Corporations Act 2001

A Company Limited by Shares

Constitution of

Sample Company Pty Ltd

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TABLE OF CONTENTS

PART 1 PRELIMINARY **1**
1. What is this? 1
2. Definitions 1

PART 2 OFFICERS **1**
3. Management of business 1
4. Company may appoint a director 1
5. Directors may appoint other directors 1
6. Remuneration of directors 2
7. Director may resign by giving written notice 2
8. Removal by members 2
9. Directors may appoint managing director 2
10. Powers of managing director 2
11. Termination of appointment of managing director 2
12. Terms and conditions of office for secretary 3
13. Alternate directors 3
14. Execution of documents 3
15. Negotiable instruments 3
16. Wholly owned subsidiary 4
17. Contracts or arrangements involving director 4
18. Indemnity and insurance 4
19. Company or directors may allow member to inspect books 5

PART 3 MEETING OF DIRECTORS **5**
20. Calling directors' meetings 5
21. Chairing directors' meetings 5
22. Quorum at directors' meetings 5
23. Passing of directors' resolutions 5
24. Circulating resolutions of directors 5

PART 4 MEETINGS OF MEMBERS **6**
25. Calling of meetings of members by a director 6
26. Notice of meetings of members to members and directors 6
27. Chairing meetings of members 6
28. Quorum of members' meeting 7
29. Notice of adjourned meeting 7
30. Adjourned meeting 7
31. Who can appoint a proxy? 7
32. Validity of proxy vote 8
33. How voting is carried out 8
34. When and how polls must be taken 8
35. Number of votes 8
36. Jointly held shares 9
37. Objections to right to vote 9
38. Circulating Resolution of Members 9

PART 5 SHARES **9**
39. Share capital 9
40. Separate Classes of Shares 10
41. "A", "A1", "A2" Class Shares 10
42. "B", "B1", "B2" Class Shares 10
43. "C", "C1", "C2" Class Shares 10
44. "D", "D1", "D2" Class Shares 10
45. "E", "E1", "E2" Class Shares 11
46. "F", "F1", "F2" Class Shares 11
47. "G", "G1", "G2" Class Shares 11
48. "H" Class Shares 11
49. "I" Class Shares 12

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50. “J” Class Shares 12
51. Share offer to existing shareholders 13
52. Dividends 13
53. Calls on shares 13
54. Pre-call payment of unpaid amount 14
55. Interest on unpaid call 14
56. Forfeiture of shares on failure to pay call 14
57. Transmission of shares on death 16
58. Transmission of shares on bankruptcy 16
59. Transmission of shares on mental incapacity 16
60. Registration of transfers 17
61. Additional general discretion for directors to refuse to register transfers 17

PART 6 LOANS TO MEMBERS 18
62. Loan clause 18

SCHEDULE 1 19

Loan Agreement referred to in clause 62 of this Constitution 19

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Corporations Act 2001
A Proprietary Company
Constitution

Part 1: Preliminary

1. What is this?

This is the constitution of

Sample Company Pty Ltd

2. Definitions

(1) In this constitution:

(a) ***Corporations Act*** means the *Corporations Act 2001* (Cth.) or any Act that replaces it, as in force from time to time.

(b) Unless the contrary intention appears, words in the singular number include the plural and words in the plural number include the singular.

(2) Expressions used in this constitution that are defined by the Corporations Act have the same meanings as in that Act.

(3) Each "Note" in italics is for guidance only and is not to be interpreted as being part of this Constitution.

(4) The replaceable rules contained in the Corporations Act are displaced by this Constitution.

Part 2: Officers

3. Management of Business

(1) The business of the company is to be managed by, or under the direction of, the directors.

(2) The directors may exercise all the powers of the company except any powers that the Corporations Act or this constitution requires the company to exercise at a general meeting.

4. Company May Appoint a Director

The company may appoint a person as a director by a resolution passed at a general meeting.

5. Directors May Appoint Other Directors

(1) The directors may appoint a person as a director.

(2) A person can be appointed as a director at any time in order to make up a quorum for a directors' meeting even if the total number of directors of the company is not enough to make up that quorum at that time.

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(3) A person appointed under this clause as a director ceases to be a director if the appointment is not confirmed by the company by resolution within 2 months after the appointment is made.

(4) While the same person is both the company's sole director and sole shareholder, that person may appoint another director by recording the appointment and signing the record in accordance with section 201F(1) of the Corporations Act.

(5) If a person who is the only director and the only shareholder dies or cannot manage the company because of the person's mental incapacity, and a personal representative is appointed to administer the person's estate or property, then that personal representative or trustee may appoint a person as the director of the company in accordance with section 201F(2) of the Corporations Act.

6. Remuneration of Directors

(1) The directors may be paid the remuneration that the company determines by resolution.

(2) The company may also pay the directors' travelling and other expenses that they properly incur:

(a) in attending directors' meetings or any meetings of committees of directors; or
(b) in attending any general meetings of the company; or
(c) in connection with the company's business.

7. Director May Resign by Giving Written Notice

A director may resign as a director by giving a written notice of resignation to the company at its registered office.

8. Removal by Members

The company:
(a) may, by resolution, remove a director from office; and
(b) may, by resolution, appoint another person as a director instead.

9. Directors May Appoint Managing Director

The directors may appoint 1 or more of themselves to the office of managing director for the period, and on the terms (including as to remuneration), that the directors consider appropriate.

10. Powers of Managing Director

(1) The directors may confer on a managing director any of the powers that the directors can exercise.

(2) The directors may revoke or vary a conferral of powers on the managing director.

11. Termination of Appointment of Managing Director

(1) A person ceases to be managing director if they cease to be a director.

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(2) The directors may revoke or vary an appointment of a managing director.

12. Terms and Conditions of Office for Secretary

A secretary holds office on the terms and conditions (including as to remuneration) that the directors determine.

13. Alternate Directors

(1) With the approval of the other directors, if any, a director may appoint an alternate to exercise some or all of the director's powers for a specified period.

(2) If the appointing director requests the company to give the alternate notice of directors' meetings, the company must do so.

(3) An exercise of the director's powers by an alternate is as effective as if exercised by the director.

(4) The appointing director may terminate the alternate's appointment at any time.

(5) An appointment or its termination must be in writing.
Note: ASIC must be given notice of the appointment and termination of appointment of an alternate (see subsections 205F(2) and (5) of the Corporations Act).

(6) The appointing director must give to the company a copy of an appointment or its termination.

14. Execution of Documents

(1) If the company has a sole director and does not have a secretary, the sole director may:

(a) execute a document (including a deed) without fixing a common seal to it; or
(b) execute a document (including a deed) by fixing a common seal to it and witnessing the fixing.

(2) This clause does not limit the ways in which the company may execute a document.

15. Negotiable Instruments

(1) Any 2 directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.

(2) The directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

(3) If the company has a sole director, that director may sign, draw, accept, endorse or otherwise execute a negotiable instrument.

(4) If the company has a sole director, that director may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

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16. Wholly Owned Subsidiary

Subject to the Corporations Act, a director is authorised to act in the best interests of any company of which this company is a wholly owned subsidiary if:

(a) this company is not insolvent at the time the director acts; and
(b) this company does not become insolvent because of the director's act.

17. Contracts or Arrangements Involving Director

(1) A director is not, because of being a director, disqualified from:

(a) holding any office or place of profit under:
(i) this company; or
(ii) any company of which this company is a shareholder or in which this company is otherwise interested; or
(b) contracting with this company either as a vendor or purchaser or in any other capacity.

(2) This company cannot avoid a contract mentioned in subclause (1)(b) merely because it is entered into by a director.

(3) This company cannot avoid a contract or arrangement entered into by it, or on its behalf, merely because a director has an interest in it.

(4) A director is not, only because of being a director or of owing any duty to this company as a director, liable to account to this company for any profit:

(a) arising from an office or place of profit mentioned in subclause (1)(a); or
(b) realised by a contract mentioned in subclause (1)(b) or a contract or arrangement mentioned in subclause (3).

(5) A director may vote on matters that relate to a contract or arrangement in which the director has a material personal interest.

(6) A director may, on behalf of this company, sign a document relating to a contract or arrangement in which the director has a material personal interest.

18. Indemnity and Insurance

(1) Each officer of the company is indemnified out of the property of the company against any liability (including legal costs) to another person (other than this company or a related body corporate).

(2) The company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an officer of the company against any liability:

(a) for costs and expenses incurred by the person in defending proceedings, whether civil or criminal and whatever their outcome; or
(b) incurred by the person as an officer of the company.

(3) This clause applies to the extent that it may lawfully do so.

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19. Company or Directors May Allow Member to Inspect Books

The directors, or the company by a resolution passed at a general meeting, may authorise a member to inspect books of the company.

Part 3: Meetings of Directors

20. Calling Directors' Meetings

A directors' meeting may be called by a director giving reasonable notice individually to each other director.

21. Chairing Directors' Meetings

(1) The directors may elect a director to chair their meetings. The directors may determine the period for which the director is to be the chairperson.

(2) The directors must elect a director present to chair a meeting, or part of it, if:

(a) a director has not already been elected to chair the meeting; or
(b) a previously elected chairperson is not available or declines to act, for the meeting or the part of the meeting.

22. Quorum at Directors' Meetings

Unless the directors determine otherwise:

(a) the quorum for a directors' meeting is 2 directors; and
(b) the quorum must be present at all times during the meeting.

Note: For resolutions of 1 director companies without meetings, see subclause 24(4).

23. Passing of Directors' Resolutions

(1) A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.

(2) The chairperson has a casting vote if necessary in addition to any vote they have in their capacity as a director.

Note: The chairperson may be precluded from voting, for example, by a conflict of interest.

24. Circulating resolutions of directors

(1) The directors may pass a resolution without a directors' meeting being held if all the directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

(2) Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy.

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(3) The resolution is passed when the last director signs.

Resolution if 1 Director

(4) If the company has only 1 director, then that director may pass a resolution by recording it and signing the record in accordance with section 248B of the Corporations Act.

Note: Passage of a resolution or the making of a declaration under this clause must be recorded in the company's minute books.

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Part 4: Meetings of Members

25. Calling of Meetings of Members by a Director

A director may call a meeting of the company's members.

26. Notice of Meetings of Members to Members and Directors

(1) Notice to joint members must be given to the joint member named first in the register of members.

(2) A notice of meeting sent by post is taken to be given 3 days after it is posted.

(3) A notice of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.

(4) A notice of meeting given to a member under subsection 249J(3A) of the Corporations Act (where a member nominates electronic means of notification or access) is taken to be given on the business day after the day on which the member is notified that the notice of meeting is available.

27. Chairing Meetings of Members

(1) The directors may elect an individual to chair meetings of members.

(2) The directors at a meeting of members must elect an individual present to chair the meeting (or part of it) if:

(a) an individual has not already been elected by the directors to chair it; or
(b) an individual so elected is not available to chair it, or declines to act, for the meeting (or part of the meeting).

(3) The members at a meeting of members must elect a member present to chair the meeting (or part of it) if:

(a) a chairperson has not previously been elected by the directors to chair the meeting; or
(b) a previously elected chairperson is not available, or declines to act, for the meeting (or part of the meeting).

(4) The chairperson must adjourn a meeting of members if the members present with a majority of votes at the meeting agree or direct that the chairperson must do so.

28. Quorum of Members' Meeting

(1) The quorum for a meeting of the company's members is 2 members.

(2) The quorum must be present at all times during the meeting.

Note: For single member companies, see subclause 38(2).

(3) The following applies when determining whether a quorum is present:

(a) count individuals attending as proxies or body corporate representatives;
(b) if a member has appointed more than 1 proxy or representative, count only 1 of them;
(c) if an individual is attending both as a member and as a proxy or body corporate representative, count them only once.

Note: For rights to appoint proxies, see section 249X of the Corporations Act.

Note: For body corporate representatives, see section 250D of the Corporations Act.

(4) A meeting of members that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is adjourned to the date, time and place the directors specify.

(5) If the directors do not specify 1 or more of the things mentioned in subclause (4), the meeting is adjourned to:

(a) if the date is not specified—the same day in the next week; and
(b) if the time is not specified—the same time; and
(c) if the place is not specified—the same place.

(6) If a quorum is not present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

29. Notice of Adjourned Meeting

If a meeting is adjourned for 1 month or more, a new notice of the resumed meeting must be given.

30. Adjourned Meeting

Only unfinished business is to be transacted at a meeting resumed after an adjournment.

31. Who Can Appoint a Proxy?

(1) A member who is entitled to attend and cast a vote at a meeting of members may appoint a person as their proxy to attend and vote for them at the meeting.

(2) The person appointed as proxy may be an individual or a body corporate.

Note: A body corporate may appoint a representative to exercise the powers that the body corporate may exercise as the member's proxy, see section 250D of the Corporations Act.

(3) The appointment may specify the proportion or number of votes that the proxy may exercise.

(4) Each member may appoint a proxy.

(5) If a member is entitled to cast 2 or more votes at the meeting, they may appoint 2 proxies.

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(6) If a member appoints 2 proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of the votes.

(7) Disregard any fractions of votes resulting from the application of subclause (3) or (6).

32. Validity of Proxy Vote

Unless the company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes, the appointing member:

(a) dies; or
(b) becomes mentally incapacitated; or
(c) revokes the proxy's appointment; or
(d) revokes the authority under which the proxy was appointed by a third party; or
(e) transfers the share in respect of which the proxy was given.

Note: A proxy's authority to vote is suspended while the member is present at the meeting (see subsection 249Y(3) of the Corporations Act).

33. How Voting is Carried Out

(1) A resolution put to the vote at a meeting of members must be decided on a show of hands unless a poll is demanded.

(2) Before a vote is taken the chairperson must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.

(3) On a show of hands, a declaration by the chairperson is conclusive evidence of the result if it reflects the show of hands and the votes of the proxies received.

(4) Neither the chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against.

Note: Even though the chairperson's declaration is conclusive of the voting results, the members present may demand a poll (see paragraph 250L(3)(c) of the Corporations Act).

34. When and How Polls Must be Taken

(1) A poll demanded on a matter other than the election of a chairperson or the question of an adjournment must be taken when, and in the manner, the chairperson directs.

(2) A poll on the election of a chairperson or on the question of an adjournment must be taken immediately.

35. Number of Votes

(1) Subject to any rights or restrictions attached to any class of shares, at a meeting of members:

(a) on a show of hands, each member has 1 vote; and
(b) on a poll, each member has 1 vote for each share they hold.

Note: Unless otherwise specified in the appointment, a body corporate representative has all the powers that a body corporate has as a member (including the power to vote on a show of hands).

(2) The chairperson has a casting vote, and also, if they are a member, any vote they have in their capacity as a member.

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Note: The chairperson may be precluded from voting, for example, by a conflict of interest.
Note: For rights to appoint proxies, see section 249X of the Corporations Act.

36. Jointly Held Shares

If a share is held jointly and more than 1 member votes in respect of that share, only the vote of the member whose name appears first in the register of members counts.

37. Objections to right to vote

A challenge to a right to vote at a meeting of members:

(a) may only be made at the meeting; and
(b) must be determined by the chairperson, whose decision is final.

38. Circulating Resolution of Members

(1) The company may pass a resolution without a general meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document in accordance with section 249A of the Corporations Act.

Resolution if 1 Member

(2) If the company has only 1 member, that member may pass a resolution by the member recording it and signing the record in accordance with section 249B of the Corporations Act.

Note: Passage of a resolution or the making of a declaration under this clause must be recorded in the company's minute books.

Part 5: Shares

39. Share Capital

(1) Without limiting any power to issue shares, issued shares may include:

(a) ordinary shares
(b) “A”, “A1”, “A2” Class shares
(c) “B”, “B1”, “B2” Class shares
(d) “C”, “C1”, “C2” Class shares
(e) “D”, “D1”, “D2” Class shares
(f) “E”, “E1”, “E2” Class shares
(g) “F”, “F1”, “F2” Class shares
(h) “G”, “G1”, “G2” Class shares
(i) “H” Class Redeemable Preference shares
(j) “I” Class Redeemable Preference shares
(k) “J” Class Redeemable Preference shares

(2) The right to vote referred to in the following clauses applies despite subclause 35(1).

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40. Separate Classes of Shares

For clarity, every class of share identified by a letter followed by a number in clauses 41 to 47, inclusive, is a separate and distinct class of share.

41. "A", "A1", "A2" Class Shares

A member being the holder of an "A", "A1" or "A2" Class share holds that share subject to the following rights, privileges and conditions:-

(a) the right to attend and vote at all meetings of the company and on a show of hands or poll to one vote for every share held.

(b) the right to participate in the dividends (if any) determined by the directors to be paid on that share;

(c) in a winding up of the company to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the company and in this regard to rank equally with all other shareholders so entitled.

42. "B", "B1", "B2" Class Shares

A member being the holder of a "B", "B1" or "B2" Class share holds that share subject to the following rights, privileges and conditions:-

(a) the right to attend and vote at all meetings of the company and on a show of hands or poll to one vote for every share held;

(b) the right to participate in the dividends (if any) determined by the directors to be paid on that share;

(c) in a winding up of the company to repayment of the paid issue price of such share but no right to participate in the division of surplus assets or profits of the company.

43. "C", "C1", "C2" Class Shares

A member being the holder of a "C", "C1" or "C2" Class share holds that share subject to the following rights, privileges and conditions:-

(a) the right to attend and vote at all meetings of the company and on a show of hands or poll to one vote for every share held;

(b) no right to any dividends;

(c) in a winding up of the company to repayment of the paid issue price of such share but no right to participate in the division of surplus assets or profits of the company.

44. "D", "D1", "D2" Class Shares

A member being the holder of a "D", "D1" or "D2" Class share holds that share subject to the following rights, privileges and conditions:-

(a) the right to attend and vote at all meetings of the company and on a show of hands or poll to one vote for every share held;

(b) no right to any dividends;

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(c) in a winding up of the company to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the company and in this regard to rank equally with all other shareholders so entitled.

45. "E", "E1", "E2" Class Shares

A member being the holder of a "E", "E1" or "E2" Class share holds that share subject to the following rights, privileges and conditions:-

(a) no right to attend and no right to vote at any meeting of the company;

(b) the right to participate in the dividends (if any) determined by the directors to be paid on that share.

(c) in a winding up of the company to repayment of the paid issue price of such share but no right to participate in the division of surplus assets or profits of the company.

46. "F", "F1", "F2" Class Shares

A member being the holder of a "F", "F1" or "F2" Class share holds that share subject to the following rights, privileges and conditions:-

(a) no right to attend and no right to vote at any meeting of the company;

(b) the right to participate in the dividends (if any) determined by the directors to be paid on that share;

(c) in a winding up of the company to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the company and in this regard to rank equally with all other shareholders so entitled.

47. "G", "G1", "G2" Class Shares

A member being the holder of a "G", "G1" or "G2" Class share holds that share subject to the following rights, privileges and conditions:-

(a) no right to attend and no right to vote at any meeting of the company;

(b) no right to any dividends;

(c) in a winding up of the company to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the company and in this regard to rank equally with all other shareholders so entitled.

48. "H" Class Shares

A member being the holder of an "H" Class Redeemable Preference share holds that share subject to the following rights, privileges and conditions:-

(a) no right to attend and no right to vote at any meeting of the company;

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(b) upon giving seven days notice in writing of its intention so to do, delivered or posted to the last known address of the registered holder of any Redeemable Preference Share together with the amount paid up in respect of the shares to be redeemed, the company may at any time redeem all or from time to time redeem any one or more of those shares and redemption takes place immediately on the expiry of seven days from the delivery or posting of the notice of redemption and payment;

(c) in a winding up of the company to repayment of the amount paid up for that share, in priority to all other shares in the company, but no right to participate in the division of any surplus assets or profits of the company;

(d) the right to receive from the profits of the company as a first charge a non-cumulative preferential dividend at the rate of five percent (5%) per annum on the paid issue price of the "H" Class Redeemable Preference shares held.

49. "I" Class Shares

A member being the holder of an "I" Class Redeemable Preference share holds that share subject to the following rights, privileges and conditions:-

(a) no right to attend and no right to vote at any meeting of the company;

(b) upon giving seven days notice in writing of its intention so to do, delivered or posted to the last known address of the registered holder of any Redeemable Preference Share together with the amount paid up in respect of the shares to be redeemed, the company may at any time redeem all or from time to time redeem any one or more of those shares and redemption takes place immediately on the expiry of seven days from the delivery or posting of the notice of redemption and payment;

(c) in a winding up of the company to repayment of the amount paid up for that share, in priority to all other shares in the company, except the "H" Class Redeemable Preference shares but no right to participate in the division of any surplus assets or profits of the company;

(d) the right to such (non-cumulative) dividends (if any) determined by the directors to be payable on that share.

50. "J" Class Shares

A member being the holder of a "J" Class Redeemable Preference share holds that share subject to the following rights, privileges and conditions:-

(a) the right to attend and vote at all meetings of the company and on a show of hands or poll to one vote for every share held;

(b) upon giving seven days notice in writing of its intention so to do, delivered or posted to the last known address of the registered holder of any Redeemable Preference Share together with the amount paid up in respect of the shares to be redeemed, the company may at any time redeem all or from time to time redeem any one or more of those shares and such redemption takes place immediately on the expiry of seven days from the delivery or posting of the notice of redemption and payment;

(c) in a winding up of the company to repayment of the amount paid up for that share, in priority to all other shares in the company, except the "H" Class Redeemable Preference shares but no right to participate in the division of any surplus assets or profits of the company;

(d) the right to such (non-cumulative) dividends (if any) determined by the directors to be payable on that share.

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51. Share Offer to Existing Shareholders

(1) This clause does not apply while the same person is both the company's sole director and sole shareholder.

(2) Before issuing shares of a particular class, the directors must offer them to the existing holders of shares of that class.

(3) As far as practicable, the number of shares offered to each shareholder must be in proportion to the number of shares of that class that they already hold.

(4) To make the offer, the directors must give the shareholders a statement setting out the terms of the offer, including:

(a) the number of shares offered; and
(b) the period for which the offer will remain open.

(5) The directors may issue any shares not taken up under the offer under subclause (2) as they consider appropriate.

(6) The company may, by a resolution passed at a general meeting, authorise the directors to issue any shares without complying with subclause (2).

52. Dividends

(1) Subject to the terms of issue of shares, the directors may pay dividends as they consider appropriate.

(2) The directors may determine that a dividend is payable and fix:

(a) the amount; and
(b) the time for payment; and
(c) the method of payment.

(3) The methods of payment may include the payment of cash, the issue of shares, the grant of options and the transfer of assets.

(4) Interest is not payable on a dividend.

53. Calls on Shares

(1) The directors may make calls on the members in respect of any money unpaid on the shares of the members that, by the terms of issue of those shares, is not payable at fixed times.

(2) A call must be taken to have been made at the time the resolution of the directors authorising it was passed.

(3) A call must not:

(a) exceed 25% of the issue price of the shares; or

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(b) be payable earlier than one month after the date fixed for the payment of the last preceding call.

(4) 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.

(5) Each member must, on receiving at least 14 days' notice specifying the time or times and place of payment, pay the amount called as specified in the notice.

(6) A call may be required to be paid by instalments.

(7) The directors may revoke or postpone a call.

(8) The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

(9) Any sum that, by the terms of issue of a share, becomes payable on issue or at a fixed date must, for this constitution, be taken to be a call duly made and payable on the date on which by those terms it becomes payable.

54. Pre-call Payment of Unpaid Amount

(1) The directors may accept from a member the whole or a part of the amount unpaid on a share although no part of that amount has been called up.

(2) The directors may authorise payment by the company of interest, at a rate agreed between the directors and the member, on the whole or any part of an amount accepted as mentioned in subclause (1) until the amount becomes payable.

(3) However, the rate of interest payable under subclause (2) must not exceed:

(a) if the company has, by resolution, fixed a rate - the rate so fixed; and
(b) in any other case - 8% per year.

55. Interest on Unpaid Call

(1) This clause applies if a sum called in respect of a share is not paid on or before the day appointed for payment.

(2) The person liable to pay the sum must pay interest on it from the day appointed for payment to the time of actual payment at the rate, not exceeding 8% per year, that the directors determine.

(3) The directors may waive payment of interest wholly or in part.

56. Forfeiture of Shares on Failure to Pay Call

(1) This clause applies if a member fails to pay a call or instalment of a call on the day appointed for payment.

(2) The directors may, at any time after the day appointed for payment until the call or instalment is paid, serve a notice on the member requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued.

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(3) The notice must:

(a) name a further day (not earlier than the end of 14 days after the date of service of the notice) on or before which the payment required by the notice is to be made; and
(b) state that, if payment is not made as mentioned in subclause (a), the shares in respect of which the call was made will be liable to be forfeited.

(4) The company may, by resolution, if payment is not made as mentioned in subclause (3)(a), declare any share in respect of which the call was made to have been forfeited.

(5) Forfeiture under subclause (4) includes all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

(6) A forfeited share may be sold or otherwise disposed of on any terms and in any manner that the directors consider appropriate.

(7) The company may:

(a) receive the consideration (if any) given for a forfeited share on any sale or disposition of the share; and
(b) execute a transfer of the share in favour of the person to whom the share is sold or disposed of.

(8) On the execution of the transfer, the transferee:

(a) must be registered as the holder of the share; and
(b) is not bound to see to the application of any money paid as consideration.

(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) At any time before a sale or disposition mentioned in subclause (6), the forfeiture may be cancelled on any terms that the directors consider appropriate.

(11) A person whose shares are forfeited:

(a) ceases to be a member in respect of the forfeited shares; but
(b) remains liable to pay to the company all money that, at the date of forfeiture, was payable by the member to the company in respect of the shares.

(12) A liability under subclause (11)(b) includes, if the directors so demand, liability to pay interest on the money for the time being unpaid, at the rate of 8% per year from the date of forfeiture.

(13) 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 the statement, is evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.

(14) This clause applies 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 duly made and notified.

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57. Transmission of Shares on Death

(1) If a shareholder who does not own shares jointly dies, the company will recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder's interest in the shares.

(2) If the personal representative gives the directors the information they reasonably require to establish the representative's entitlement to be registered as holder of the shares:

(a) the personal representative may:
(i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
(ii) by giving a completed transfer form to the company, transfer the shares to another person; and

(b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the deceased shareholder.

(3) On receiving an election under subclause (2)(a)(i), the company must register the personal representative as the holder of the shares.

(4) A transfer under subclause (2)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

(5) If a shareholder who owns shares jointly dies, the company will recognise only the survivor as being entitled to the deceased shareholder's interest in the shares.

(6) The estate of the deceased shareholder is not released from any liability in respect of the shares.

58. Transmission of Shares on Bankruptcy

(1) This clause applies if a person entitled to shares because of the bankruptcy of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares.

(2) The person may:

(a) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
(b) by giving a completed transfer form to the company, transfer the shares to another person.

(3) On receiving an election under subclause (2)(a), the company must register the person as the holder of the shares.

(4) A transfer under subclause (2)(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

(5) This clause is subject to the *Bankruptcy Act 1966* (Cth).

59. Transmission of Shares on Mental Incapacity

(1) This clause applies if a person entitled to shares because of the mental incapacity of a shareholder, gives the directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares.

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(2) The person may:

(a) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
(b) by giving a completed transfer form to the company, transfer the shares to another person.

(3) The person is entitled, whether or not registered as the holder of the shares, to the same rights as the shareholder.

(4) On receiving an election under subclause (2)(a), the company must register the person as the holder of the shares.

(5) A transfer under subclause (2)(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

60. Registration of Transfers

(1) A person transferring shares remains the holder of the shares until:

(a) the transfer is registered; and
(b) the name of the person to whom they are being transferred is entered in the register of members in respect of the shares.

(2) The directors are not required to register a transfer of shares in the company unless:

(a) the transfer and any share certificate have been lodged at the company's registered office; and
(b) any fee payable on registration of the transfer has been paid; and
(c) the directors have been given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.

(3) The directors may refuse to register a transfer of shares in the company if:

(a) the shares are not fully paid; or
(b) the company has a lien on the shares.

(4) The directors may suspend registration of transfers of shares in the company at the times and for the periods they determine.

(5) Periods of suspension under subclause (4) must not exceed 30 days in any one calendar year.

61. Additional General Discretion for Directors to Refuse to Register Transfers

Despite clause 60, the directors may refuse to register a transfer of shares for any reason and without giving any reason for the refusal.

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Part 6: Loan to Members

62. Loan Clause

(1) A loan made by the company to a member must be taken to be made in accordance with the Loan Agreement in Schedule 1 unless the company and the member agree in writing that the Loan Agreement in Schedule 1 is not to apply.

(2) The Loan Agreement continues to apply even if the member ceases to be a member of the company.

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SCHEDULE 1

Loan Agreement referred to in clause 62 of this Constitution

This is the Loan Agreement referred to in Clause 62 of the Constitution. This Agreement sets out the rate of interest payable, maximum term, terms and conditions of every Loan made by the *Company* to any *Member*.

THE PARTIES to this *Agreement* are the *Company* whose Constitution this *Agreement* forms a part (the "*Company*")

AND each *Member* of the *Company*, being a person whose name is entered in the register of Members under section 169 of the Corporations Act, 2001 (the "*Member*").

RECITALS:

(i) The *Company* has agreed to lend money without security to the *Member*.

(ii) The *Company* and the *Member* have agreed to enter into this Agreement to set out the terms and conditions of every *Loan* by the *Company* to the *Member*.

(iii) Unless agreed otherwise, the *Company* and the *Member* desire that all *Loans* meet the criteria set out in section 109N of Division 7A of the Income Tax Assessment Act 1936 and are therefore not taken to be dividends.

THE PARTIES AGREE:-

1. Definitions and Interpretation

(a) **Definitions**

In this *Agreement*, unless inconsistent with the context or subject matter, the following terms have the following meanings:

"Amalgamated Loan" has the same meaning as in section 109E of *Division 7A of* the *ITAA 1936* being the sum of the *Constituent Loans* made by the *Company* to the *Member* and not repaid before the *Lodgement Day* for the *year of income* in which the *Loan* was made.

"*Agreement*" means this agreement as varied from time to time.

"Constituent Loan" means any *Loan* forming part of an *Amalgamated Loan.*

"Corporations Act" means the Corporations Act 2001 (Commonwealth) and, where applicable, the corresponding legislation of any State or Territory of Australia and Regulations.

"Current Year" means the first *Year of Income* the *Loan* was made to the *Member*.

"Division 7A" means Division 7A of the Income Tax Assessment Act 1936.

"Drawdown Date" means the date the Loan is paid to the *Member* or paid as directed by the *Member* in writing.

"Income Year" or "Year of Income" means the period of 1 July to 30 June or, an accounting period adopted in lieu of by the *Company*;

"Loan" has the same meaning as appears in section 109D of the ITAA 1936 and includes:-

(a) an advance of money; and

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(b) a provision of credit or any other form of financial accommodation; and
(c) a payment of an amount for, on account of, or on behalf of or at the request of, an entity, if there is an express or implied obligation to repay the amount; and
(d) a transaction (whatever its terms or form) which in substance effects a *Loan* of money.
(e) all Loans as above made by the *Company* to the Borrower that have not been fully repaid except those loans in respect of which the *Company* and the *Borrower* have agreed that this Loan Agreement shall not apply.

"Lodgement Day" has the same meaning as appears in section 109D(6) of the ITAA 1936.

"Minimum Yearly Repayment" means the minimum yearly repayment to be made by the *Member* in accordance with section 109E of the ITAA 1936.

"Repayment Date" means, in respect to each *Loan* made pursuant to this *Agreement*, is a maximum of seven (7) years from the *Drawdown Date*.

"ITAA 1936" means the Income Tax Assessment Act, 1936 (Cth) and related legislation including Regulations made under that Act from time to time.

(b) **Interpretation**

Unless the context otherwise requires, in the interpretation of this Agreement;

(i) Words importing the singular number include the plural and vice versa.

(ii) Any gender includes the other genders.

(iii) Any reference to a person includes a reference to a corporation, firm, authority, government or governmental agency.

(iv) Any reference to a party to this Agreement includes their permitted successors and assigns of that person.

(v) A reference to legislation or to a legislative provision includes all regulations, orders, proclamations, notices or other requirements under that legislation or legislative provision. It also includes any amendments modifications or re-enactments of that legislation or legislative provision and any legislation or legislative provision substituted for, and any statutory instrument issued under that legislation or legislative provision.

(vi) The clause headings in this *Agreement* are for reference purposes only and do not in any way influence or affect the meaning of this *Agreement*.

(vii) This *Agreement* includes the recitals to this *Agreement* and where amended or varied means this *Agreement* as so amended or varied.

2. Loans to the Member

Where the *Company* makes a *Loan* to a *Member* during the *Current Year* and the *Loan* is not fully repaid before the *Lodgement Day* for the *Current Year* then:

(a) The *Member* must pay interest, calculated on the daily balance of the unpaid *Loan*, for each *Year of Income* after the year in which the *Loan* was made for the term of the *Loan*; and

(b) The rate of interest for an *Income Year* is equal to the benchmark interest rate for that *Income Year* as defined in section 109N of the *ITAA 1936*; and

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(c) The *Member* must where required by Section 109E, make *Minimum Yearly Repayments* to the *Company*, and in accordance with section 109E of the *ITAA 1936*, for the term of the *Loan* and paid on or before the last day of each *Year of Income*; and

(d) The *Member* must repay and finally discharge the *Loan,* including any interest accrued and unpaid on the *Loan* and all other amounts payable under this *Agreement* and unpaid to the *Company,* on or before the *Repayment Date*.

(e) The term of each *Loan* is a maximum of seven (7) years from the *Drawdown Date*.

3. Application and Payment of Monies Received

Any payment made by the *Member* to the *Company i*n relation to a *Constituent Loan* will, in accordance with section 109E(4) of the *ITAA 1936* be deemed a payment in relation to the *Amalgamated Loan* of which the *Constituent Loan* is a part.

4. Notices

A Notice must be in writing and served personally on the *Member* or sent by prepaid mail (airmail if overseas) or by facsimile to the address or facsimile number of the *Member* as recorded in the *Company* Register.

5. General

(a) The *Member* must provide the *Company* with such information as the *Company* may at any time require.

(b) A statement in writing by the *Company* setting out the *Member*'s debt or any component parts shall be prima facie evidence of those amounts.

(c) The *Member* agrees that time is of the essence in relation to the performance of its obligations under this *Agreement*.

(d) Each provision of this *Agreement* shall be deemed to be separate and severable from the others of them. If any provisions of this *Agreement* are determined to be invalid or unenforceable in any jurisdiction, such determination and the consequential severance (if any) shall not invalidate the rest of the *Agreement* which shall remain in full force and effect as if such provision had not been made a part thereof, nor shall it affect the validity or enforceability of such provision in any other jurisdiction.

(e) This *Agreement* is governed by the laws from time to time in force in the State or Territory in which the *Company* is incorporated.

(f) The Parties shall execute such other agreements and do all such acts, matters and things as shall be necessary or desirable in order to implement and give full effect to the provisions and purposes of this *Agreement*.

6. Sole Agreement

Subject to clause 9, this *Agreement* states exclusively the terms and conditions for each *Loan* the *Company* makes to the *Member* however the *Company* and the *Member* may agree in writing to vary this *Agreement*.

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7. Joint and Several Liability

Any agreement, warranty, representation or obligation which binds or benefits two or more persons under this *Agreement*, whether expressed or implied, binds or benefits those persons jointly and severally.

8. Inconsistency

If there is any inconsistency between the provisions of Division 7A of the ITAA 1936 and this *Agreement* then this *Agreement* shall be deemed varied to the extent necessary to ensure that any *Loan* is not treated as a dividend.

9. Amendment

Any provision of this *Agreement* may be varied by the Company and the Member agreeing in writing to vary it. The variation, subject to the ITAA 1936, takes effect from such date, whether an antecedent, current or future date, as the Company and the Member agree.

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Agreement

I/We, the undersigned, agree to this Constitution.

Signed by all members on: 10/03/2015

Signed: _____
Smith, John

Signed: _____
Smith, John In trust for JJ Smith

Signed: _____
Smith, Peter

Executed for and on behalf of
Corporate Shareholder Pty Ltd
(A.C.N. 058 086 169)
by authority of the director(s):

_____ _____
Director AND Secretary or Director

_____
OR Sole Director/Secretary

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