

# Constitution of Solvar Limited

ACN: 117 296 143

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# Constitution of Solvar Limited

## Preliminary

### 1 Defined terms

In this Constitution:

**Alternate Director** means a person appointed as an alternate Director under clause 74.

**ASX Settlement Operating Rules** means the operating rules of ASX Settlement Pty Limited and, to the extent that they are applicable, the operating rules of the ASX and the operating rules of ASX Clear Pty Limited or of any relevant organisation which is an alternative or successor to, or replacement of, ASX Settlement Pty Ltd and any other CS Facility regulating the settlement, clearing and registration of uncertificated securities except to the extent of any relief or waiver given by the CS Facility operator in their application to the Company;

**ASX** means ASX Limited ACN 008 624 691 or the Australian Stock Exchange, as the content required or such other body corporate that is declared by the Directors to be the Company's primary stock exchange for the purposes of this definition.

**Auditor** means the Company's auditor.

**Business Day** has the same meaning as in the Listing Rules.

**Holding** means the holder of Shares recorded in the Computerised trading system operated by ASX Settlement Pty Limited.

**Company** means Solvar Limited ACN 117 296 143

**Constitution** means this constitution (as amended from time to time).

**Corporations Act** means the *Corporations Act 2001* (Cth) as amended or replaced from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

**CS Facility** has the same meaning as clearing and settlement facility in the Act.

**Director** means a person appointed to the position of a Director of the Company and where appropriate, includes an Alternate Director.

**Directors** means all or some of the Directors acting as a board.

**Dividend** includes bonus.

**Executive Director** has the meaning given by clause 81(b).

**Listed** means the Company is admitted to the Official List of the ASX.

**Listing Rules** means the listing clauses of ASX applicable to the Company or the Shares while the Company is admitted to the Official List, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

**Managing Director** means a Director appointed as managing Director under clause 81(a).

**Member** means a person who is a Member of the Company under the Corporations Act.

**Non-Executive Director** means a Director who is not an Executive Director.

**Non-Marketable Parcel** means a parcel of securities that is less than a Marketable Parcel.

**Record Time** means:

- (a) in the case of a meeting for which the caller of the meeting has decided, under the Corporations Act, that Shares are to be taken to be held by the persons who held them at a specified time before the meeting, that time; and

- (b) in any other case, 48 hours before the relevant meeting, or, if this time would fall on a trading day, 7.00pm (Sydney time) on that day or such other time specified in the ASX Settlement Operating Rules.

**Register** means the register of Members of the Company.

**Representative** means a person appointed by a Member to act as its representative under clause 59(a).

**Restricted Securities** has the meaning given to it in the Listing Rules and includes Shares defined as such in any Restriction Agreement;

**Restriction Agreement** means a restriction agreement or a restriction notice in the form set out in the Listing Rules or otherwise approved by ASX and includes any agreement which the Company and any Member agrees is a restriction agreement

**Seal** means the Company's common seal.

**Secretary** means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if more than one person is appointed, any one or more of such persons.

**Shares** means shares in the share capital of the Company.

## 2 Interpretation

- (a) In this Constitution, except where the context otherwise requires:
- (i) the singular includes the plural and vice versa, and a gender includes other genders;
  - (ii) another grammatical form of a defined word or expression has a corresponding meaning;
  - (iii) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
  - (iv) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
  - (v) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
  - (vi) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions; and
  - (vii) Unless the contrary intention appears:
    - (A) an expression in a clause that deals with a matter dealt with by a provision of the Corporations Act, the Listing Rules or the ASX Settlement Operating Rules has the same meaning as in that provision; and
    - (B) subject to clause 2(vii)(A), an expression in a clause that is used in the Act has the same meaning in this Constitution as in the Act.
- (b) Headings are for ease of reference only and do not affect interpretation.
- (c) The Corporations Act prevails over any inconsistency with:
- (i) this Constitution;
  - (ii) the Listing Rules; and
  - (iii) the ASX Settlement Operating Rules.

- (d) Before the Company is Listed, a provision of this Constitution subject to or in any way restricted by the Listing Rules or the ASX Settlement Operating Rules is construed as if it were not subject to or restricted by the Listing Rules or the ASX Settlement Operating Rules.

### **3 Replaceable clauses**

The provisions of the Corporations Act that apply to certain companies as replaceable clauses are displaced by this Constitution in their entirety and do not apply to the Company.

## **Shares**

### **4 Rights**

Subject to this Constitution and to the terms of issue of Shares, all Shares attract the following rights:

- (a) the right to receive notice of and to attend and vote at all general meetings of the Company;
- (b) the right to receive dividends; and
- (c) in a winding up or a reduction of capital, the right to participate equally in the distribution of the assets of the Company (both capital and surplus), subject to any amounts unpaid on the Share and, in the case of a reduction, to the terms of the reduction.

### **5 Issue of Shares**

Subject to the Corporations Act, the Listing Rules and this Constitution, the Directors may issue and allot, or dispose of, Shares:

- (a) on terms determined by the Directors;
- (b) at the issue price that the Directors determine; and
- (c) to Members whether in proportion to their existing shareholdings or otherwise, and to such other persons as the Directors may determine.
- (d) The Directors' power under clause 5(a) includes the power to:
  - (i) grant options over unissued Shares;
  - (ii) issue and allot Shares:
    - (A) with any preferential, deferred or special rights, privileges or conditions;
    - (B) with any restrictions in regard to dividend, voting, return of capital or otherwise;
    - (C) which are liable to be redeemed;
    - (D) which are bonus Shares for whose issue no consideration is payable to the Company; or
    - (E) which have any combination of the characteristics described in clauses 5(d)(ii)(A) to 5(d)(ii)(D) inclusive.

### **6 Preference Shares**

- (a) The Company may issue preference shares including preference shares which are, or at the option of the Company or holder are, liable to be redeemed or convertible into ordinary shares.

- (b) Each preference share confers on the holder a right to receive a preferential dividend, in priority to the payment of any dividend on the ordinary shares, at the rate and on the basis decided by the Directors under the terms of issue.
- (c) In addition to the preferential dividend and rights on winding up, each preference share may participate with the ordinary shares in profits and assets of the Company, including on a winding up, if and to the extent the Directors decide under the terms of issue.
- (d) The preferential dividend may be cumulative only if and to the extent the Directors decide under the terms of issue, and will otherwise be non-cumulative.
- (e) Each preference share confers on its holder the right in a winding up and on redemption to payment in priority to the ordinary shares of:
  - (i) the amount of any dividend accrued but unpaid on the share at the date of winding up or the date of redemption, unless otherwise provided for in the terms of issue; and
  - (ii) any additional amount specified in the terms of issue.
- (f) To the extent the Directors may decide under the terms of issue, a preference share may confer a right to a bonus issue or capitalisation of profits in favour of holders of those shares only.
- (g) A preference share does not confer on its holder any right to participate in the profits or assets of the Company except as set out above.
- (h) A preference share does not entitle its holder to vote at any general meeting of the Company except in the following circumstances:
  - (i) on any of the proposals specified in clause 6(i);
  - (ii) on a resolution to approve the terms of a buy back agreement;
  - (iii) during a period in which a dividend or part of a dividend on the share is in arrears;
  - (iv) during the winding up of the Company; or
  - (v) in any other circumstances in which the Listing Rules require holders of preference shares to be entitled to vote.
- (i) The proposals referred to in clause 6(h) are proposals:
  - (i) to reduce the share capital of the Company;
  - (ii) that affect rights attached to the share;
  - (iii) to wind up the Company; or
  - (iv) for the disposal of the whole of the property, business and undertaking of the Company.
- (j) The holder of a preference share who is entitled to vote in respect of that share under clause 6(h) is, on a poll, entitled to the greater of one vote per share or such other number of votes specified in, or determined in accordance with, the terms of issue for the share.
- (k) In the case of a redeemable preference share, the Company must, at the time and place for redemption specified in, or determined in accordance with, the terms of issue for the share, redeem the share and, on receiving a redemption request under the terms of issue, pay to or at the direction of the holder the amount payable on redemption of the share.
- (l) A holder of a preference share must not transfer or purport to transfer, and the Directors, to the extent permitted by the Listing Rules, must not register a transfer of,



the share if the transfer would contravene any restrictions on the right to transfer the share set out in the terms of issue for the share.

## **7 Commission and brokerage**

Any brokerage or commission which may be paid by the Company may be made in cash, by the issue and allotment of Shares, or the issue of debentures, or by a combination of any of those methods.

## **8 Trusts not recognised**

- (a) Except as required by law, the ASX Settlement Operating Rules or as otherwise provided by this Constitution, the Company will not recognise any person as holding a Share on trust and the Company will not be bound to recognise any equitable, contingent, future or partial interest or any other right in respect of a Share except the registered holder's absolute right of ownership.
- (b) This clause 8 applies even if the Company has notice of the relevant trust, interest or right.

## **9 Joint holders**

- (a) Where two or more persons are registered as the joint holders of Shares then they are taken to hold the Shares as joint tenants with rights of survivorship, but the Company is not bound:
  - (i) to register more than three persons as joint holders of a Share (unless the Listing Rules permit an additional number of persons to be regarded as joint Holders, in which case the Company will regard the maximum number of such persons permitted by the Listing Rules so registered to be regarded as joint holders and all other names will be disregarded by the Company for all purposes); or
  - (ii) to issue more than one certificate or holding statement in respect of Shares jointly held.
- (b) Any one of the joint holders of a Share may give an effective receipt for any dividend or return of capital payable to the joint holders.
- (c) The Company is entitled to and in respect of Holdings, must:
  - (i) record the names of only the first four joint holders of a Share on the Register;
  - (ii) regard the four joint holders of a Share appearing first on the Register as the registered holders of that Share to the exclusion of any other holders; and
  - (iii) disregard the entitlement of any person to be registered on the Register as a holder if the name of the person would appear on the Register after the first four holders for that Share.

## **10 Share certificates**

- (a) The Directors will not, unless they determine otherwise or the Listing Rules require, issue a certificate to a Member for any Shares registered in the Member's name or record any holding as held on a certificated subregister.
- (b) Any certificate for Shares must be issued and despatched in accordance with the Corporations Act, the Listing Rules and the ASX Settlement Operating Rules.
- (c) Subject to the Listing Rules, the Directors may in their absolute discretion elect whether to maintain a certificated subregister for any class of Shares.

- (d) Subject to the Listing Rules and the ASX Settlement Operating Rules, Shares may be held on any subregister maintained by or on behalf of the Company or on any branch register kept by the Company.
- (e) The Directors may order worn out or defaced certificates to be cancelled and, if necessary, replaced by new certificates.

## 10A Computerised Trading

- (a) The Directors may do anything they consider necessary or desirable and which is permitted under the Corporations Act, the Listing Rules and the Settlement Operating Rules to facilitate the involvement by the Company in any computerised or electronic system established or recognised by the Corporations Act or the Listing Rules for the purposes of facilitating dealings in securities.
- (b) If the Company is involved in a system of the kind described in rule 10A.1(a) the Company must comply with and give effect to the Listing Rules and the Settlement Operating Rules applying in relation to that system.
- (c) This clause 5 applies if the Company participates in any computerised or electronic system established or recognised by the Corporations Act or the Listing Rules for the purposes of facilitating dealings in securities.
- (d) The Company must comply with the Settlement Operating Settlement Rules if any of its securities are securities to which the Settlement Operating Rules apply. In particular the Company must comply with the requirements of the Settlement Operating Rules and the Listing Rules regarding the maintenance of registers, the issuing of holding statements and transfers in relation to its securities.

## 11 Class meetings

- (a) The rights attached to any class of Shares may be varied in accordance with the Corporations Act.
- (b) The provisions of this Constitution relating to general meetings apply, with necessary changes, to a meeting of a class of Members holding Shares in that class as if it was a general meeting except that:
  - (i) a quorum is two persons holding or representing by proxy, attorney or Representative not less than 5% of the Shares of the class or, if there is one holder of Shares in the class, that holder or a proxy, attorney or representative of that holder; and
  - (ii) any five holders, or holders of Shares of the class present in person or by proxy, attorney or Representative who can vote not less than 5% of all votes held by Members of that class, may demand a poll.

## 12 Non-marketable parcels

- (a) If one or more Members hold less than a Marketable Parcel of Shares, the Directors may invoke the procedure for the sale of Shares under this clause 12 (**Procedure**).
- (b) To invoke the Procedure, the Directors must give each Member (or each Member whose Shares are not held in a Holding) who holds less than a Marketable Parcel of Shares (**Eligible Member**) written notice (**Notice of Divestiture**) that complies with this clause 12.
- (c) A Notice of Divestiture given to a Member must:
  - (i) state that the Shares referred to in the Notice of Divestiture are liable to be sold in accordance with the Procedure if the Member does not advise the Company before a specified date (**Relevant Date**) that the Member wishes to keep those Shares; and

- (ii) if the Member holds Shares in a Holding, contain a statement to the effect that if those Shares remain in a Holding after the Relevant Date, the Company may, without further notice, move those Shares from the Holding to an Issuer Sponsored Holding or a Certificated Holding for the purposes of divestment by the Company in accordance with the Procedure.
- (d) The Relevant Date must be six weeks or more after the date that the Notice of Divestiture is sent.
- (e) A copy of a Notice of Divestiture must be given to any other person required by the ASX Settlement Operating Rules.
- (f) If an Eligible Member on whom a Notice of Divestiture has been served, wants to keep the Shares referred to in the Notice of Divestiture, the Eligible Member must give the Company written notice before the Relevant Date, advising the Company that the Member wants to keep those Shares in which event the Company will not sell the Shares.
- (g) If an Eligible Member on whom a Notice of Divestiture has been served does not give the Company written notice before the Relevant Date advising the Company that the Eligible Member wants to keep the Shares referred in the Notice of Divestiture, the Company may:
  - (i) if the Member holds those Shares in a Holding, move those Shares from the Holding to an Issuer Sponsored Holding or a Certificated Holding; and
  - (ii) in any case, sell those Shares in accordance with the Procedure,but only if the Shares held by the Eligible Member on the Relevant Date is less than a Marketable Parcel.
- (h) Any Shares which may be sold under this clause 12 may be sold on the terms, in the manner (whether on-market, by private treaty, through a share sale facility established by, on behalf or, or at the request of the Company, or otherwise) and at the time or times determined by the Directors and, for the purposes of a sale under this clause 12, each Eligible Member:
  - (i) appoints the Company as the Eligible Member's agent for sale;
  - (ii) authorises the Company to effect on the Eligible Member's behalf a transfer of the Shares sold and to deal with the proceeds of the sale of the Shares in accordance with clause 12(j);
  - (iii) appoints the Company, its Directors and the Secretary jointly and severally as the Eligible Member's attorneys to execute an instrument or take other steps, in the Eligible Member's name and on the Eligible Member's behalf, as they or any of them may consider appropriate to transfer the Shares sold; and
  - (iv) authorises each of the attorneys appointed under clause 12(h)(iii) to appoint an agent to do a thing referred to in clause 12(h)(iii).
- (i) The title of the transferee to Shares acquired under this clause 12 is not affected by an irregularity or invalidity in connection with the sale of Shares to the Transferee.
- (j) The proceeds of any sale of Shares under this clause 12 less any unpaid calls and interest (**Sale Consideration**) will be paid to the relevant Member or as that Member may direct.
- (k) The Company will hold the Sale Consideration in trust for the Member whose Shares are sold under this clause and will forthwith notify the Member in writing that the Sale Consideration in respect of the Member's Shares has been received by the Company and is being held by the Company pending instructions from the Member as to how it is to be dealt with. If the Member has been issued with a share certificate or certificates, the Member's instructions, to be effective, must be accompanied by the share certificate or certificates to which the Sale Consideration relates or, if the

certificate or certificates has or have been lost or destroyed, by a statement and undertaking under subsection 1070D(5) of the Corporations Act.

- (l) Subject to the Corporations Act, the Company or the purchaser will bear all costs, including brokerage and stamp duty, associated with the sale of any Shares under this clause.
- (m) The Procedure may only be invoked once in any 12 month period after its adoption or renewal.
- (n) If the Procedure has been invoked and there is an announcement of a takeover bid for Shares, no more sales of Shares may be made under this clause 12 until after the close of the offers made under the takeover. The Procedure may then be invoked again.

## Calls

### 13 General

- (a) Subject to the Corporations Act and the terms on which partly paid Shares are issued, the Directors may make calls on the holders of the Shares for any money unpaid on them.
- (b) A call is made when the resolution of the Directors authorising it is passed.
- (c) The Directors may revoke or postpone a call before its due date for payment.
- (d) The Directors may require a call to be paid by instalments.
- (e) The Company must comply with the Corporations Act and the Listing Rules in relation to the dispatch and content of notices to Members on whom a call is made.
- (f) A Member to whom notice of a call is given in accordance with this clause 13 must pay to the Company the amount called in accordance with the notice.
- (g) Failure to send a notice of a call to any Member or the non-receipt of a notice by any Member does not invalidate the call.
- (h) Joint holders of Shares are jointly and severally liable to pay all calls in respect of their Shares.

### 14 Instalments and amounts which become payable

If:

- (a) the Directors require a call to be paid by instalments; or
- (b) an amount becomes payable by the terms of issue of Shares on allotment, or at a time or in circumstances specified in the terms of issue,

then:

- (c) every instalment or the amount payable under the terms of issue is payable as if it were a call made by the Directors and as if they had given notice of it; and
- (d) the consequences of late payment or non-payment of an instalment or the amount payable under the terms of issue are the same as the consequences of late payment or non-payment of a call.

### 15 Interest and expenses

If an amount called is not paid on or before the due date, the person liable to pay the amount must also pay:

- (a) interest on the amount from the due date to the time of actual payment at a rate determined by the Directors (not exceeding 20% per annum); and
- (b) all expenses incurred by the Company as a consequence of the non-payment,

but the Directors may waive payment of the interest and expenses in whole or in part.

## **16 Recovery of amounts due**

On the hearing of any action for the recovery of money due for any call, proof that:

- (a) the name of the person sued was, when the call was made, entered in the Register as a holder or the holder of Shares in respect of which the call was made;
- (b) the resolution making the call is duly recorded in the Directors' minute book; and
- (c) notice of the call was given to the person sued,

will be conclusive evidence of the debt.

## **17 Differentiation**

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.

## **18 Payment of calls in advance**

- (a) The Directors may accept from a Member the whole or part of the amount unpaid on a Share before the amount accepted has been called.
- (b) The Company may:
  - (i) pay interest on any amount accepted, until the amount is payable under a call and at a rate (not exceeding 20% per annum) agreed between the Member and the Directors; and
  - (ii) subject to any contract between the Company and the Member, repay all or any of the amount accepted in excess of the amount called on the Share.
- (c) Payment of an amount in advance of a call does not entitle the paying Member to any:
  - (i) dividend, benefit or advantage, other than the payment of interest under this clause 18; or
  - (ii) voting right,

to which the Member would not have been entitled if it had paid the amount when it became due.

## **Lien and forfeiture**

### **19 Lien**

- (a) To the extent permitted by the Listing Rules, the Company has a first and paramount lien on every partly paid Share and dividends payable in respect of the Share for all money:
  - (i) due and unpaid to the Company at a fixed time, in respect of the Share;
  - (ii) presently payable by a holder or the holder of the Share, or the holder's estate, to the Company in respect of the Share; or
  - (iii) which the Company is required by law to pay (and has paid) in respect of the Share.
- (b) The lien extends to reasonable interest and expenses incurred because the amount is not paid.
- (c) If any law for the time being of any country, state or place imposes or purports to impose an immediate or contingent liability on the Company to make any payment or authorises a taxing authority or Government official to require the Company to make

payment in respect of Shares or dividends or other moneys accruing due to the Member who holds the Shares:

- (i) the Member or, if the Member is deceased, the Member's legal personal representative, indemnifies the Company in respect of any such payment or liability; and
- (ii) subject to the Corporations Act and the Listing Rules, the Company:
  - (A) has a lien on the Shares and dividends and other moneys payable in respect of the Shares, whether the Shares are held by the Member solely or jointly with another person in respect of any payment made or liability incurred by the Company, together with reasonable expenses and interest on any payment made by the Company at a rate to be fixed by the Directors not exceeding 20% per annum from the date of payment by the Company to the date of repayment by the Member;
  - (B) may set off amounts so paid by the Company against amounts payable by the Company to the Member as dividends or otherwise; and
  - (C) may recover as a debt due from the Member or its legal personal representative the amount of all payments made by the Company together with reasonable expenses and interest at the rate and for the period referred to in clause 19(c)(ii)(A).
- (d) The Company may do all things which the Directors think necessary or appropriate to do under the Listing Rules and the ASX Settlement Operating Rules to enforce or protect the Company's lien.
- (e) Unless the Directors determine otherwise, the registration of a transfer of a Share operates as a waiver of the Company's lien on the Share.
- (f) The Directors may declare a Share to be wholly or partly exempt from a lien.

## **20 Lien sale**

If:

- (a) the Company has a lien on a Share for money presently payable;
- (b) the Company has given the Member or the Member's executors or administrators (as the case may be) holding the Share written notice demanding payment of the money; and
- (c) that Member fails to pay all of the money demanded,

then 14 or more days after giving the notice, the Directors may, if the Listing Rules permit, sell the Share in any manner determined by them.

## **21 Forfeiture notice**

- (a) The Directors may at any time after a call or instalment becomes payable and remains unpaid by a Member, serve a notice on the Member requiring the Member to pay all or any of the following:
  - (i) the unpaid amount;
  - (ii) any interest that has accrued; and
  - (iii) all expenses incurred by the Company as a consequence of the non-payment.
- (b) The notice under clause 21(a) must:

- (i) specify a day (not earlier than 14 days after the date of the notice) on or before which the payment required by the notice must be made; and
- (ii) state that if a Member does not comply with the notice, the Shares in respect of which the call was made or instalment is payable will be liable to be forfeited.

## **22 Forfeiture**

- (a) If a Member does not comply with a notice served under clause 21, then any or all of the Shares in respect of which the notice was given may be forfeited under a resolution of the Directors.
- (b) Unpaid dividends in respect of forfeited Shares will also be forfeited.
- (c) On forfeiture, Shares become the property of the Company and forfeited Shares must be:
  - (i) if the Listing Rules permit, sold, disposed of, or cancelled on terms determined by the Directors; or
  - (ii) offered by public auction in accordance with any requirements of the Listing Rules.
- (d) The Directors may, at any time before a forfeited Share is sold, disposed of or cancelled, annul the forfeiture of the Share on conditions determined by them.
- (e) Promptly after a Share has been forfeited:
  - (i) notice of the forfeiture must be given to the Member in whose name the Share was registered immediately before its forfeiture; and
  - (ii) the forfeiture and its date must be noted in the Register.
- (f) Omission or neglect to give notice of or to note the forfeiture as specified in clause 22(e) will not invalidate a forfeiture.

## **23 Liability of former Member**

- (a) The interest of a person who held Shares which are forfeited is extinguished but subject to the Listing Rules, the former Member remains liable to pay:
  - (i) all money (including interest and expenses) that was payable by the Member to the Company at the date of forfeiture in respect of the forfeited Shares; and
  - (ii) interest from the date of forfeiture until payment of the money referred to in clause 23(a)(i), of this clause at a rate determined by the Directors (not exceeding 20% per annum).
- (b) A former Member's liability to the Company ceases if and when the Company receives payment in full of all money (including interest and expenses) payable by the former Member in respect of the Shares. The liability may only be released or waived in accordance with the Listing Rules.

## **24 Disposal of Shares**

- (a) The Company may:
  - (i) receive the consideration (if any) given for a forfeited Share on any sale or disposition of the Share, or a Share sold under a lien sale; and
  - (ii) effect a transfer of the Share in favour of a person to whom the Share is sold or disposed of.
- (b) The purchaser of the Share:

- (i) is not bound to check the regularity of the sale or the application of the purchase price;
  - (ii) obtains title to the Share despite any irregularity in the sale; and
  - (iii) will not be subject to complaint or remedy by the former holder of the Share in respect of the purchase.
- (c) A statement signed by a Director and the Secretary that the Share has been regularly forfeited and sold or reissued or regularly sold without forfeiture to enforce a lien, is conclusive evidence of the matters stated as against all persons claiming to be entitled to the Share.
- (d) Subject to the terms on which a Share is on issue, the net proceeds of any sale made to enforce a lien or on forfeiture must be applied by the Company in the following order:
- (i) in payment of the costs of the sale;
  - (ii) in payment of all amounts (if any) secured by the lien or all money (if any) that was payable in respect of the forfeited Share; and
  - (iii) where the Share was forfeited under clause 22(a), in payment of any surplus to the former Member whose Share was sold.

## Transfer of Shares

### 25 General

- (a) Subject to this Constitution, a Member may transfer Shares held by that Member.
- (b) Subject to this Constitution.
  - (i) the Corporations Act, the Listing Rules and any restrictions attached to a Share ASX Settlement Rules, a Member's Shares may be transferred as provided by the Settlement Operating Rules or by any other method of transfer which is required or permitted by instrument in writing in any form authorised by the Corporations Act and ASX.
  - (ii) No fee may be charged by the Company on the transfer of any Shares unless the transfer is paper-based in which case the Company may at its discretion, charge a reasonable fee for the transfer, subject to the Corporations Act and the Listing Rules.
- (c) The Company may participate in any computerised or electronic system for market settlement, securities transfer and registration conducted in accordance with the Corporations Act, the Listing Rules and the ASX Settlement Operating Rules, or corresponding laws or securities exchange clauses in any other country.
- (d) If the Company participates in a system of the kind described in clause (c), then despite any other provision of this Constitution:
  - (i) Shares may be transferred, and transfers may be registered, in any manner required or permitted by the Listing Rules or the ASX Settlement Operating Rules (or corresponding laws or securities exchange clauses in any other country) applying in relation to the system;
  - (ii) the Company must comply with and give effect to those clauses; and
  - (iii) the Company may, in accordance with those clauses, decline to issue certificates for holdings of Shares.
- (e) A written transfer instrument must be:
  - (i) executed by the transferor or (where the Corporations Act permits) stamped by the transferor's broker;



- (ii) unless the Directors decide otherwise in the case of a fully paid Share, executed by the transferee or (where the Corporations Act permits) stamped by the transferee's broker; and
- (iii) in the case of a transfer of partly paid Shares, endorsed or accompanied by an instrument executed by the transferee or by the transferee's broker to the effect that the transferee agrees to accept the Shares subject to the terms and conditions on which the transferor held them, to become a Member and to be bound by the Constitution.

Subject to the Corporation Act, the written transfer instrument may comprise more than one document.

- (f) Except as required by the ASX Settlement Operating Rules:
  - (i) a transferor of Shares remains the holder of the Shares transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Shares; and
  - (ii) a transfer of Shares does not pass the right to any dividends on the Shares until such registration.

## **26 Transfer procedure**

- (a) Subject to this Constitution and to any restrictions attached to a Member's shares, a Member may transfer any of the Member's shares by:
  - (i) a Proper ASTC Transfer; or
  - (ii) a written transfer in any usual form or in any other form approved by the Directors.
- (b) A transfer referred to in clause 26(a)(ii) must be:
  - (i) signed by or on behalf of the transferor and, if required by the Company, the transferee;
  - (ii) if required by law to be stamped, duly stamped; and
  - (iii) left for registration at the Company's registered office, or at any other place the Directors decide, with such evidence the Directors require to prove the transferor's title or right to the shares and the transferee's right to be registered as the owner of the shares.
- (c) Subject to the powers vested in the Directors under clause 27, where the Company receives a transfer complying with clause 26(a), the Company must register the transferee named in the transfer as the holder of the shares to which it relates.
- (d) A transferor of shares remains the holder of the shares until a Proper ASTC Transfer has been effected or the transferee's name is entered in the register of Members as the holder of the shares.
- (e) The Company must not charge a fee for registering a transfer of Shares unless:
  - (i) the Company is not Listed; or
  - (ii) the fee is permitted by the Listing Rules.
- (f) The Company (or the Company's securities registry) may put in place, and require compliance with, reasonable processes and procedures in connection with determining the authenticity of an instrument of transfer, notwithstanding that this may prevent, delay or interfere with the registration of the relevant instrument of transfer.
- (g) The Company may retain a registered transfer for any period the Directors decide.

- (h) The Directors may do anything that is necessary or desirable for the Company to participate in any computerised, electronic or other system for facilitating the transfer of Shares or operation of the Company's registers that may be owned, operated or sponsored by the Exchange or a related body corporate of the Exchange.
- (i) The Directors may, to the extent the law permits, waive any of the requirements of this clause 5.1 and prescribe alternative requirements instead, to give effect to clause 5.1(h) or for another purpose.

## **27 Right to refuse registration**

- (a) The Directors may decline to register, or prevent registration of, a transfer of Shares or apply a holding lock to prevent a transfer in accordance with the ASX Settlement Rules or the Listing Rules where:
  - (i) the transfer is not in registrable form;
  - (ii) the Company has a lien on any of the Shares transferred;
  - (iii) registration of the transfer may breach a law of Australia;
  - (iv) the transfer is paper-based and registration of the transfer will result in a holding which, at the time the transfer is lodged, is less than a marketable parcel;
  - (v) the transfer is not permitted under the terms of an employee share plan; or
  - (vi) the Company is otherwise permitted or required to do so under the Listing Rules or, under the terms of issue of the Shares
- (b) If a person has lodged a transfer which the Directors have refused to register, the Company must, give to the lodging person written notice of the refusal and the reasons for it in accordance with the Corporations Act and the Listing Rules.
- (c) The Directors may suspend the registration of transfers at any times, and for any periods, permitted by the ASX Settlement Operating Rules that they decide.
- (d) Restricted Securities cannot be disposed of during the escrow period except as permitted by the Listing Rules or ASX. The Company will refuse to acknowledge a disposal of Restricted Securities to the extent required under the Listing Rules.

## **Transmission of Shares**

### **28 Title on death**

- (a) The legal personal representative of a deceased Member who was the sole holder of Shares is the only person whom the Company will recognise as having any title to the deceased Member's Shares.
- (b) If a deceased Member was a joint holder of Shares, the other joint holder is the only person whom the Company will recognise as having any title to the deceased Member's Shares.
- (c) The estate of the deceased Member will not be released from any liability to the Company in respect of the Shares.
- (d) The Company may register or give effect to a transfer to a transferee who dies before the transfer is registered.

### **29 Entitlement to transmission**

- (a) A person who becomes entitled to a Share in consequence of the death, mental incapacity or bankruptcy of a Member may, subject to clause 27 and to producing to the Company evidence of its entitlement which is satisfactory to the Directors, elect to:

- (i) be registered as the holder of the Share; or
  - (ii) transfer the Share to some other person nominated by it.
- (b) If the person who has become entitled to a Share:
- (i) elects to be registered as the holder, then the person must deliver or send to the Company a written notice of election signed by him or her; or
  - (ii) elects to transfer the Share, then the person must effect a transfer of the Share.
- (c) An election to be registered as a holder of a Share under clause 29(a)(i) or a transfer of a Share from a Member or deceased Member under this clause 29 is subject to the same limitations, restrictions and provisions of this Constitution as would apply if the election were a transfer or the transfer were made by the Member or deceased Member himself or herself.
- (d) A person who:
- (i) has become entitled to a Share by operation of law; and
  - (ii) has produced evidence of that person's entitlement which is satisfactory to the Directors,

is entitled to the dividends and other rights of the registered holder of the Share.

- (e) Where two or more persons are jointly entitled to any Share in consequence of the death of the registered holder, they will be considered to be joint holders of the Share.
- (f) Any person who is registered under this clause must indemnify the Company against all liabilities, costs, losses and expenses incurred by the Company as a result of registering the person.

## Proportional takeover bids

### **30 Transfers not to be registered**

Despite clauses 26(c) and 27, a transfer giving effect to a contract resulting from the acceptance of an offer made under a Proportional Takeover Bid must not be registered unless an Approving Resolution to approve the Proportional Takeover Bid has been passed (Approving Resolution) or is taken to have been passed in accordance with clause 31.

### **31 Approving Resolution**

- (a) Where offers have been made under a Proportional Takeover Bid, the Directors must:
  - (i) convene a meeting of the persons entitled to vote on the Approving Resolution for the purpose of considering and, if thought fit, passing a resolution to approve the Proportional Takeover Bid; and
  - (ii) ensure that the resolution is voted on in accordance with this clause 31, before the Approving Resolution Deadline.
- (b) The provisions of this Constitution relating to general meetings apply, with such modification as the circumstances require, to a meeting that is convened under clause 31(a), as if that meeting were a general meeting of the Company.
- (c) The bidder under a Proportional Takeover Bid and any associates of the bidder are not entitled to vote on the Approving Resolution and if they do vote, their votes must not be counted.
- (d) Subject to clause 31(c), a person who, as at the end of the day on which the first offer under the Proportional Takeover Bid was made, held securities of the relevant class, is entitled to vote on the Approving Resolution relating to the Proportional Takeover Bid.

- (e) An Approving Resolution that has been voted on is taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than 50%, and otherwise is taken to have been rejected.
- (f) If an Approving Resolution has not been voted on in accordance with this clause 31 as at the end of the day before the Approving Resolution Deadline, an Approving Resolution will be taken to have been passed in accordance with this clause 31 on the Approving Resolution Deadline.

## 32 Sunset

Clauses 31, 32 and **Error! Reference source not found.**, cease to have effect at the end of 3 years beginning:

- (a) where those clauses have not been renewed in accordance with the Corporations Act, on the date that those clauses were adopted by the Company; or
- (b) where those clauses have been renewed in accordance with the Corporations Act, on the date those clauses were last renewed.

## 33 Definitions

These terms have the following meanings in clauses 30, 31 and 32:

- (a) **Approving Resolution** in relation to a Proportional Takeover Bid means a resolution to approve the Proportional Takeover Bid passed in accordance with clause 31
- (b) **Approving Resolution Deadline** in relation to a Proportional Takeover Bid means the day that is 14 days before the last day of the bid period, during which the offers under the Proportional Takeover Bid remain open or a later day allowed by the Australian Securities and Investments Commission.
- (c) **Proportional Takeover Bid** a takeover bid that is made or purports to be made under section 618(1)(b) of the Corporations Act in respect of securities included in a class of securities in the Company.
- (d) **Relevant Class** in relation to a Proportional Takeover Bid, means the class of securities in the Company in respect of which offers are made under the Proportional Takeover Bid.

## Changes to Share capital

### 34 Consolidation or division

For the purpose of giving effect to any consolidation or division of Shares, the Directors may, subject to the ASX Settlement Operating Rules, settle any difficulty which arises with respect to fractions of Shares in any manner that they think expedient.

## Powers of attorney

### 35 Powers of attorney

- (a) If a Member executes or proposes to execute any document or do any act by or through an attorney which is relevant to the Company or the Member's shareholding in the Company, that Member must deliver the instrument appointing the attorney to the Company for notation.
- (b) The Company may require the Member to lodge a certified copy of the instrument for retention by the Company, and ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.
- (c) Any power of attorney granted by a Member will, as between the Company and the Member who granted the power of attorney:

- (i) continue in force; and
- (ii) may be acted on,

unless express notice in writing of its revocation or of the death of the Member who granted it is lodged with the Company.

- (d) Where a Member proposes that an attorney represent the Member at a general meeting or adjourned meeting, the Member must comply with clause 57(a) of this Constitution.

## General meetings

### 36 Calling general meeting

- (a) A general meeting may only be called:
  - (i) by a Directors' resolution; or
  - (ii) as otherwise provided in the Corporations Act.
- (b) The Directors may, by notice to the ASX, change the venue for, postpone or cancel a general meeting, but:
  - (i) a meeting which is called in accordance with a Members' requisition under the Corporations Act; and
  - (ii) any other meeting that is not called by a resolution of Directors,may not be postponed or cancelled without the prior written consent of the persons who called or requisitioned the meeting.
- (c) A general meeting may be held at two or more venues simultaneously or entirely via virtual means using any technology that gives the Members as a whole a reasonable opportunity to participate.
- (d) If, before or during the meeting, any technical difficulty occurs which may materially impact the participation of Members who are not present in the same location as the Chairperson of the meeting, the Chairperson may:
  - (i) adjourn the meeting until the difficulty is remedied; or
  - (ii) continue to hold the meeting in the location of the Chairperson (and any other place which is linked in the notice) and transact business, and no Member may object to the meeting being held or continuing.
- (e) In no circumstances shall the inability of one or more Members to access, or to continue to access, an electronic participation facility or facilities affect the validity of a meeting or any business conducted at a meeting, provided that sufficient Members are able to participate in the meeting as are required to constitute a quorum.

### 37 Notice

- (a) Notice of a general meeting must be given in accordance with the Corporations Act to each person who is at the time of giving the notice:
  - (i) a Member;
  - (ii) a Director; and
  - (iii) the auditor of the Company; or
  - (iv) is entitled to be registered as a holder of a Share under clause 28.
- (b) Except as permitted by the Corporations Act, general meetings must be called on at least the minimum number of days notice required by the Corporations Act and the

Listing Rules and otherwise in accordance with the procedures set out in the Corporations Act.

- (c) Notice of change of venue, cancellation or postponement of a general meeting must state the reason for cancellation or postponement and be:
  - (i) Published in a daily newspaper circulating in Australia;
  - (ii) Given to ASX; or
  - (iii) subject to the Corporations Act and the Listing Rules, given in any other manner determined by the Directors.
- (d) Subject to the requirements of the Corporations Act, a notice calling a general meeting must:
  - (i) specify the place, date and time of the meeting (and if the meeting is to be held in two or more places or via virtual or hybrid means, the technology that will be used to facilitate this);
  - (ii) state the general nature of the business to be transacted at the meeting;
  - (iii) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
  - (iv) subject to the ASX Settlement Operating Rules, specify particulars of any determination made under regulation 7.11.37 of the *Corporations Regulations 2001* (Cth); and
  - (v) comply with any other requirements of the Corporations Act.
- (e) Unless the Corporations Act provides otherwise except with the approval of the Directors or the chairperson, no person may move any amendment to a proposed resolution the terms of which are set out in the notice calling the meeting or to a document which relates to such a resolution and a copy of which has been made available to Members to inspect or obtain.
- (f) The Notice may be distributed to members by electronic means.

## **38 Business**

- (a) The business of an annual general meeting may include:
  - (i) any of the following matters, even if not referred to in the notice of meeting:
    - (A) consideration of the annual financial report, Directors' report and auditor's report;
    - (B) election of Directors;
    - (C) appointment of the auditor;
    - (D) fixing the auditor's remuneration;
  - (ii) any business which under this Constitution or the Corporations Act is required to be transacted at an annual general meeting; and
  - (iii) any other business which may lawfully be transacted at a general meeting.
- (b) The chairperson of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to:
  - (i) ask questions about or make comments on the management of the Company; and
  - (ii) ask the Auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the Auditor's report for the Company.

- (c) The Directors may postpone or cancel any general meeting (other than a meeting requested or called by Members under the Corporations Act at any time before the day of the meeting. The Directors must give notice of the postponement by notice to the Exchange.
- (d) An accidental omission to send a notice of a general meeting (including a proxy appointment form) or the postponement of a general meeting to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.
- (e) A person's attendance at a general meeting waives any objection that person may have to:
  - (i) a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
  - (ii) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

## Proceedings at general meetings

### 39 Member Present

- (a) In clauses 40, 41, 44 and 50, Member includes a Member present in person or by proxy, attorney or Representative, either physically at the main place of a general meeting or at a designated separate meeting location or virtual attendance as disclosed in the Notice of Meeting.
- (b) If a separate or virtual meeting place is linked to the main place of a general meeting by an instantaneous audio-visual communication device which, by itself or in conjunction with other arrangements:
  - (i) gives the general body of Members in the separate meeting place a reasonable opportunity to participate in proceedings in the main place;
  - (ii) enables the chairperson to be aware of proceedings in the other place; and
  - (iii) enables the Members in the separate meeting place to vote on a show of hands or on a poll,
- (c) a Member present at the separate or virtual meeting place is taken to be present at the general meeting and entitled to exercise all rights as if he or she was present at the main place.
- (d) If, before or during the meeting, any technical difficulty occurs where one or more of the matters set out in clause 39(b) is not satisfied, the chairperson may:
  - (i) adjourn the meeting until the difficulty is remedied; or
  - (ii) continue to hold the meeting in the main place (and any other place which is linked under clause 39(b) and transact business, and no Member may object to the meeting being held or continuing.

### 40 Quorum

- (a) No business may be transacted at a general meeting unless a quorum of Members is present at the commencement of business.
- (b) A quorum of Members is 3 Members unless there is less than 3 Members at that time, in which case a quorum is the number of Members at that time.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:

- (i) the general meeting is automatically dissolved if it was requested or called by Members; or
- (ii) in any other case:
  - (A) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
  - (B) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the Members present (being not less than 2) will be a quorum unless the number of Members at that time is less than 3, in which case the general meeting is automatically dissolved.

## **41 Chairperson**

- (a) The chairperson, or in the chairperson's absence the deputy chairperson, of Directors' meetings will be the chairperson at every general meeting.
- (b) If:
  - (i) there is no chairperson or deputy chairperson; or
  - (ii) neither the chairperson nor deputy chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
  - (iii) the chairperson and deputy chairperson are unwilling to act as chairperson of the general meeting,

the Directors present may elect a chairperson of the general meeting of the Members.
- (c) If no chairperson is elected in accordance with clause 41(b), then:
  - (i) the Members may elect one of the Directors present as chairperson; or
  - (ii) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.
- (d) At any time during a meeting and in respect of any specific item or items of business, the chairperson may elect to vacate the chair in favour of another person nominated by the chairperson (which person must be a Director unless no Director is present or is willing to act). That person is to be taken to be the chairperson and will have all the powers of the chairperson (other than the power to adjourn the meeting), during the consideration of that item of business or those items of business.
- (e) If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

## **42 General conduct**

- (a) The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting will be determined by the chairperson, including the procedure for the conduct of the election of Directors. The chairperson's ruling on all matters relating to the order of business, procedure and conduct of a meeting is final.
- (b) Without limiting the general discretion of the chairperson to determine the general conduct of each general meeting of the Company and the procedures to be adopted at the meeting, the following will apply:
  - (i) impose a limit on the time that a person may speak on each motion or other item of business and terminate debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members present;



- (ii) adopt any procedures for casting or recording votes at the meeting whether on a show of hands or on a poll, including the appointment of scrutineers; and
  - (iii) decide not to put to the meeting any resolution proposed in the notice convening the meeting (other than a resolution proposed by Members in accordance with section 249N of the Corporations Act or required by the Corporations Act to be put to the meeting).
- (c) A decision by a chairperson under clauses 42(a) or 42(b) is final.
- (d) The chairperson may postpone the meeting before it has started, whether or not a quorum is present, if, at the time and place appointed for the meeting, he or she considers that:
- (i) there is not enough room for the number of Members who wish to attend the meeting; or
  - (ii) a postponement is necessary in light of the behaviour of persons present or for any other reason so that the business of the meeting can be properly carried out.
- (e) A postponement under clause 42(d) will be to another time, which may be on the same day as the meeting, and may be to another place (and the new time and place will be taken to be the time and place for the meeting as if specified in the notice which called the meeting originally).

## 43 Adjournment

- (a) The chairperson may at any time during the course of the meeting:
- (i) adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting; and
  - (ii) for the purpose of allowing any poll to be taken or determined, suspend the proceedings of the meeting for such periods as he or she decides without effecting an adjournment. No business may be transacted and no discussion may take place during any suspension of proceedings unless the chairperson otherwise allows.
- (b) The chairperson's rights under clauses 42(d) and 43(a) are exclusive and, unless the chairperson requires otherwise, no vote may be taken or demanded by the Members present concerning any postponement, adjournment or suspension of proceedings.
- (c) Only unfinished business may be transacted at a meeting resumed after an adjournment.
- (d) Where a meeting is postponed or adjourned under clauses 42 or 43, notice of the postponed or adjourned meeting must be given to the Exchange, but, except as provided by clause 43(f), need not be given to any other person.
- (e) Where a meeting is postponed or adjourned, the Directors may, by notice to the Exchange, postpone, cancel or change the place of the postponed or adjourned meeting.
- (f) Where a meeting is postponed or adjourned for 30 days or more, notice of the postponed or adjourned meeting must be given as in the case of the original meeting.
- (g) A poll cannot be demanded on any resolution concerning the adjournment of a general meeting except by the chairperson.
- (h) after the chairperson of a meeting declares the meeting to be adjourned, terminated or over, no business or question may be brought forward, discussed or decided.

## **44 Decisions**

- (a) Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- (b) A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded by:
  - (i) Member or Members in accordance with the Corporations Act; or
  - (ii) the chairperson.
- (c) A poll may be demanded:
  - (i) before a vote is taken; or
  - (ii) in the case of a vote taken on a show of hands, immediately before or immediately after, the results of the vote are declared.
- (d) Unless a poll is demanded:
  - (i) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
  - (ii) an entry to that effect in the minutes of the meeting,are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- (e) The demand for a poll may be withdrawn.
- (f) No objection may be made to the validity of any vote except at the meeting (or adjourned meeting) or poll at which such vote is tendered and every vote not disallowed at any such meeting is valid for all purposes.
- (g) The chairperson may determine any dispute about the admission or rejection of a vote, and such determination, if made in good faith, will be final and conclusive.
- (h) A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the meeting was not entitled to do so.

## **45 Taking a poll**

- (a) Subject to clause 45(e), a poll will be taken when and in the manner that the chairperson directs. No notice need be given of any poll.
- (b) The result of the poll will determine whether the resolution on which the poll was demanded is carried or lost.
- (c) The chairperson may determine any dispute about the admission or rejection of a vote, and such determination, if made in good faith, will be final and conclusive.
- (d) A poll cannot be demanded on any resolution concerning the election of the chairperson of a general meeting.
- (e) A poll demanded by the chairperson on any resolution concerning the adjournment of a general meeting must be taken immediately.
- (f) After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

## **46 Casting vote of chairperson**

If the votes are equal on a proposed resolution, the chairperson of the meeting has a casting vote, in addition to any deliberative vote.

## **47 Direct Voting**

- (a) The Directors may permit direct voting on resolutions proposed at a general meeting by allowing members entitled to vote on the resolution to cast their vote without being present (whether in person or by proxy or other representative) at the meeting.
- (b) The Directors may determine the regulations, rules and procedures for direct voting, including the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.
- (c) Subject to clauses 47d & 47e, where notice of a general meeting specifies that direct voting on a resolution proposed for consideration at the meeting is permitted by Members or particular Members, a direct vote cast by or on behalf of such a Member in accordance with the regulations, rules and procedures for direct voting determined by the Directors (whether set out in the notice of meeting or otherwise) is taken to have been validly cast by that member at the meeting.
- (d) A direct vote cast by or on behalf of a Member on a resolution proposed at a general meeting is of no effect and will be disregarded if the member is not entitled to vote on the resolution at the meeting or, had the vote been cast by or on behalf of the member at the meeting, the Company would be required to disregard the vote.
- (e) Subject to the regulations, rules or procedures for direct voting determined by the Directors, if a direct vote is cast by or on behalf of a member on a resolution proposed for consideration at a general meeting and a vote is also cast on the resolution by the member or the member's proxy or other representative present at the meeting, the Company may:
  - (i) regard the direct vote as valid and effective and disregard the vote cast at the meeting; or
  - (ii) disregard the direct vote and regard the vote cast at the meeting as valid and effective.

## **48 Admission to general meetings**

The chairperson of a general meeting may take any action he or she considers appropriate for the safety of persons attending the meeting and the orderly conduct of the meeting and may refuse admission to, or require to leave and remain out of, the meeting any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of an article considered by the chairperson to be dangerous, offensive or liable to cause disruption;
- (d) who refuses to produce or permit examination of any article, or the contents of any article, in the person's possession;
- (e) who refuses to comply with a request to turn off a mobile telephone, personal communication or similar device;
- (f) who behaves or threatens to behave or who the chairperson has reasonable grounds to believe may behave in a dangerous, offensive or disruptive way;
- (g) who is not entitled to receive notice of the meeting.
- (h) causes any disruption to the meeting, or
- (i) the chairperson believes may be of danger or a health risk to other attendees

## **49 Auditor's right to be heard**

The Auditor is entitled to:

- (a) attend any general meeting of the Company;
- (b) be heard at any general meeting of the Company on any part of the business of the meeting that concerns the Auditor in their capacity as auditor, even if:
  - (i) the Auditor retires at the general meeting; or
  - (ii) Members pass a resolution to remove the Auditor from office; and
- (c) authorise a person in writing to attend and speak at any general meeting as the Auditor's representative.

## **Votes of Members**

### **50 Entitlement to vote**

- (a) Subject to this Constitution and to any rights or restrictions attaching to any class of Shares:
  - (i) every Member may vote;
  - (ii) subject to clause 54(d) and the Corporations Act, on a show of hands every Member has one vote; and
  - (iii) on a poll every Member has:
    - (A) for each fully paid Share held by the Member as at the Record Time, one vote; and
    - (B) for each partly paid Share held by the Member, a fraction of a vote equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable, whether or not called (excluding amounts credited), on the Share as at the Record Time. Without limiting the generality of clause 18(c), an amount paid on a Share in advance of a call is not to be taken as paid for the purposes of this clause.
- (b) During a breach of the Listing Rules relating to Shares which are Restricted Securities, or a breach of a restriction agreement, the holder of the relevant Restricted Securities is not entitled to any voting rights in respect of those Restricted Securities.
- (c) If a Member:
  - (i) dies; or
  - (ii) through mental or physical infirmity, is incapable of managing the Member's affairs,

and a personal representative, trustee or other person is appointed under law to administer the Member's estate or property, the personal representative, trustee or person so appointed may exercise any rights of the Member in relation to a general meeting as if the personal representative, trustee or person (as the case may be) was a Member.

### **51 Unpaid calls**

A Member is entitled to:

- (a) vote; or
- (b) be counted in a quorum,

only in respect of Shares on which all calls due and payable have been paid.

## **52 Joint holders**

- (a) If two or more joint holders purport to vote, the vote of the joint holder whose name appears first in the Register will be accepted, to the exclusion of the other joint holder or holders.
- (b) For the purposes of this clause 52, several executors or administrators of a deceased Member in whose sole name any Shares are registered will be taken to be joint holders of those Shares.

## **53 Objections**

- (a) An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.
- (b) An objection must be referred to the chairperson of the general meeting, whose decision made in good faith is final.
- (c) Subject to clause 53(d), a vote which the chairperson does not disallow under an objection is valid for all purposes.
- (d) A vote which the Listing Rules require the Company to disregard is not valid.

## **54 Votes by proxy**

- (a) A Member who is entitled to vote at a general meeting of the Company may appoint not more than two proxies to attend and vote at the general meeting on that Member's behalf.
- (b) A proxy need not be a Member.
- (c) If a Member appoints one proxy, that proxy may, subject to the Corporations Act, vote on a show of hands.
- (d) If a Member appoints two 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 the votes. However, neither proxy may vote on a show of hands.
- (e) A proxy may demand or join in demanding a poll.
- (f) A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If an appointment directs the way the proxy is to vote on a particular resolution:
  - (i) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
  - (ii) if the proxy has two or more appointments that specify different ways to vote on the resolution - the proxy must not vote on a show of hands;
  - (iii) if the proxy is the chair - the proxy must vote on a poll and must vote that way; and
  - (iv) if the proxy is not the chair - the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.
- (g) If:
  - (i) a Member nominates the chairperson of the meeting as the Member's proxy; or
  - (ii) the chairperson is to act as proxy under clause 56 or otherwise under a default appointment according to the terms of the proxy form,

then the person acting as chairperson in respect of an item of business at the meeting must act as proxy under the appointment in respect of that item of business.

## **55 Document appointing proxy**

- (a) An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by subsection 250A(1) of the Corporations Act.
- (b) For the purposes of clause 55(a), an appointment received at an electronic address will be taken to be signed by the Member if:
  - (i) a personal identification code allocated by the Company to the Member has been input into the appointment; or
  - (ii) the appointment has been verified in another manner approved by the Directors.
- (c) The Company may send a proxy appointment form to Members in a form which has been approved by the Directors or by the chairperson and the Managing Director.
- (d) A proxy's appointment is valid at an adjourned general meeting.
- (e) A proxy or attorney may be appointed for all meetings or for any number of general meetings or for a particular purpose.
- (f) Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
  - (i) to vote on:
    - (A) any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and
    - (B) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
  - (ii) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.

## **56 Proxy in blank**

If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either act as proxy or complete the proxy appointment by inserting the name or names of one or more Directors or the Secretary.

## **57 Lodgement of proxy**

- (a) Subject to clause 57(c), the appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the general meeting (or the resumption of an adjourned general meeting) at which the appointee is to attend and vote.
- (b) If the appointment purports to be executed under a power of attorney or other authority, the original document or a certified copy of it must be received by the Company at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the general meeting (or the resumption of an adjourned general meeting).
- (c) The Company receives an appointment of a proxy or attorney or other authority under which it was signed when they are received at:

- (i) the Company's registered office;
- (ii) a facsimile number at the Company's registered office; or
- (iii) a place, facsimile number or electronic address specified for that purpose in the notice of general meeting.

## **58 Validity**

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became mentally incapacitated;
- (c) revoked the proxy or power; or
- (d) transferred the Shares in respect of which the vote was cast,

unless the Company received written notification of the death, mental incapacity, revocation or transfer before the relevant general meeting or adjourned general meeting.

## **59 Representatives of bodies corporate**

- (a) Any Member that is a body corporate may appoint an individual as its representative as provided by the Corporations Act.
- (b) The appointment of a Representative may set out restrictions on the Representative's powers.
- (c) The original form of appointment of a Representative, a certified copy of the appointment, or a certificate of the body corporate evidencing the appointment of a Representative is prima facie evidence of a Representative having been appointed.

The chairperson of a general meeting may permit a person claiming to be a Representative to exercise the body's powers even if he or she has not produced a certificate or other satisfactory evidence of his or her appointment.

# Appointment and removal of Directors

## **60 Number of Directors**

- (a) Subject to the Corporations Act, the Company may by resolution passed at a general meeting increase the minimum number of Directors or increase or reduce the maximum number of Directors.
- (b) Until the Company resolves otherwise in accordance with clause 60(a) there will be:
  - (i) a minimum of three Directors; and
  - (ii) a maximum of 10 Directors.
- (c) Subject to any resolution of the Members determining the maximum and minimum numbers of Directors, the Directors may from time to time determine the respective numbers of Executive and Non-Executive Directors.
- (d) If at any time there is no Director or no Director capable of performing the functions of a Director, the Secretary or any Member may convene a meeting for the purpose of electing sufficient Directors. Any Director so elected will hold office until the next annual general meeting.
- (e) The Directors and Secretary in office on the date this Constitution becomes effective, continue in office subject to this Constitution.

## **61 Qualification**

- (a) Neither a Director nor an Alternate Director has to hold any Shares as a qualification to hold office.
- (b) In addition to the circumstances which disqualify a person from managing a corporation according to the Corporations Act, no person who has been an insolvent under administration within the previous five years is eligible to become a Director.
- (c) A Director (and an Alternate Director when acting as a Director) is entitled to notice of all general meetings and meetings of the holders of any class of Shares.

## **62 Power to remove and appoint**

- (a) The Company may, subject to the Corporations Act, by resolution passed in general meeting:
  - (i) remove any Director before the end of the Director's term of office; and
  - (ii) if the outgoing Director is a Non-Executive Director, elect another person to replace the Director.
- (b) A person appointed under clause 62(a) will hold office for the remainder of the term for which the Director replaced would have held office if the Director had not been removed.
- (c) Subject to the provisions of this Constitution, the Company may appoint a person as a Director by resolution passed in general meeting.
- (d) A Director appointed or elected at a general meeting is taken to have been appointed or elected with effect from immediately after the end of that general meeting unless the resolution by which the Director was appointed or elected specifies a different time.
- (e) If the conduct or position of any Director is such that continuance in office appears to the majority of the Directors to be prejudicial to the interests of the Company, a majority of Directors at a meeting of the Directors specifically called for that purpose may suspend that Director.
- (f) A suspended Director may not take any part in the business or affairs of the Company until the suspension has been terminated.
- (g) Within 14 days of suspension of Director, the Directors must call a general meeting, at which the Members may consider a motion to remove the Director from office in accordance with clause 62(a)(i).
- (h) If a motion to remove a suspended Director from office is not carried at the general meeting called to consider the matter, the suspension of the Director is terminated and the Director is reinstated in his or her office.

## **63 Additional and casual Directors**

- (a) Subject to clause 60, the Directors may appoint any person as a Director to fill a casual vacancy or as an addition to the existing Directors.
- (b) Unless the Director is an Executive Director and the Listing Rules do not require that Director to be subject to retirement as set out in this clause, a Director appointed under clause 63(a) will hold office until the end of the next annual general meeting of the Company, at which the Director may be re-elected but he or she will not be taken into account in determining the number of Directors who must retire by rotation at the meeting in accordance with clause 64(a).



## **64 Retirement**

- (a) No Director who is not the Managing Director may hold office without re-election beyond the third annual general meeting following the meeting at which the Director was last elected or re-elected.
- (b) If there is more than one managing Director, only one of them, nominated by the Directors, is entitled not to be subject to vacation of office under clause 64(a) or retirement under clause 63(a) or 64(c).
- (c) To the extent that the Listing Rules require an election of Directors to be held and no Director would otherwise be required (by clauses 64(a) or 63(a)) to submit for election or re-election the Director to retire is any Director who wishes to retire and offer himself or herself for re-election, otherwise it is the Director who has been longest in office since their last election or appointment (excluding the managing Director). As between Directors who were last elected or appointed on the same day, the Director to retire must be decided by lot (unless they can agree among themselves).
- (d) The Directors to retire under clause 64(a) or 64(c) is decided having regard to the composition of the board of Directors at the date of the notice calling the annual general meeting. A Director is not required to retire and is not relieved from retiring because of a change in the number or identity of the Directors after the date of the notice but before the meeting closes.
- (e) The retirement of a Director from office under this Constitution and the re-election of a Director or the election of another person to that office (as the case may be) takes effect at the conclusion of the meeting at which the retirement and re-election or election occur.
- (f) The office of the Director becomes retired;
  - (i) if the Director is a Managing Director and ceases to be an employee of the Company or related body corporate of the Company; or
  - (ii) the Director becomes bankrupt or insolvent or making arrangements or compromise with their creditors generally.

## **65 Nomination of Director**

- (a) A person is eligible for election to the office of a Director at a general meeting only if:
    - (i) the person is in office as a Director immediately before that meeting;
    - (ii) the person has been nominated by the Directors for election at that meeting; or
    - (iii) in any other case, not less than the number of Members specified in the Corporations Act as being required to give notice of a resolution at a general meeting of the Company have:
      - (A) at least 45 Business Days; or
      - (B) in the case of a general meeting which the Directors have been duly requested by Members under the Corporations Act to call, at least 30 Business Days,
- but, in each case, no more than 90 Business Days, before the meeting given the Company:
- (iv) a notice signed by the Members stating their intention to nominate the person for election; and

- (v) a notice signed by the person so nominated stating his or her consent to the nomination.
- (b) A partner, employer or employee of an auditor of the Company may not be appointed or elected as a Director.
- (c) A retiring Director remains in office until the end of the meeting and will be eligible for re-election at the meeting.

## **66 Vacation of office**

The office of a Director immediately becomes vacant if the Director:

- (a) ceases to be a Director by virtue of the Corporations Act;
- (b) is prohibited by the Corporations Act from holding office or continuing as a Director;
- (c) is prohibited from holding or is removed from the office of Director by an order made under the Corporations Act;
- (d) becomes bankrupt or makes any general arrangement or composition with his or her creditors;
- (e) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (f) resigns from his or her office of Director by notice in writing to the Company;
- (g) is removed by a resolution of the Company; or
- (h) is resident in Australia and not being engaged abroad on the business of the Company, is absent from Directors' meetings for three consecutive months without leave of absence from the Directors.

## **Remuneration of Directors**

### **67 Remuneration of Non-Executive Directors**

- (a) Subject to the Listing Rules, the Directors as a whole (other than Executive Directors) may be paid or provided remuneration for their services the total amount or value of which must not exceed an aggregate maximum of \$500,000 per annum or such other maximum amount determined from time to time by the Company in general meeting.
- (b) The notice calling a general meeting at which it is proposed that Members approve an increase of the aggregate maximum sum must state the amount of the increase and the aggregate maximum sum, and any other matters required by the Listing Rules.
- (c) Subject to the Listing Rules, the aggregate maximum sum will be divided among the Non-Executive Directors in such proportion and manner as the Directors agree and, in default of agreement, equally and shall be deemed to accrue from day to day.
- (d) When calculating a non-executive Director's remuneration for the purposes of clause 67(a), any amount paid by the Company or related body corporate
  - (i) to a superannuation, retirement or pension fund for a Director so that the Company is not liable to pay the superannuation guarantee charge or similar statutory charge is to be included;
  - (ii) as fees for acting as a Director of the Company or any child entity (including attending and participating in any Director committee meetings is to be included;
  - (iii) as securities, issued with the approval of Members under the Listing Rules, are to be excluded; and

- (iv) for any insurance premium paid or agreed to be paid for a Director under clause 112(e) is to be excluded.
- (e) Non-Executive Directors may not be paid a commission on or a percentage of profits or operating revenue.
- (f) If a Director, with the concurrence of the Directors, performs extra services or makes any special exertions for the benefit of the Company, the Directors may cause that Director to be paid out of the funds of the Company such special and additional remuneration as the Directors decide is appropriate having regard to the value to the Company of the extra services or special exertions. Any amount paid will not form part of the aggregate remuneration permitted under clause 67(a).
- (g) Non-Executive Directors may also be paid all travelling, hotel 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 Company's business.
- (h) The Company may also pay a premium for a contract insuring a person who is or has been a Non-Executive Director against liability incurred by the person as a Director, except in circumstances prohibited by the Corporations Act.
- (i) Shares may be provided to Non-Executive Directors as part of their remuneration under clauses 67(c) and 67(e) according to the clauses of any share plan for the remuneration of Non-Executive Directors that may be introduced by the Company. For the purposes of clause 67(a), the value of any Shares provided will be determined according to the clauses of the share plan.

## **68 Remuneration of Executive Directors**

- (a) The remuneration of an Executive Director may from time to time be fixed by the Directors. The remuneration may be by way of salary or commission or participation in profits or by all or any of these modes but may not be by commission on, or a percentage of, operating revenue.
- (b) The Company may reimburse an Executive Director for his or her expenses properly incurred as a Director or in the course of his or her office.
- (c) Except in circumstances prohibited by the Corporations Act, the Company may pay a premium for a contract insuring a person who is or has been an Executive Director against liability incurred by the person as a Director.

## **69 Retirement benefits**

Subject to the Corporations Act, the Company may give a person a benefit in connection with a Director's retirement from a Board or managerial office in the Company.

# **Powers and duties of Directors**

## **70 Directors to manage Company**

- (a) The business of the Company is managed by or under the direction of the Directors who may exercise all powers of the Company that this Constitution, the Corporations Act or the Listing Rules do not require to be exercised by the Company in general meeting.
- (b) Without limiting the generality of clause 70(a), the Directors may exercise all the powers of the Company to:
  - (i) borrow money;
  - (ii) charge any property or business of the Company or all or any of its uncalled capital;

- (iii) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
- (iv) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

## Proceedings of Directors

### 71 Directors' meetings

- (a) The chairperson or any Director may at any time, and the Secretary must on the request of a Director call a meeting of the Directors.
- (b) Notice of a meeting of Directors must be given to each person who is, at the time the notice is given:
  - (i) a Director, except a Director on leave of absence approved by the Directors; or
  - (ii) an Alternate Director appointed under clause 74(a) by a Director on leave of absence approved by the Directors.
- (c) A notice of a meeting of Directors:
  - (i) must specify the time and place of the meeting;
  - (ii) need not state the nature of the business to be transacted at the meeting;
  - (iii) may, if necessary, be given immediately before the meeting;
  - (iv) may be given in person or by post or by telephone, fax or other electronic means, or in any other way consented to by the Directors from time to time; and
  - (v) will be taken to have been given to an alternate Director if it is given to the Director who appointed that alternate Director.
- (d) An accidental omission to send a notice of a meeting of Directors to any Director or the non-receipt of such a notice by any Director does not invalidate the proceedings, or any resolution passed, at the meeting.
- (e) Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means consented to by all the Directors. The consent may be a standing one. All the provisions in this Constitution relating to meetings of the Directors apply, as far as they can and with any necessary changes, to meetings of the Directors by telephone or other electronic means.
- (f) The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- (g) A Director who participates in a meeting held in accordance with clause 71(e) is taken to be present and entitled to vote at the meeting.
- (h) A Director can only withdraw his or her consent under clause 71(e) to the means of communication between Directors proposed for a Directors' meeting if the Director does so at least 48 hours before the meeting.
- (i) Clause 71(e) applies to meetings of Directors' committees as if all committee Members were Directors.
- (j) The Directors may meet together, adjourn and regulate their meetings as they think fit.
- (k) A quorum for meetings of Directors may be fixed by the Directors and unless so fixed, is two Directors present. The quorum must be present at all times during the meeting.

- (l) If there is a vacancy in the office of a Director, the remaining Directors may act. But, if their number is not sufficient to constitute a quorum, they may act only in an emergency or to increase the number of Directors to a number sufficient to constitute a quorum or to call a general meeting of the Company

## **72 Decisions**

- (a) Questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to the Corporations Act, each Director has one vote.
- (b) Subject to the Listing Rules and clause 72(c), in the case of an equality of votes, if the chairperson is entitled to vote on the question or resolution, the chairperson of a meeting has a casting vote in addition to his or her deliberative vote.
- (c) Where only two Directors are present and form a quorum or when only two Directors present are entitled to vote on the question or resolution, the chairperson of a meeting does not have a casting vote (in addition to his or her deliberative vote) and where the votes are equally opposed the proposal will be deemed to have been lost or not carried.
- (d) An Alternate Director has one vote for each Director for whom he or she is an alternate. If an Alternate Director is a Director, he or she also has a vote as a Director.

## **73 Directors' interests**

- (a) As required by the Corporations Act, a Director must give the Directors notice of any material personal interest in a matter that relates to the affairs of the Company.
- (b) Subject to the provisions of this clause 73, a Director or a body or entity in which a Director has a direct or indirect interest may:
  - (i) enter into any agreement or arrangement with the Company;
  - (ii) hold any office or place of profit other than as auditor in the Company; and
  - (iii) act in a professional capacity other than as auditor for the Company,and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.
- (c) The fact that a Director holds office as a Director, and has fiduciary obligations arising out of that office:
  - (i) will not void or render voidable a contract made by a Director with the Company;
  - (ii) will not void or render voidable a contract or arrangement entered into by or on behalf of the Company and in which the Director may have any interest; and
  - (iii) will not require the Director to account to the Company for any profit realised by or under any contract or arrangement entered into by or on behalf of the Company and in which the Director may have any interest.
- (d) A Director may be or become a Director or other officer of, or otherwise be interested in:
  - (i) any related body corporate of the Company; or
  - (ii) any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise,

and is not accountable to the Company for any remuneration or other benefits received by the Director as a Director or officer of, or from having an interest in, that body corporate.

- (e) A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
  - (i) be present while the matter is being considered at the meeting; or
  - (ii) vote on the matter,unless permitted to do so by the Corporations Act, in which case the Director may:
  - (iii) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
  - (iv) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
  - (v) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- (f) A Director must give to the Company such information about the Shares or other securities in the Company in which the Director has a relevant interest and at the times that the Secretary requires, to enable the Company to comply with any disclosure obligations it has under the Corporations Act or the Listing Rules.

## **74 Alternate Directors**

- (a) A Director may, with the approval of the Directors, appoint any person as his or her alternate.
- (b) An Alternate Director is entitled to notice of Directors' meetings while he or she is acting in that capacity and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.
- (c) An Alternate Director is an officer of the Company and is not an agent of the appointor.
- (d) The provisions of this Constitution which apply to Directors also apply to Alternate Directors, except that Alternate Directors are not entitled in that capacity to any remuneration from the Company.
- (e) An Alternate Director is not to be taken into account in determining the minimum or maximum number of Directors allowed or the rotation of Directors under this Constitution.
- (f) The appointment of an Alternate Director may be revoked at any time by the appointor or by the other Directors.
- (g) An Alternate Director's appointment ends automatically when his or her appointor ceases to be a Director.
- (h) Any appointment or revocation under this clause must be effected by written notice delivered to the Secretary.
- (i) An Alternate Director does not have an interest in a contract or arrangement or a material personal interest in a matter by reason only of the fact that his or her appointor has such an interest.

## **75 Remaining Directors**

- (a) The Directors may act even if there are vacancies on the board.

- (b) If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Director or Directors may act only to:
  - (i) appoint a Director or Directors; or
  - (ii) call a general meeting.

## **76 Chairperson**

- (a) The Directors may elect a Director as chairperson of Directors' meetings and may determine the period for which the chairperson will hold office.
- (b) If no chairperson is elected or if the chairperson is not present at any Directors' meeting within 10 minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of the meeting.
- (c) The Directors may elect a Director as deputy chairperson to act as chairperson in the chairperson's absence.

## **77 Delegation**

- (a) The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to a committee or committees.
- (b) The Directors may at any time revoke any delegation of power under clause 77(a).
- (c) At least one Member of each committee of Directors must be a Director.
- (d) A committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.
- (e) Meetings of any committee of Directors will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each Member was a Director.

## **78 Written resolutions**

- (a) If the majority of the Directors who are eligible to vote on a resolution have signed or consented to a document containing a statement that they are in favour of a resolution set out in the document, then a resolution in those terms is taken to have been passed by the Directors without a meeting. The resolution is passed when the last Director signs or provides consent.
- (b) For the purposes of clause 78(a), separate copies of a document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy.
- (c) A Director may consent to a resolution by:
  - (i) signing the document containing the resolution (or a copy of that document);
  - (ii) giving to the Company at its registered office a written notice (including by fax or other electronic means) addressed to the Secretary or to the chairperson of Directors signifying assent to the resolution and either setting out its terms or otherwise clearly identifying them; or
  - (iii) telephoning the Secretary or the chairperson of Directors and signifying assent to the resolution and clearly identifying its terms.
- (d) Any document referred to in this clause may be in the form of a facsimile transmission or electronic notification.
- (e) If a resolution is taken to have been passed in accordance with this clause 78, the minutes must record that fact.

- (f) This clause 78 applies to meetings of Directors' committees as if all members of the committee were Directors.
- (g) Any document referred to in this clause 78 must be sent to every Director who is entitled to vote on the resolution.

## **79 Validity of acts of Directors**

- (a) An act done by a Director is effective even if their appointment, or the continuance of their appointment, is invalid because the Company or Director did not comply with this Constitution or any provision of the Corporations Act.
- (b) Clause 79(a) does not deal with the question whether an effective act by a Director:
  - (i) binds the Company in its dealings with other people; or
  - (ii) makes the Company liable to another person.

## **80 Minutes**

- (a) The Directors must cause minutes to be made of:
  - (i) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
  - (ii) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
  - (iii) all resolutions passed in accordance with clause 78;
  - (iv) appointments of officers, but only if the Directors resolve that a minute of the appointment should be made; and
  - (v) all disclosures of interests made in accordance with the Corporations Act.
- (b) Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting, and if so signed will be conclusive evidence of the matters stated in such minutes. The Chairperson may sign the minutes by electronic means as allowed for under the Corporations Act,

## **Executive Directors**

### **81 Appointment**

- (a) The Directors may appoint a Director to the office of Managing Director on such terms as they think fit.
- (b) The Directors may appoint a Director to any other full-time or substantially full-time executive position in the Company on such terms as they think fit.
- (c) A Director appointed under clauses 81(a) or 81(b), and a Director (however appointed) occupying for the time being a full-time or substantially full-time executive position in the Company or a related body corporate of the Company, is referred to in this Constitution as an **Executive Director**.
- (d) If the appointment of an Executive Director is for a fixed term, the term must not exceed five years.
- (e) The Directors may, subject to the terms of the Executive Director's employment contract, suspend, remove or dismiss him or her from executive office and appoint another Director in that place.
- (f) If an Executive Director ceases to be a Director, his or her appointment as an Executive Director terminates automatically.



- (g) If an Executive Director ceases to hold an executive office in the Company, then, unless the Directors resolve otherwise, he or she also ceases to be a Director from the same date.
- (h) If an Executive Director is suspended from executive office of the Company or of a related body corporate of the Company, his or her duties and obligations as Director are suspended for the same period.
- (i) A Managing Director is not subject to retirement by rotation and is not to be taken into account in determining the rotation of retirement of Directors. Any other Executive Directors are subject to retirement by rotation.

## **82 Powers of Executive Directors**

- (a) The Directors may confer on an Executive Director any powers exercisable by the Directors, subject to any terms and restrictions determined by the Directors.
- (b) The Directors may authorise an Executive Director to sub-delegate all or any of the powers vested in him or her.
- (c) Any power conferred under this clause may be concurrent with but not to the exclusion of the Directors' powers.
- (d) The Directors may at any time withdraw or vary any of the powers conferred on an Executive Director.

## **Local management**

### **83 General**

- (a) The Directors may provide for the management and transaction of the affairs of the Company in any place and in such manner as they think fit.
- (b) Without limiting clause 83(a), the Directors may:
  - (i) establish local boards or agencies for managing any of the affairs of the Company in a specified place and appoint any persons to be Members of those local boards or agencies; and
  - (ii) delegate to any person appointed under clause 83(b)(i) any of the powers, authorities and discretions which may be exercised by the Directors under this Constitution,

on any terms and subject to any conditions determined by the Directors.
- (c) The Directors may at any time revoke or vary any delegation under this clause 83.

### **84 Appointment of attorneys and agents**

- (a) The Directors may from time to time by resolution or power of attorney appoint any person to be the attorney or agent of the Company:
  - (i) for the purposes;
  - (ii) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
  - (iii) for the period; and
  - (iv) subject to the conditions,

determined by the Directors.
- (b) An appointment by the Directors of an attorney or agent of the Company may be made in favour of:
  - (i) any Member of any local board established under this Constitution;

- (ii) any Company;
  - (iii) the Members, Directors, nominees or managers of any Company or firm; or
  - (iv) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- (c) A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
  - (d) An attorney or agent appointed under this clause 84 may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

## Secretary

### 85 Secretary

- (a) There must be at least one Secretary of the Company appointed by the Directors on conditions determined by them.
- (b) The Secretary is entitled to attend all Directors' and general meetings.
- (c) The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

## Seals

### 86 Execution of Documents

#### Manner of execution

- (a) (a) If the Company has a Seal, it may execute documents by affixing the Seal to the document and the affixing of the Seal is witnessed by:
  - (i) to two Directors of the Company; or
  - (ii) at least one Director and a Secretary or a person authorised by the Directors to witness the affixing of the Seal.
- (b) If the Company does not have a Seal, it may execute documents by the document being signed by:
  - (i) two Directors of the Company; or
  - (ii) at least one Director and a Secretary;
- (c) The Company may have a Common Seal, a duplicate Common Seal and one or more other Seals for specific purposes, each appropriately identified on its face,
- (d) A Common Seal may be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the Seal. Every document to which a Seal is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a clause of documents in which that document is included.
- (e) For the purposes of clause 86(c), any impression of any Seal or any Signature may be a facsimile impression or affixed to the relevant certificate by any other electronic means or Signature which has been printed, stamped, or impressed on the relevant certificate.
- (f) Documents executed by the Company with or without using a Seal may be executed electronically if so permitted under the Corporations Act.

- (g) Where a document is executed by using a Seal, the fixing of a Seal may be witnessed electronically, provided that the witness complies with the requirements under the Corporations Act.

## **87 Common Seal**

If the Company has a Seal:

- (a) the Directors must provide for the safe custody of the Seal;
- (b) it must not be used except with the authority of the Directors or a Directors' committee authorised to permit use of the Seal;
- (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document; and
- (d) the Directors may determine by resolution either generally or in any particular case that the signature of any Director or the Secretary to a document to which the Seal or a duplicate seal or certificate seal is affixed may be a facsimile applied to the document by specified mechanical means.

## **88 Duplicate Seal**

If the Company has a Seal, the Company may have one or more duplicate seals of the Seal each of which:

- (a) must be a facsimile of the Seal with the addition on its face of the words **Duplicate Seal**; and
- (b) must only be used with the authority of the Directors or a Directors' committee.

## **89 Share Seal**

If the Company has a Seal, the Company may have a certificate seal which:

- (a) may be affixed to Share, option or other certificates;
- (b) must be a facsimile of the Seal with the addition on its face of the words **Share Seal**; and
- (c) must only be used with the general or specific authority of the Directors or a Directors' committee.

# **Inspection of records**

## **90 Times for inspection**

- (a) Except as otherwise required by the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- (b) A Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.
- (c) Notwithstanding clauses 90(a) and 90(b), the books of the Company containing the minutes of general meetings will be kept at the Company's registered office and will be open to inspection of Members at all times when the office is required to be open to the public.
- (d) This clause 84 does not limit any right the Directors or former Directors otherwise have.

# Dividends and reserves

## 91 Dividends

- (a) The Directors may pay any dividends that, in their judgment, the financial position of the Company justifies.
- (b) The Directors may rescind a decision to pay a dividend if they decide, before the payment date, that the Company's financial position no longer justifies the payment or that it is otherwise in the best interests of the Company that the dividend decision be rescinded.
- (c) The Directors may pay any dividend required to be paid under the terms of issue of a share.
- (d) Paying a dividend does not require confirmation at a general meeting.
- (e) Subject to any rights or restrictions attached to any Shares or class of Shares:
  - (i) all dividends must be paid equally on all Shares, except that a partly paid share confers an entitlement only to the proportion of the dividend which the amount paid (not credited) on the share is of the total amounts paid and payable (excluding amounts credited);
  - (ii) for the purposes of clause 91(e)(i), unless the Directors decide otherwise, an amount paid on a share in advance of a call is to be taken as not having been paid until it becomes payable; and
  - (iii) interest is not payable by the Company on any dividend.
- (f) Subject to the ASX Settlement Operating Rules, the Directors may fix a record date for a dividend, with or without suspending the registration of transfers from that date.
- (g) Subject to the ASX Settlement Operating Rules, a dividend in respect of a share must be paid to the person who is registered, or entitled under clause 91(c) to be registered, as the holder of the share:
  - (i) where the Directors have fixed a record date in respect of the dividend, on that date; or
  - (ii) where the Directors have not fixed a record date in respect of that dividend, on the date fixed for payment of the dividend,and a transfer of a share that is not registered, or left with the Company for registration under clause 91(b), on or before that date is not effective, as against the Company, to pass any right to the dividend.
- (h) When resolving to pay a dividend, the Directors may direct payment of the dividend from any available source permitted by law, including:
  - (i) wholly or partly by the distribution of specific assets, including paid-up Shares or other securities of the Company or of another body corporate, either generally or to specific Members; and
  - (ii) unless prevented by the Listing Rules, to particular Members wholly or partly out of any particular fund or reserve or out of profits derived from any particular source, and to the other Members wholly or partly out of any other particular fund or reserve or out of profits derived from any other particular source.
- (i) Subject to the ASX Settlement Operating Rules, where a person is entitled to a share because of a Transmission Event, the Directors may, but need not, retain any dividends payable on that share until that person becomes registered as the holder of that share or transfers it.

- (j) The Directors may retain from any dividend payable to a Member any amount presently payable by the Member to the Company and apply the amount retained to the amount owing.
- (k) The Directors may decide the method of payment of any dividend or other amount in respect of a share. Different methods of payment may apply to different Members or groups of Members (such as overseas Members). Without limiting any other method of payment which the Company may adopt, payment in respect of a share may be made:
  - (i) by such electronic or other means approved by the Directors directly to an account (of a type approved by the Directors) nominated in writing by the Member or the joint holders; or
  - (ii) by cheque sent to the address of the Member shown in the register of Members or, in the case of joint holders, to the address shown in the register of Members of any of the joint holders, or to such other address as the Member or any of the joint holders in writing direct.
- (l) A cheque sent under clause 91(k):
  - (i) may be made payable to bearer or to the order of the Member to whom it is sent or any other person the Member directs; and
  - (ii) is sent at the Member's risk.
- (m) If the Directors decide that payments will be made by electronic transfer into an account (of a type approved by Directors) nominated by a Member, but no such account is nominated by the Member or an electronic transfer into a nominated account is rejected or refunded, the Company may credit the amount payable to an account of the Company to be held until the Member nominates a valid account.
- (n) Where a Member does not have a registered address or the Company believes that a Member is not known at the Member's registered address, the Company may credit an amount payable in respect of the Member's Shares to an account of the Company to be held until the Member claims the amount payable or nominates an account into which a payment may be made.
- (o) An amount credited to an account under clauses 91(m) or 91(n) is to be treated as having been paid to the Member at the time it is credited to that account. The Company will not be a trustee of the money and no interest will accrue on the money. The money may be used for the benefit of the Company until claimed, reinvested under clause 91(p) or disposed of in accordance with the laws relating to unclaimed moneys.
- (p) If a cheque for an amount payable under clause 91(k) is not presented for payment for at least 11 calendar months after issue or an amount is held in an account under clauses 91(m) or 91(n) for at least 11 calendar months, the Directors may reinvest the amount, after deducting reasonable expenses, into Shares in the Company on behalf of, and in the name of, the Member concerned and may stop payment on the cheque. The Shares may be acquired on market or by way of new issue at a price the Directors accept is market price at the time. Any residual sum which arises from the reinvestment may be carried forward or donated to charity on behalf of the Member, as the Directors decide. The Company's liability to provide the relevant amount is discharged by an application under this clause 90(p). The Directors may do anything necessary or desirable (including executing any document) on behalf of the Member to effect the application of an amount under this clause 90(p). The Directors may determine other clauses to regulate the operation of this clause 90(p) and may delegate their power under this clause to any person.

## **92 No interest**

Interest is not payable by the Company on a dividend.

## **93 Reserves**

- (a) The Directors may set aside such amounts by way of reserves as they think appropriate before declaring a dividend or determining to pay a dividend.
- (b) The Directors may apply the reserves for any purpose for which profits may be properly applied.
- (c) Pending any application of the reserves, the Directors may invest or use the reserves in the business of the Company or in other investments as they think fit.
- (d) The Directors may carry forward any undistributed profits without transferring them to a reserve.

## **94 Dividend entitlement**

- (a) Subject to the rights of persons (if any) entitled to Shares with special rights as to dividends:
  - (i) all fully paid Shares on which any dividend is declared or paid, are entitled to participate in that dividend equally; and
  - (ii) each partly paid Share is entitled to a fraction of the dividend declared or paid on a fully paid Share of the same class, equivalent to the proportion which the amount paid (not credited) on the Share bears to the total amounts paid and payable, whether or not called, (excluding amounts credited) on the Share.
- (b) An amount paid on a Share in advance of a call is not to be taken as paid for the purposes of clause 94(a).
- (c) Unless otherwise determined by the Directors, Shares rank for dividends from their date of allotment.
- (d) Subject to the Corporations Act and the ASX Settlement Operating Rules, a transfer of Shares registered after the record date notified to ASX for determining entitlements to a dividend paid or payable in respect of the transferred Shares, does not pass the right to that dividend.

## **95 Restricted securities**

While the Company is on the official list of ASX, the Company must recognise and comply with the Listing Rules with respect to restricted securities. Without limiting the obligation to comply with the Listing Rules:

- (a) a holder of restricted securities must not dispose of, or agree or offer to dispose of, the restricted securities during the escrow period applicable to those restricted securities except as permitted by the ASX Listing Rules or ASX;
- (b) if the restricted securities are in the same class as quoted securities, the holder will be taken to have agreed in writing that the restricted securities are to be kept on the Company's issuer sponsored sub-register and are to have a holding lock applied for the duration of the escrow period applicable to those securities;
- (c) the Company will refuse to acknowledge any disposal (including, without limitation, to register any transfer), of restricted securities during the escrow period except as permitted by the ASX Listing Rules or the ASX;
- (d) a holder of restricted securities will not be entitled to participate in any return of capital on those restricted securities during the escrow period applicable to those restricted securities except as permitted by the ASX Listing Rules or ASX; and
- (e) if a holder of restricted securities breaches a restriction deed or a provision of this Constitution restricting a disposal of those restricted securities, the holder will not be

entitled to any dividend or distribution, or to exercise any voting rights, in respect of those restricted securities for so long as the breach continues.

## **96 Deductions from dividends**

The Directors may deduct from a dividend payable to a Member all sums presently payable by the Member to the Company on account of calls or otherwise in relation to Shares in the Company.

## **97 Distribution of assets**

- (a) The Directors may resolve that a dividend (interim or final) will be paid wholly or partly by the transfer or distribution of specific assets, including fully paid Shares in, or debentures of, any other corporation.
- (b) If the Company is required to distribute to its Members, by way of dividend or otherwise, Shares of the Company or of any other corporation, each Member:
  - (i) will be deemed to have agreed to accept the Shares or other securities (includes debentures) of the Company or other corporation and, in the case of Shares, agreed to become a Member of the Company or other corporation (as the case requires); and
  - (ii) appoints the Company or any of its Directors as its agent to execute any transfer of Shares or other securities (includes debentures) or other document required to give effect to the transfer or distribution of Shares or other securities (includes debentures) to the Member..
- (c) If a difficulty arises in making a transfer or distribution of specific assets, the Directors may:
  - (i) deal with the difficulty as they consider expedient;
  - (ii) fix the value of all or any part of the specific assets for the purposes of the distribution;
  - (iii) determine that cash will be paid to any Members on the basis of the fixed value in order to adjust the rights of all the Members; and
  - (iv) vest any such specific assets in trustees as the Directors consider expedient.
- (d) If a transfer or distribution of specific assets to a particular Member or Members is illegal or, in the Directors' opinion, impracticable, the Directors may make a cash payment to the Member or Members on the basis of the cash amount of the dividend instead of the transfer or distribution of specific assets.

## **98 Ancillary powers**

- (a) To give effect to any resolution to reduce the capital of the Company, to satisfy a dividend as set out in clause 91(h)(i) or to capitalise any amount under clause 102(b), the Directors may:
  - (i) settle as they think expedient any difficulty that arises in making the distribution or capitalisation and, in particular, make cash payments in cases where Members are entitled to fractions of Shares or other securities and decide that amounts or fractions of less than a particular value decided by the Directors may be disregarded to adjust the rights of all parties;
  - (ii) fix the value for distribution of any specific assets;
  - (iii) pay cash or issue Shares or other securities to any Member to adjust the rights of all parties;

- (iv) vest any of those specific assets, cash, Shares or other securities in a trustee on trust for the persons entitled to the distribution or capitalised amount that seem expedient to the Directors; and
  - (v) authorise any person to make, on behalf of all the Members entitled to any specific assets, cash, Shares or other securities as a result of the distribution or capitalisation, an agreement with the Company or another person which provides, as appropriate, for the distribution or issue to them of Shares or other securities credited as fully paid up or for payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing Shares or other securities by applying their respective proportions of the amount resolved to be distributed or capitalised.
- (b) Any agreement made under an authority referred to in clause 97(a)(v) is effective and binds all Members concerned.
  - (c) If a distribution, transfer or issue of specific assets, Shares or securities to a particular Member or Members is, in the Directors' discretion, considered impracticable or would give rise to parcels of securities which do not constitute a marketable parcel, the Directors may make a cash payment to those Members or allocate the assets, Shares or securities to a trustee to be sold on behalf of, and for the benefit of, those Members, instead of making the distribution, transfer or issue to those Members. Any proceeds receivable by Members under this clause 97(c) will be net of expenses incurred by the Company and trustee in selling the relevant assets, Shares or securities.
  - (d) If the Company distributes to Members (either generally or to specific Members) securities in the Company or in another body corporate or trust (whether as a dividend or otherwise and whether or not for value), each of those Members appoints the Company as his or her agent to do anything needed to give effect to that distribution, including agreeing to become a Member of that other body corporate.

## **99 Payment**

- (a) Any dividend or other money payable in respect of Shares may be paid:
  - (i) by cheque sent through the mail directed to:
    - (A) by the address of the Member shown in the Register or to the address of the joint holder of Shares shown first in the Register; or
    - (B) by an address which the Member has, or joint holders have, in writing notified the Company as the address to which dividends should be sent;
  - (ii) by electronic funds transfer to an account with a bank or other financial institution nominated by the Member and acceptable to the Company; or
  - (iii) by any other means determined by the Directors.
- (b) Any joint holder may give an effectual receipt for any dividend or other money paid in respect of Shares held by holders jointly.

## **100 Election to reinvest dividend**

The Directors may:

- (a) establish a plan under which Members or any class of Members may elect to reinvest cash dividends or other amounts payable by the Company by subscribing for Shares or any class of Shares or any convertible securities;
- (b) vary, suspend or terminate the arrangements established under clause 100(a).



## **101 Election to accept Shares in lieu of dividend**

- (a) If and to the extent authorised by resolution of the Company in general meeting, the Directors may resolve, in respect of any dividend which it is proposed to pay on any Shares, that holders of those Shares may elect to:
  - (i) forego their right to share in the proposed dividend or part of the proposed dividend; and
  - (ii) instead receive an issue of Shares credited as fully paid.
- (b) If the Directors resolve to allow the election provided for in clause 101(a), each holder of Shares conferring a right to share in the proposed dividend may, by notice in writing to the Company given in such form and within such period as the Directors may decide, elect to:
  - (i) forego the dividend which otherwise would have been paid to the holder on such of the holder's Shares conferring a right to share in the proposed dividend as the holder specifies in the notice of election; and
  - (ii) receive instead Shares to be issued to the holder credited as fully paid, on and subject to such terms and conditions as the Directors may determine.
- (c) Following the receipt of duly completed notices of election under clause 101(a)(ii), the Directors must:
  - (i) appropriate from the Company's profits or any reserve available for distribution to Members an amount equal to the aggregate issue price (if any) of the Shares to be issued credited as fully paid to those holders of Shares who have given such notices of election; and
  - (ii) apply the amount (if any) in paying up in full the number of Shares required to be so issued.
- (d) The Directors may rescind, vary or suspend a resolution of the Directors made under clause 101(a) and the arrangements implemented under the resolution.
- (e) The powers given to the Directors by this clause 101 are additional to the provisions for capitalisation of profits provided for by this Constitution. If the Directors exercise their power to capitalise profits under clause 103 then any Member who has elected to participate in arrangements established under this clause 101 is deemed, for the purpose of determining the Member's entitlement to share in the capitalised sum, not to have so elected.

## **102 Unclaimed dividends**

- (a) All dividends unclaimed for one year after the time for payment has passed may be invested by the Directors as they think fit for the benefit of the Company until claimed or until required to be dealt with in accordance with any law relating to unclaimed money.
- (b) Subject to clause 102 (a), the Directors have the discretion to donate all unclaimed funds less than \$10 in value to a Charity approved by Directors.

## **103 Capitalisation of profits**

- (a) Subject to the Listing Rules, any rights or restrictions attached to any Shares or class of Shares and any special resolution of the Company, the Directors may capitalise and distribute among those Members who would be entitled to receive dividends and in the same proportions, any amount:
  - (i) forming part of the undivided profits of the Company;

- (ii) representing profits arising from an ascertained accretion to capital or a revaluation of the assets of the Company;
  - (iii) arising from the realisation of any assets of the Company; or
  - (iv) otherwise available for distribution as a dividend.
- (b) The ways in which a sum may be applied for the benefit of Members under clause 103(a) are:
- (i) in paying up any amounts unpaid on Shares held or to be held by Members;
  - (ii) in paying up in full unissued Shares or debentures to be issued to Members as fully paid;
  - (iii) partly as mentioned in clause 103(b)(i) and partly as mentioned in clause 103(b)(ii); or
  - (iv) any other method permitted by law.
- (c) To the extent necessary to adjust the rights of the Members among themselves, the Directors may:
- (i) make cash payments in cases where Shares or debentures become issuable in fractions; and
  - (ii) authorise any person to make, on behalf of all the Members entitled to a benefit on the capitalisation, an agreement with the Company providing for:
    - (A) the issue to them, credited as fully paid up, of any such further Shares or debentures; or
    - (B) the payment by the Company on their behalf of the amount or any part of the amount remaining unpaid on their existing Shares by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement made under the authority of clause 103(c)(ii) is effective and binding on all the Members concerned.

## Notices

### **104 Notices by the Company to Members**

- (a) Without limiting any other way in which notice may be given to a Member under this Constitution, the Corporations Act or the Listing Rules, the Company may give a notice to a Member by:
  - (i) delivering it personally to the Member;
  - (ii) sending it by prepaid post to the Member's address in the register of Members or any other address the Member supplies to the Company for giving notices; or
  - (iii) sending it by fax or other electronic means (including providing a URL link to any document or attachment) to the fax number or electronic address the Member has supplied to the Company for giving notices.
- (b) The Company may give a notice to the joint holders of a share by giving the notice in the way authorised by clause 104(a) to the joint holder who is named first in the register of Members for the share.
- (c) The Company may give notice of a General Meeting or the Annual General Meeting to a Member by electronic message as authorised by the Corporations Act. The Company will give notice of a General Meeting or the Annual General Meeting

personally or by sending by post to any person who has made a request for a hard copy document only in accordance with the Corporations Act

- (d) The Company may give a notice to a person entitled to a share as a result of a Transmission Event by delivering it or sending it in the manner authorised by clause 104(a) addressed to the name or title of the person, to:
  - (i) the address, fax number or electronic address that person has supplied to the Company for giving notices to that person; or
  - (ii) if that person has not supplied an address, fax number or electronic address, to the address, fax number or electronic address to which the notice might have been sent if that Transmission Event had not occurred.
- (e) A notice given to a Member under clauses 103(a) or 103(b) is, even if a Transmission Event has occurred and whether or not the Company has notice of that occurrence:
  - (i) duly given for any Shares registered in that person's name, whether solely or jointly with another person; and
  - (ii) sufficiently served on any person entitled to the Shares because of the Transmission Event.
- (f) A notice given to a person who is entitled to a share because of a Transmission Event is sufficiently served on the Member in whose name the share is registered.
- (g) A person who, because of a transfer of Shares, becomes entitled to any Shares registered in the name of a Member, is taken to have received every notice which, before that person's name and address is entered in the register of Members for those Shares, is given to the Member complying with this clause 104.
- (h) A signature to any notice given by the Company to a Member under this clause 104 may be printed or affixed by some electronic, mechanical or other means.
- (i) Where a Member does not have a registered address or where the Company believes that Member is not known at the Member's registered address, all notices are taken to be:
  - (i) given to the Member if the notice is exhibited in the Company's registered office for a period of 48 hours; and
  - (ii) served at the commencement of that period,unless and until the Member informs the Company of the Member's address.

## **105 Notices by the Company to Directors**

The Company may give a notice to a Director or alternate Director by:

- (a) delivering it personally to him or her;
- (b) sending it by prepaid post to his or her usual residential or business address, or any other address he or she has supplied to the Company for giving notices; or
- (c) sending it by fax or other electronic means to the fax number or electronic address he or she has supplied to the Company for giving notices.
- (d)

## **106 Notices by Directors to the Company**

A Director or alternate Director may give a notice to the Company by:

- (a) delivering it to the Company's registered office;
- (b) sending it by prepaid post to the Company's registered office; or

- (c) sending it by fax or other electronic means to the principal fax number or electronic address at the Company's registered office.

## **107 Time of service**

- (a) A notice from the Company properly addressed and posted is taken to be served at 10.00am (Melbourne time) on the day after the date it is posted.
- (b) A certificate signed by a secretary or officer of the Company to the effect that a notice was duly posted under this Constitution is conclusive evidence of that fact.
- (c) Where the Company sends a notice by fax, the notice is taken as served at the time the fax is sent if the correct fax number appears on the facsimile transmission report produced by the sender's fax machine.
- (d) Where the Company sends a notice by electronic transmission, the notice is taken as served at the time the electronic transmission is sent.
- (e) Where the Company gives a notice to a Member by any other means permitted by the Corporations Act relating to the giving of notices and electronic means of access to them, the notice is taken as given at 10.00am (Melbourne time) on the day after the date on which the Member is notified that the notice is available.
- (f) Where a given number of days' notice or notice extending over any other period must be given, the day of service is not to be counted in the number of days or other period.

## **108 Other communications and documents**

- (a) Rules 103 to 106 (inclusive) apply, so far as they can and with any necessary changes, to serving any communication or document.

## **109 Written notices**

- (a) A reference in this Constitution to a written notice includes a notice given by fax or other electronic means. A signature to a written notice need not be handwritten.

## **Audit and financial records**

### **110 Company to keep financial records**

- (a) The Directors must cause the Company to keep written financial records and to prepare financial documents and reports in accordance with the requirements of the Corporations Act and the Listing Rules.
- (b) The Directors must cause the financial records and financial documents of the Company to be audited in accordance with the requirements of the Corporations Act and the Listing Rules.

## **Winding up**

### **111 Winding up**

- (a) Nothing in this clause prejudices the rights of the holders of Shares issued on special terms and conditions.
- (b) If the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company:
  - (i) divide among the Members in kind all or any of the Company's assets; and
  - (ii) for that purpose, determine how he or she will carry out the division between the different classes of Members,

but may not require a Member to accept any Shares or other securities in respect of which there is any liability.

- (c) The liquidator may, with the sanction of a special resolution of the Company, vest all or any of the Company's assets in a trustee on trusts determined by the liquidator for the benefit of the contributories.

## Indemnity & Insurance

### 112 Indemnity and Insurance

- (a) To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an officer of the Company against any liability (other than for legal costs) incurred by that person as an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).
- (b) To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an officer of the Company against reasonable legal costs incurred in defending an action for a liability incurred or allegedly incurred by that person as an officer of the Company (including such legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).
- (c) The amount of any indemnity payable under clauses 112(a) or 112(b) will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of any input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.
- (d) The Directors may agree to advance to an officer an amount which it might otherwise be liable to pay to the officer under clause 112(a) on such terms as the Directors' think fit but which are consistent with this clause, pending the outcome of any findings of a relevant court or tribunal which would have a bearing on whether the Company is in fact liable to indemnify the officer under clause 112(a). If after the Company makes the advance, the Directors form the view that the Company is not liable to indemnify the officer, the Company may recover any advance from the officer as a debt due by the officer to the Company.
- (e) The Company may, to the extent permitted by law:
  - (i) purchase and maintain insurance; or
  - (ii) pay or agree to pay a premium for insurance,for each Officer against any Liability incurred by the Officer as an officer of the Company or of a related body corporate including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending or responding to proceedings, whether civil or criminal and whatever their outcome.
- (f) The Company may enter into a deed with any Officer to give effect to the rights conferred by this clause 106 or the exercise of a discretion under this clause 106 on such terms as the Directors think fit which are not inconsistent with this clause 106.
- (g) For the purposes of this clause 112, **officer** means:
  - (i) a Director; or
  - (ii) a Secretary.

## 113 Shareholder actions and disclosure

If a Member has entered, or is required by ASX to enter, into any arrangement restricting the transfer or other disposal of Shares (or any interest in Shares) and those arrangements are of the nature of arrangements which the Company is required to comply with or disclose under the Listing Rules, then the Member agrees to:

- (a) take such actions (including the execution of any agreements that may be required by the Company or ASX under the Listing Rules); and
- (b) provide to the Company such information that the Company requires and within the time that the Company requires,

in order for the Company to comply with the requirements of ASX under the Listing Rules and Company's disclosure obligations.

## Listing Rules

### 114 Listing Rules

- (a) If, and for such time only as, the Company is Listed, the following clauses apply:
  - (i) Notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done.
  - (ii) Nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done.
  - (iii) If the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
  - (iv) If the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision.
  - (v) If the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision.
  - (vi) If any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.
- (b) For the avoidance of doubt, the clauses set out in clause 114(a) above have no operation or effect unless and until the Company is Listed and those clauses will cease to have any operation or effect at such time, if any, as the Company is no longer Listed.

### 115 Foreign Listing Rules

- (a) In this clause 115, unless the context otherwise requires:

**Foreign Exchange** means a financial market other than ASX, including (but not limited to) the American Stock Exchange, New York Stock Exchange, New Zealand Stock Exchange, The Stock Exchange of Hong Kong Ltd, Stock Exchange of Singapore Limited, The Amsterdam Stock Exchange, the Frankfurt Stock Exchange, The International Stock Exchange of the United Kingdom and the Republic of Ireland Limited, the Milan Stock Exchange, the NASDAQ National Market, the Paris Bourse, the Tokyo Stock Exchange, the Toronto Stock Exchange, and the Zurich Stock Exchange.

**Foreign Listing** means the Company is included in the official list of a Foreign Exchange.

**Foreign Listing Rules** means the listing clauses of a Foreign Exchange and any other clauses of the Foreign Exchange applicable to the Company or the Shares while the Company is admitted to the official list of that Foreign Exchange, each as amended or replaced from time to time, except to the extent of any express written waiver by the Foreign Exchange.

- (b) Subject to clause 114(a), if, and for such time only as, the Company has a Foreign Listing, the following clauses apply:
- (i) Notwithstanding anything contained in this Constitution, if the Foreign Listing Rules prohibit an act being done, the act shall not be done.
  - (ii) Nothing contained in this Constitution prevents an act being done that the Foreign Listing Rules require to be done.
  - (iii) If the Foreign Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
  - (iv) If the Foreign Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision.
  - (v) If the Foreign Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision.
  - (vi) If any provision of this Constitution is or becomes inconsistent with the Foreign Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

For the avoidance of doubt, the clauses set out in clause 115(b) above have no operation or effect unless and until the Company has a Foreign Listing and those clauses will cease to have any operation or effect at such time, if any, as the Company no longer has a Foreign Listing.