming aware of such circumstances.

34. CONSTITUTION SUBJECT OT SHAREHOLDERS AGREEMENT

34.1 This Constitution will be subject to the Shareholders Agreement and to the extent of any inconsistency the Shareholders Agreement will prevail.

SCHEDULE 1

ACKNOWLEDGMENT OF LOAN SUBJECT TO DIVISION 7A, ITAA 1936

I, (*Name of Person*), being a shareholder (whether current or former) or an Associate of a shareholder (whether current or former) in ACTIV8 CAPITAL VENTURES PTY LTD ACN: 649 208 506 (the "Company"), hereby irrevocably and unconditionally acknowledge that:

- (a) The Company has advanced (or otherwise paid, lent or forgiven) the amount of \$_____ to me in the (insert year) income year.
- (b) The amount specified in (a) is repayable by me pursuant to clause 18.6 of the Constitution of the Company.
- (c) The term of the loan is (*insert term*) and the first minimum repayment is payable in the next income year by applying (*insert relevant benchmark interest rate*) as the interest rate for s.109N, ITAA 1936.
- (d) I undertake to comply with the terms and conditions set out in sub-clause 18.6 of the present Constitution of the Company, in respect of every such loan (including by making the minimum annual repayment required under section 109E(6), ITAA 1936 where any further loans with the same term as specified in paragraph (c) are subsequently made by the Company to me).
- (e) In the event that I am trustee of a trust and the amount was loaned, advanced or forgiven in that trustee capacity, then the terms and conditions contained in sub-clause 18.6 of the Constitution and this acknowledgment set out above will apply to me in that trustee capacity.

Signed by (Print Name of Member/Associate)

Signed by Member/Associate (Signature)

Dated / /
Signed for and on behalf of the Company by Director/Secretary (Print Name)

Signature of Director/Secretary

Dated

/ /

**CIRCULAR RESOLUTION OF THE MEMBERS OF ACTIV8 CAPITAL VENTURES PTY LTD
ACN: 649 208 506**

We, the undersigned being the holders of all the issued capital of **ACTIV8 CAPITAL VENTURES PTY LTD ACN: 649 208 506**, notwithstanding that, the period of notice required by the Corporations Act has been given for the holding of members' meeting, and that any other formalities as to notice contained in the Constitution have not been complied with, hereby consent to the passing of the following special resolution:

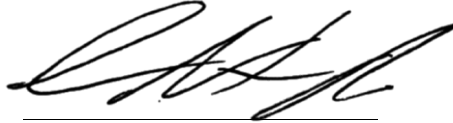
*To adopt the attached Constitution provided to us by the Directors as the constitution of **ACTIV8 CAPITAL VENTURES PTY LTD ACN: 649 208 506** and which it is agreed shall apply to us and any future members as a binding contract inter se and as against the company and to sign the cover page of the Constitution.*

Authorised Signatory

Authorised Signatory

Date Signed

**ACTIV8 HOLDINGS PTY LTD
ACN 618 200 249
ATF ACTIV8 TRUST**



20 / 05 / 2021

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