

Constitution



A public company limited by shares
incorporated in Victoria
under the *Corporations Act 2001* (Cth)



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Constitution

of



1. Definitions and interpretation

1.1 Definitions

In this Constitution:

Affiliate	means, in respect of a person: <ul style="list-style-type: none">(a) a shareholder of the person;(b) a Related Body Corporate of the person;(c) a director, secretary or officer of the person;(d) an entity the person Controls;(e) an entity that Controls the person;(f) a Related Entity of the person; and(g) an entity that is Controlled by an entity that Controls the person.
Alternate Director	means a person appointed as alternate director of the Company under rule 13.11.
Appointor	has the meaning given in clause 22.2(a).
Attorney Clauses	has the meaning given in clause 22.1.

Auditor means the person appointed for the time being as the auditor of the Company.

Board means the Directors and Alternate Directors present at a meeting, duly convened as a meeting of Directors, at which a quorum is present.

Business Day means a day on which banks are open for business in Melbourne excluding a Saturday, Sunday or public holiday in that city.

Called Shares has the meaning given in clause 8.1(a).

Chair means the person occupying the position of Chair or acting Chair of the Directors under rule 15.3 (where appropriate).

Company means

Control has the meaning given in the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth) and the *Corporations Regulations 2001* (Cth) as amended from time to time.

Director means a director of the Company and (where appropriate) includes any Alternate Director.

Dividend means any distribution (including an interim dividend) made, or any amount credited, by the Company to the Shareholders (excluding amounts debited against the share capital account).

Drag Along Completion Date has the meaning given in clause 8.1(b)(iii).

Drag Along Notice has the meaning given in clause 8.1(a).

Drag Along Price has the meaning given in clause 8.1(b)(ii).

[REDACTED]

Founder

[REDACTED]

Immediately Available Funds

means:

- (a) cash;
- (b) bank cheque; or
- (c) telegraphic or other electronic means of transfer of cleared funds into a bank account nominated in advance by the payee.

Managing Director

means a Director appointed as, or to perform the duties of, managing director of the Company.

Nominee Director

has the meaning given to it in rule 13.2(b).

Recipient

has the meaning given in clause 8.1(a).

Related Body Corporate

has the meaning given to it in section 9 of the Corporations Act.

Related Entity

has the meaning given to it in section 9 of the Corporations Act.

Replaceable Rules

means the replaceable rules applicable to a public company limited by shares referred to in Part 2B.4 and section 141 of the Corporations Act.

Sale Shares

has the meaning given in clause 8.1(b)(i).

Secretary

means a person appointed by the Directors to perform the duties of secretary of the Company.

Securities

means Shares, rights to Shares, options, debentures or any similar rights granted over issued or unissued Shares or any other instruments convertible into Shares in the Company.

[REDACTED]

Securityholder	means a holder of a Security.
Seller	has the meaning given in clause 8.1(a).
Share	means a share in the capital of the Company.
Shareholder	means a holder of a Share.
Shareholder Present	means, in connection with a meeting, the Shareholder present at the venue or venues for the meeting, in person or by proxy, by attorney or, where the Shareholder is a body corporate, by representative.
Tag Along Notice of Sale	has the meaning given in clause 9.1(a).
Tag Along Option Period	has the meaning given in clause 9.1(b).
Tag Along Response Notice	has the meaning given in clause 9.2(a).
Tag Along Sale Date	has the meaning given in clause 9.1(a)(iii).
Tagged Share Sale Price	has the meaning given in clause 9.1(a)(ii).
Third Party Buyer	has the meaning given in clause 8.1(a).

1.2 Interpretation

In this Constitution unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this Constitution;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a gender includes all other genders;

- (d) other parts of speech and grammatical forms of a word or phrase defined in this Constitution have a corresponding meaning;
- (e) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate (whether or not having a separate legal personality);
- (f) a reference to any thing (including any right) includes a part of that thing, but nothing in this rule 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a rule, party, annexure, exhibit or schedule is a reference to a rule of, and a party, annexure, exhibit and schedule to, this Constitution and a reference to this Constitution includes any rule, annexure, exhibit and schedule;
- (h) a reference to a document (including this Constitution) includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing and includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to any document includes that party's successors and permitted assigns;
- (j) a reference to time is to Melbourne, Victoria, Australia time;
- (k) a reference to any legislation includes all delegated legislation made under it and includes all amendments, consolidations, replacements or re-enactments of any of them, from time to time;
- (l) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (m) a reference to a body, other than a party to this Constitution (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (n) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this Constitution do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;
- (o) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (p) a reference to a month is a reference to a calendar month;
- (q) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;

- (r) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5.00 pm on that day, it is taken to have occurred or been done on the next day;
- (s) a reference to '\$', 'A\$', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia; and
- (t) an expression which is not defined in this Constitution has the same meaning as given under the Corporations Act.

1.3 **Business Day**

If anything under this Constitution is required to be done by or on a day that is not a Business Day that thing must be done by or on the next Business Day.

1.4 **Replaceable Rules do not apply**

The Replaceable Rules are displaced by and do not apply to this Constitution except to the extent that this Constitution provides otherwise.

2. **Public company**

The Company is a public company limited by Shares. The Company must have at least one Shareholder.

3. **Capital**

3.1 **Issue of Securities**

Without affecting any special rights conferred on the holders of any Securities, any Securities (including partly-paid Securities) may be issued with preferred, deferred or other special rights, obligations or restrictions, whether in regard to Dividends, voting, return of share capital, payment of calls or otherwise, as the Directors may determine and on any terms the Directors consider appropriate from time to time.

3.2 **Directors' power to issue Securities**

- (a) Except as provided by contract or this Constitution to the contrary, all unissued Securities are under the control of the Board who may grant options on the Securities, issue or otherwise dispose of the Securities on the terms and conditions and for the consideration it thinks fit.
- (b) An issue of Securities of the same class as an existing class of Securities is not to be considered to constitute a variation of the rights of the holders of Securities in the existing class. Any Director or any person who is an associate of a Director may participate in any issue by the Company of Securities.

3.3 Pro-rata offers to existing holders

- (a) If the Company proposes to issue Securities:
 - (i) where such Securities will equate to 10% or more of the total Shares (whether upon issue or following exercise, conversion or similar event of those Securities) on issue following that Securities issue; or
 - (ii) where as a result of that issue a Shareholder or its Affiliates will increase its Shareholding from less than 10% of the total Shares to holding 10% or more of the total Shares (whether upon issue or following exercise, conversion or similar event of those Securities),

then the Company may not proceed with that issue unless both Founders have consented to that offer in writing, where a Founder may withhold that consent at their absolute discretion.

- (b) Subject to rule 3.3(a), the Company may issue new Securities without first offering those Securities to the existing holders of Securities in the same class.

3.4 Redeemable preference Shares

Subject to rule 3.3(a), the Board at its discretion may issue redeemable preference Shares provided that a special resolution is passed by the Shareholders which sets out the following terms of the redeemable preference Shares:

- (a) repayment of capital;
- (b) participation in surplus assets and profits;
- (c) cumulative and non-cumulative Dividends;
- (d) voting; and
- (e) priority of payment of capital and Dividends in relation to other Shares or classes of preferential Shares.

3.5 Recognition of third party interests

Whether or not it has notice of the rights or interests concerned, the Company is not bound to recognise:

- (a) any equitable, contingent, future or partial claim to, or interest in, any Security or unit of a Security; or
- (b) any other right in respect of a Security,

except an absolute right of ownership of the Securityholder or as otherwise provided by this Constitution or by law.

3.6 Variation of class rights

- (a) If the Share capital is divided into different classes of Shares, the rights attached to any class (unless otherwise provided by the terms of issue of the Shares of that class) may be varied or cancelled (whether or not the Company is being wound up) only by:
 - (i) special resolution of the Company; and
 - (ii) either of the following:
 - (A) by special resolution passed at a separate meeting of the class of members holding Shares in the class which is intended to be varied or cancelled; or
 - (B) with the written consent of the members with at least 75 per cent of the votes in the class.
- (b) The provisions of this Constitution relating to general meetings will apply to every such separate meeting under rule 3.6(a)(ii)(A) with such changes as are necessary so:
 - (i) the necessary quorum of one or more persons together holding or representing by proxy at least one-third of the issued Shares of the class; and
 - (ii) any holder of Shares in the class present in person or by proxy or power of attorney or as representative may demand a poll.

3.7 Commissions

The Company may pay brokerage or commission to a person in respect of that person or another person agreeing to take up Securities.

3.8 Surrender of Securities

In their discretion, the Directors may accept a surrender of Securities by way of compromise of any question as to whether or not those Securities have been validly issued or in any other case where the surrender is within the powers of the Company. Any Securities surrendered may be sold or re-issued in the same manner as forfeited Shares.

3.9 Joint holders

Where two or more persons are registered as the holders of any Securities, they are considered to hold the Securities as joint tenants with benefits of survivorship subject to the following provisions:

- (a) the Company is not bound to register more than three persons as the holders of the Securities (except in the case of personal representatives of a deceased Securityholder);

- (b) the joint holders of the Securities are liable severally as well as jointly in respect of all payments which ought to be made in respect of the Securities;
- (c) any one of the joint holders may give a receipt for any Dividend, bonus or return of capital payable to the joint holders in respect of the Securities;
- (d) only the person whose name appears first in the Securities register as one of the joint holders of the Securities is entitled, if the Company determines to issue certificates for Securities, to delivery of a certificate relating to the Securities or to receive notices from the Company and any notice given to that person is considered notice to all the joint holders; and
- (e) any one of the joint holders may vote at any meeting of the Company either personally or by properly authorised representative, proxy or attorney, in respect of the Securities as if that joint holder was solely entitled to the Securities. If more than one of the joint holders are present personally or by properly authorised representative, proxy or attorney, only the vote of the joint holder whose name appears first in the Securities register counts.

4. Certificates for Securities

4.1 Entitlement to certificate

Every person whose name is entered as a member in the register of members of the Company in respect of a Security is entitled free of charge to receive a certificate executed by the Company in accordance with the Corporations Act in respect of that Security. In respect of a Security or Securities held jointly by several persons the Company is not bound to issue more than one certificate. Delivery of a certificate for a Security to one of several joint holders in accordance with rule 3.9 is sufficient delivery to all such holders.

4.2 General issue or replacement of certificate

Subject to the requirements of the Corporations Act, Directors may determine to issue certificates for Securities of the Company and to cancel any certificates on issue and to replace lost destroyed or defaced certificates on issue on the basis and in the form they determine from time to time.

5. Forfeiture and lien

5.1 Liability to forfeiture

- (a) If a Securityholder fails to pay any sum payable in respect of any Securities, either for money payable on issue, calls or instalments, on or before the day for payment, the Directors may serve a notice on the Securityholder requiring payment of the unpaid sum, together with interest accrued and all expenses of the Company incurred by reason of the non-payment.

- (b) The notice must:
 - (i) specify a day (not earlier than 14 days after the date of service of the notice) on or before which and a place where the payment required by the notice is to be made; and
 - (ii) state that, if payment is not made by the time and at the place specified, the Securities in respect of which the call was made are liable to be forfeited.

5.2 Power to forfeit

If the requirements of a notice served under rule 5.1 are not complied with within 14 days of the notice, any Security in respect of which the notice has been given may at any time afterwards, but before the payment required by the notice has been made, be forfeited by a resolution of the Directors in their discretion to that effect. The forfeiture includes all Dividends, declared by the Company in respect of the forfeited Securities and not paid before the forfeiture.

5.3 Consequences of forfeiture

A person who has had their Securities forfeited:

- (a) ceases to be a Securityholder in respect of the forfeited Security at the time and on the date of the passing of the Directors' resolution approving the forfeiture;
- (b) has no claims or demands against the Company in respect of those Securities;
- (c) has no other rights incident to the Securities except the rights that are provided by the Corporations Act or saved by this Constitution; and
- (d) remains liable to pay to the Company all money that, at the date of forfeiture, was payable by the person to the Company in respect of the Securities (including, if the Directors determine, interest from the date of forfeiture at the rate the Directors determine). The Directors may enforce the payment of the money or any part of the money for which the Securityholder is liable as they determine. The Directors are under no obligation to enforce payment.

5.4 Lien on Securities

- (a) The Company has a first and paramount lien on every Security and on the proceeds of sale of every Security for:
 - (i) any amount due and unpaid in respect of the Security which has been called or is payable at a fixed time;
 - (ii) any amounts which remain outstanding on loans made by the Company to acquire the Security under an employee incentive scheme;
 - (iii) all amounts that the Company may be called on by law to pay in respect of the Security; and

- (iv) reasonable interest and expenses incurred by the Company in respect of the unpaid amounts.
- (b) The Directors may at any time exempt a Security wholly or in part from the provisions of this rule.
- (c) The lien extends to any Dividend and entitlements declared in respect of the Securities but, if the Company registers a transfer of any Securities on which it has a lien or charge without giving the transferee notice of any claim it may have at that time, the Securities are freed and discharged from the lien or charge of the Company in respect of that claim. The Directors may retain those Dividends or entitlements and may apply them in or towards satisfaction of all amounts due to the Company in respect of which the lien exists.
- (d) No person is entitled to exercise any rights or privileges as a Securityholder until the Securityholder has paid all calls and instalments of calls and other moneys (including interest) for the time being payable in respect of every Security held by the Securityholder.
- (e) If any money is paid or payable by the Company under any law with respect to a transfer of Securities, the Company may refuse to register a transfer of any Securities by the Securityholder or the Securityholder's personal representative until the earlier of:
 - (i) the money paid by the Company and any interest accrued on it is set off or deducted from any money payable by the Company to the Securityholder; or
 - (ii) in case where the money paid by the Company and any interest accrued on it exceeds any amount payable by the Company to the Securityholder, until the Company is reimbursed in full the money paid by the Company and any interest accrued on it; or
 - (iii) until the money payable under any law with respect to the transfer of Securities is paid by the transacting parties (excluding the Company).
 - (iv) The Company is not required under this rule to pay money payable by the Company under any law with respect to a transfer of Securities.
- (f) Nothing in this rule affects any right or remedy which any law confers on the Company and any right or remedy is enforceable by the Company whether against the Securityholder or the Securityholder's personal representative.

5.5 Notice of forfeiture

When any Security is forfeited, notice of the resolution of the Directors must be given to the Securityholder in whose name the Security was registered immediately prior to the forfeiture, and an entry of the forfeiture and the date of forfeiture must be made in the Securities register. Failure to give notice or make the entry as required by this rule does not invalidate the forfeiture. At any time before any forfeited Security is sold or otherwise disposed of, the Directors may annul the forfeiture of the Security on any condition they determine.

5.6 Disposal of forfeited Securities

Any forfeited Security is considered the property of the Company and the Directors may sell or otherwise dispose of or deal with the Security in any manner they determine and with or without any money paid on the Security by any former holder being credited as paid up.

5.7 Sale of Securities to enforce lien

- (a) For the purpose of enforcing a lien, the Directors may sell the Securities which are subject to the lien in any manner they determine and with or without giving any notice to the Securityholder in whose names the Securities are registered. The Directors may authorise a person to do everything necessary to transfer the Securities sold to the purchaser of the Securities.
- (b) The validity of the sale of the Securities may not be impeached by any person after the transfer has been registered, and the purchaser is not bound to see to the application of the purchase money.
- (c) The title of the purchaser to the Securities is not affected by any irregularity or invalidity in connection with the sale.
- (d) The purchaser is discharged from liability for any calls which may have been due before the purchase of those Securities, unless otherwise agreed.
- (e) The remedy of any person aggrieved by the sale is in damages only and against the Company exclusively.

5.8 Application of proceeds of sale

- (a) The proceeds of a sale made under a lien may be applied by the Company in payment of:
 - (i) first, the expenses of the sale; and
 - (ii) second, that part of the amount in respect of which the lien exists as is presently payable.
- (b) Any residue is to be paid to the person entitled to the Securities immediately prior to the sale on delivery by that person of the certificate (if any) for the Securities that have been sold.

5.9 Transfers after forfeiture and sale

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

- (b) On the completion of the transfer, the transferee is to be registered as the holder of the Security.

6. Call on Shares

6.1 Directors' power to make calls

- (a) Subject to the terms of issue of any Shares the Directors may make calls as they think fit on the Shareholders in respect of any money unpaid on the Shares.
- (b) The Directors may revoke or postpone a call.
- (c) A call may be required to be paid by instalments.
- (d) A call is made at the time of or as specified in the resolution of the Directors authorising the call.
- (e) The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any Shareholder does not invalidate the call.

6.2 Interest on unpaid amounts

- (a) If a sum called or otherwise payable to the Company in respect of a Share is not paid before or on the day for payment, the person from whom the sum is due must pay:
 - (i) interest on the sum from the due date to the time of actual payment at the rate determined by the Directors; and
 - (ii) any costs and expenses incurred by the Company by reason of non-payment or late payment of the sum.
- (b) The Directors may waive payment of some or all of the interest, costs and expenses under rule 6.2(a).

6.3 Differentiation between holders

The Directors may differentiate on the issue of Shares between the holders as to the amount of calls to be paid and the times of payment.

7. Transfer of Securities

7.1 Transfers

- (a) No transfer of any Securities may be registered unless a proper instrument of transfer, in writing in the usual or common form or in any form the Directors may

prescribe or in a particular case accept, signed by the transferor and the transferee and properly stamped (if necessary) is delivered to the Company (but the Directors may dispense with the execution of the instrument by the transferee if the Directors think fit).

- (b) The transferor is considered to remain the holder of the Securities transferred until the name of the transferee is entered on the Securities register.

7.2 Transfer and certificate (if any)

- (a) Every transfer must be left for registration at the registered office of the Company or any other place the Directors determine. Unless the Directors otherwise determine either generally or in a particular case, the transfer is to be accompanied by the certificate for the Securities to be transferred. In addition, any fee payable on registration of the transfer must be paid, and the transfer is to be accompanied by any other evidence which the Directors may require to prove the title of the transferor, the transferor's right to transfer the Securities, execution of the transfer form or compliance with the provisions of any law relating to stamp duty.
- (b) Subject to rule 7.2(a), on each application to register the transfer of any Securities or to register any person as the holder in respect of any Securities transmitted to that person by operation of law or otherwise, the certificate specifying the Securities in respect of which registration is required must be delivered to the Company for cancellation and on registration the certificate is considered to have been cancelled.
- (c) Each transfer which is registered may be retained by the Company for any period determined by the Directors after which the Company may destroy it.

7.3 Directors may refuse to register

- (a) If a Shareholder or Shareholders propose to transfer Shares:
 - (i) that are equal to 10% or more of the total Shares; or
 - (ii) where as a result of that transfer a Shareholder or its Affiliates will hold 10% or more of the total Shares,

then the Board must not register that transfer until both Founders have consented to that transfer in writing, where a Founder may withhold that consent at his absolute discretion.
- (b) The Board may refuse to register a transfer of any Share if:
 - (i) a proper instrument of transfer and any Certificate or other title document (if any) has not been lodged at the registered office;
 - (ii) any fee payable on the registration of the transfer is not paid;

- (iii) the Board has not been given any additional document or information that it reasonably requires to establish the right of the Shareholder transferring the Share to make the transfer;
 - (iv) the Share is not fully-paid; or
 - (v) the Company has a lien over the Share.
- (c) Notice must be given to the transferee within two months after the date on which the transfer was lodged if the Board refuses to register a transfer of any Share.

8. Drag along

8.1 Drag Along Option

- (a) If a Shareholder (or Shareholders) holds 51% or more of the Shares issued by the Company (**Seller**), the Seller may serve a written notice (**Drag Along Notice**) on the other Shareholder or all other Shareholders (if there is more than one other Shareholder) (**Recipient**) stating that the Recipient must sell all of the Recipient's Shares (**Called Shares**) to a bona fide third party buyer who is in substance not affiliated with the Seller (**Third Party Buyer**) on the terms contained in the Drag Along Notice and otherwise in accordance with this clause 8.
- (b) Each Drag Along Notice issued under clause 8.1(a) must specify:
 - (i) the number and class of Shares that the Seller proposes to sell (which must be all of the Shares held by the Seller) (**Sale Shares**);
 - (ii) the proposed purchase price (which may be cash and/or script consideration) per Share (**Drag Along Price**);
 - (iii) the proposed settlement date which must not exceed 90 days from the date of the notice and must be the same date as the date proposed for completion of the sale of the Sale Shares (**Drag Along Completion Date**);
 - (iv) the name of the proposed Third Party Buyer; and
 - (v) any other commercial terms of the sale.
- (c) A Drag Along Notice is irrevocable.
- (d) Not less than 10 Business Days following the date of service of the Drag Along Notice:
 - (i) the Seller may dispose of the Sale Shares to the Third Party Buyer on the same terms as set out in the Drag Along Notice and otherwise in accordance with this clause 8; and

- (ii) the Recipient must, as part of the sale of the Sale Shares by the Seller to the Third Party Buyer, sell all the Called Shares to the Third Party Buyer on terms which comply with clauses 8.1(e) and 8.1(f).
- (e) Subject to clause 8.1(f), the sale of the Called Shares to the Third Party Buyer under this clause 8 must be for the same sale price per Share and otherwise be on same terms (including covenants, representations, warranties and indemnities) and conditions as those applicable to the sale of the Sale Shares by the Seller to the Third Party Buyer except as otherwise necessary to:
 - (i) ensure that the rights and liabilities of the Seller and the Recipient are several and pro-rata; and
 - (ii) reflect the identity of the Recipient as the seller of the Called Shares.
- (f) The Recipient is not required to make any covenants, representations or warranties or give any indemnities in favour of the Third Party Buyer other than such customary representations and warranties as to the authority and capacity of the Recipient and the nature and quality of its title to the Called Shares to be sold by it as the Third Party Buyer, acting reasonably, may request.
- (g) The Seller must ensure that there is no agreement, arrangement or understanding between the Seller and the Third Party Buyer (or, in each case, any Affiliate) conditional on, or in connection with, the sale of the Sale Shares by the Seller to the Third Party Buyer such as to confer a benefit or advantage or potential benefit or advantage on the Seller (or an Affiliate of the Seller) which is not capable of being extended to the Recipient proportionate to its holding of Shares in the Company.

8.2 Exercise of Drag Along Option

- (a) The Seller must procure that the purchase price for the Called Shares:
 - (i) if in cash, is paid in Immediately Available Funds to the Recipient; and
 - (ii) if script consideration, is issued to the Recipient so that the Recipient receives clear title to that script consideration, subject to any escrow conditions reasonably requested by the Third Party Buyer, or restrictions imposed by a securities exchange, if the Third Party Buyer is or will be listed on a securities exchange,

on the Drag Along Completion Date, which must take place at the same time as the closing of the sale of the Sale Shares by the Seller to the Third Party Buyer.
- (b) Without limiting clause 8.1(e), on or before the Drag Along Completion Date, the Recipient must deliver to the Third Party Buyer:
 - (i) a transfer form in favour of the Third Party Buyer signed by the Recipient;
 - (ii) the share certificate(s) or other title documents for the Called Shares;

- (iii) a written resignation from each Nominee Director appointed by the Recipient, unless otherwise agreed with the Third Party Buyer; and
- (iv) a notice signed by the Recipient irrevocably appointing the Third Party Buyer as the Recipient's proxy in respect of the Called Shares until such time as those Shares are registered in the name of the Third Party Buyer.
- (c) On the Drag Along Completion Date, each Shareholder releases any security interest it holds in respect of any of the Shares of the other Shareholder and if applicable must register a Financing Change Statement on the Personal Property Securities Register, to reflect any such release.
- (d) Each Shareholder irrevocably appoints the Company as its attorney in accordance with clause 22 on default by it of its obligations under clause 8.
- (e) The Seller will continue to be bound by this clause 8 following the sale of the Sale Shares until the process in this clause 8 has completed.
- (f) If the Seller serves a Drag Along Notice in accordance with clause 8.1(a) and, for any reason, the Seller does not transfer the Sale Shares to the Third Party Buyer on the Drag Along Completion Date (subject to extensions agreed by the Seller and the Third Party Buyer) or the Third Party Buyer notifies any party (where that party must then promptly notify the other parties) that it does not wish to purchase all of the Shares in accordance with this clause 8, then the Drag Along Notice and all obligations under that notice will lapse and the Seller may not exercise the drag along under this clause unless it complies again with this clause 8.

9. Tag along

9.1 Tag along option

- (a) If a Seller (or Sellers) that holds at least 51% of the Shares issued by the Company wishes to sell its Shares to a Third Party Buyer, then the Seller must notify the Company and the Recipients in writing (**Tag Along Notice of Sale**) of:
 - (i) its intention to sell all of the Sale Shares to the Third Party Buyer;
 - (ii) the sale price per Share that the Seller has been offered by the Third Party Buyer for the Sale Shares (which may be cash and/or script consideration) (**Tagged Share Sale Price**);
 - (iii) subject to clause 9.1(b), the date on which the sale to the Third Party Buyer is proposed to be completed (**Tag Along Sale Date**);
 - (iv) the name of the Third Party Buyer; and
 - (v) any other commercial terms of the sale.

- (b) The Seller must wait 10 Business Days from the date of service of the Tag Along Notice of Sale (**Tag Along Option Period**) before selling or agreeing to sell the Sale Shares.

9.2 Exercise of Tag along option

- (a) The Recipient may, during the Tag Along Option Period, serve a written notice (**Tag Along Response Notice**) on:
 - (i) the Seller; and
 - (ii) the Company,

specifying that the Seller must use its reasonable endeavours to cause the Third Party Buyer to purchase all of the Recipient's Shares on no less favourable terms than those set out in the Tag Along Notice of Sale issued under clause 9.1(a).
- (b) The Tag Along Response Notice is irrevocable.
- (c) If the Recipient does not give a Tag Along Response Notice within the Tag Along Option Period, then the Seller may, upon written notice to the Company and the Recipient, and at its discretion, at any time within 30 days after the Tag Along Option Period, sell the Sale Shares at the Tagged Share Sale Price to the Third Party Buyer.
- (d) If the Recipient has given a Tag Along Response Notice, the Seller must not transfer any Sale Shares to the Third Party Buyer unless the Third Party Buyer also acquires all of the Recipient's Shares on no less favourable terms and conditions as those applicable to the sale by the Seller of the Sale Shares and at not less than the Tagged Share Sale Price.
- (e) Following receipt of the Tag Along Response Notice, the Seller must, as part of the sale of the Sale Shares, use its best endeavours to procure that the Third Party Buyer also purchases all of the Recipient's Shares on terms that comply with clauses 9.2(d) and 9.2(g).
- (f) If the Recipient has given a Tag Along Response Notice and, despite the Seller's reasonable endeavours, the Third Party Buyer refuses to purchase all of the Recipient's Shares, then the Seller must not transfer any Sale Shares to the Third Party Buyer and the Tag Along Response Notice lapses.
- (g) The sale of the Recipient's Shares to the Third Party Buyer under this clause 9 must be for the same sale price per Share and otherwise be on the same terms (including covenants, representations, warranties and indemnities) and conditions as those applicable to the sale by the Seller of the Sale Shares to the Third Party Buyer except as otherwise necessary to:
 - (i) ensure that the rights and liabilities of the Seller and the Recipient are several and pro rata; and

- (ii) reflect the identity of the Recipient as the seller of that Recipient's Shares.
- (h) The Seller must ensure that there is no agreement, arrangement or understanding between the Seller and the Third Party Buyer (or, in each case, any Affiliate) conditional on or in connection with, the sale by the Seller of the Sale Shares to the Third Party Buyer such as to confer a benefit or advantage or potential benefit or advantage on the Seller (or an Affiliate of the Seller) which is not capable of being extended to the Recipient.
- (i) The purchase price for the Recipient's Shares:
 - (i) if in cash, must be paid in Immediately Available Funds to the Recipient; and
 - (ii) if script consideration, the Recipient must receive clear title to such script consideration, subject to any escrow conditions reasonably requested by the Third Party Buyer, or restrictions imposed by a securities exchange, if the Third Party Buyer is or will be listed on a securities exchange,

on the Tag Along Sale Date, which must take place at the same time as the closing of the sale of the Sale Shares by the Seller to the Third Party Buyer.
- (j) Without limiting clause 9.2(d), on the Tag Along Sale Date, the Recipient must deliver to the Third Party Buyer:
 - (i) a transfer form in favour of the Third Party Buyer signed by the Recipient;
 - (ii) the share certificate(s) or other title documents for the Recipient's Shares;
 - (iii) a written resignation from each Nominee Director appointed by the Recipient, unless otherwise agreed with the Third Party Buyer; and
 - (iv) a notice signed by the Recipient irrevocably appointing the Third Party Buyer as the Recipient's proxy in respect of the Recipient's Shares until such time as those Shares are registered in the name of the Third Party Buyer.
- (k) The Seller shall continue to be bound by this clause 9 following the sale of the Sale Shares until the process in this clause 9 has completed.
- (l) On the Tag Along Sale Date, each Shareholder releases any security interest it holds in respect of any of the Shares of the other Shareholder and if applicable must register a Financing Change Statement on the Personal Property Securities Register, to reflect any such release.
- (m) Each Shareholder irrevocably appoints the Company as its attorney in accordance with clause 22 on default by it of its obligations under this clause 9.

10. Transmission of Securities

10.1 Transmission on death

- (a) Where a Securityholder who is a natural person dies:
 - (i) the legal personal representatives of the deceased, where the Securityholder was a sole holder or a joint holder; and
 - (ii) the survivor or survivors, where the Securityholder was a joint holder,
 are the only persons recognised by the Company as having any title to the Securityholder's interest in the Securities of the Company (as the case may be).
- (b) Subject to the Corporations Act, the Directors may require evidence of a Securityholder's death as they determine.
- (c) This rule does not release the estate of a deceased joint holder from any liability in respect of any Security that had been jointly held by the holder with other persons.

10.2 Transmission on bankruptcy

- (a) If a person entitled to Shares as a result of the bankruptcy of a Shareholder gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the Shares then, the person may:
 - (i) by giving written and signed notice to the Company, elect to be registered as the holder of the Shares; or
 - (ii) by giving a completed transfer form to the Company, transfer the Shares to another person; and
 - (iii) the person is entitled, whether or not registered as the holder of the Shares, to the same rights as the Shareholder.
- (b) On receiving an election under rule 10.2(a) the Company must register the person as the holder of the Shares.
- (c) This rule 10.2 has effect subject to the *Bankruptcy Act 1966* (Cth).

10.3 Transmission on mental incapacity

- (a) If a person entitled to Shares as a result of the mental incapacity of a Shareholder gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the Shares, the person may:

- (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the Shares; or
- (ii) by giving a completed transfer form to the Company, transfer the Shares to another person.
- (b) The person is entitled, whether or not registered as the holder of the Shares, to the same rights as the Shareholder.
- (c) On receiving an election under rule 10.3(a)(i) the Company must register the person as the holder of the Shares.

10.4 **Transmission by operation of law**

A person (**Transmittee**) who establishes to the satisfaction of the Directors that the right to any Securities has devolved on the Transmittee by will or by operation of law may be registered as a holder in respect of the Securities or may (subject to the provisions in this Constitution relating to transfers) transfer the Securities. The Directors have the same right to refuse to register the Transmittee as if the Transmittee was the transferee named in a transfer presented for registration.

11. **Alteration of capital**

The Company may reduce or alter its Share capital in any manner provided for by the Corporations Act. The Directors may do anything which is required to give effect to any resolution authorising the reduction or alteration of the Share capital of the Company including, but not limited to:

- (a) distributing to Shareholders securities of any other body corporate and, on behalf of the Shareholders, consenting to each Shareholder becoming a member of that body corporate and agreeing to be bound by the constitution of that body corporate; and
- (b) making provision for the issue of fractional certificates or sale of fractions of Shares and the distribution of net proceeds as they think fit.

12. General meetings

12.1 Convening and cancelling general meetings

- (a) Any one Director may convene a general meeting of the Company whenever the Director thinks fit.
- (b) The Directors must call and arrange to hold a general meeting on the request of Shareholders with at least five per cent of the votes that may be cast at the general meeting. This meeting must be called within 21 days after the request is given to the Company.
- (c) Any Director may cancel any general meeting convened by that Director by notice in writing to all persons who were entitled to receive notice of that meeting, except where the cancellation or postponement would be contrary to the Corporations Act. Any failure to give notice of cancellation or postponement does not invalidate the cancellation or postponement or any resolution passed at a postponed meeting.

12.2 Notice of general meetings

- (a) Notice of a general meeting must be given in accordance with section 249H of the Corporations Act and section 249J of the Corporations Act (on the basis that the Replaceable Rules in that section apply).
- (b) A notice of a general meeting is to specify the place and time of the meeting, the general nature of the business to be transacted at the meeting and any other matters required by the Corporations Act.

12.3 Quorum

- (a) No business may be transacted at any general meeting, other than the election of the Chair of the meeting (if required pursuant to rule 12.4), unless a quorum of Shareholders is present at the beginning of the business of the meeting (and during the whole of the meeting).
- (b) Except as otherwise provided in this Constitution:
 - (i) where there is only one Shareholder, one Shareholder Present constitutes a quorum; and
 - (ii) in all other cases, two Shareholders Present at all times during the meeting constitutes a quorum.
- (c) If there is not a quorum at a general meeting within 30 minutes after the time appointed for the meeting as specified in the notice of the meeting, the meeting is dissolved unless the chair of the meeting or the Directors adjourn the meeting to a date, time and place determined by the chair of the meeting or the Directors. If no quorum is present at any adjourned meeting within 30 minutes after the time appointed for the meeting, the meeting is dissolved.

12.4 Conduct of meetings

- (a) Subject to rule 12.4(b), the Chair is entitled to preside as chair at every general meeting.
- (b) Where a general meeting is convened and:
 - (i) there is no Chair; or
 - (ii) the Chair is not present within 30 minutes after the time appointed for the meeting or does not wish to act as chair of the meeting,

the Directors present may choose one of their number or, in the absence of all Directors or if none of the Directors present wish to act, the Shareholders Present must elect one of their number to be chair of the meeting.

- (c) If no chair of the meeting has been appointed within 60 minutes after the time appointed for the meeting, the meeting is dissolved.
- (d) The chair of the meeting must adjourn a meeting of the Company's Shareholders if the Shareholders Present with a majority of votes at the meeting agree or direct that the chair of the meeting to do so.
- (e) The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined at, during by the chair of the meeting or prior to the meeting.
- (f) The chair of the meeting may make rulings without putting the question (or any question) to the vote if the chair of the meeting considers such action is required to ensure the orderly conduct of the meeting.
- (g) At any time the chair of the meeting considers it necessary or desirable for the proper and orderly conduct of the meeting, the chair of the meeting may demand the cessation of 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 Shareholders Present.
- (h) Any determination by the chair of the meeting in relation to matters of procedure (including any procedural motions moved at, or put to, any meeting) or any other matter arising directly or indirectly from the business is final (including any procedural motions moved at, or put to, any meeting). Any challenge to:
 - (i) a right to vote (whether on a show of hands or on a poll); or
 - (ii) a determination to allow or disregard a vote,

may only be made at the meeting and must be determined by the chair of the meeting, whose decision is final.

12.5 Adjournments

- (a) During the course of the meeting the chair of the meeting may adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by the chair of the meeting. If the chair of the meeting exercises a right of adjournment of a meeting under this rule, the chair of the meeting has the sole discretion to decide whether to seek the approval of the Shareholders Present to the adjournment and, unless the chair of the meeting exercises that discretion, no vote may be taken by the Shareholders Present in respect of the adjournment.
- (b) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for one month or more, notice of the adjourned meeting must be given as in the case of an original meeting. Otherwise, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

12.6 Voting at general meetings

- (a) Each question submitted to a general meeting is to be decided by a show of hands of the Shareholders Present and entitled to vote, unless a poll is demanded.
- (b) Before a vote is taken the chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (c) Unless a poll is demanded, a declaration by the chair of the meeting following a vote on a show of hands that a resolution has been passed or lost is conclusive.

12.7 When a poll is effectively demanded

- (a) A poll may be demanded by:
 - (i) at least five Shareholders entitled to vote on the resolution;
 - (ii) Shareholders with at least five per cent of the votes that may be cast on the resolution; or
 - (iii) the chair of the meeting.
- (b) The poll may be demanded before a vote is taken, before the voting results on a show of hands are declared or immediately after the voting results on a show of hands are declared.

12.8 Special meetings

All the provisions of this Constitution as to general meetings apply to any special meeting of any class of Securityholders which may be held pursuant to this Constitution or the Corporations Act.

12.9 Procedure for polls

- (a) When demanded, a poll may be taken in the manner and at the time the chair of the meeting directs.
- (b) The result of a poll may be announced in the manner and at the time (whether during the relevant meeting or afterwards) as the chair of the meeting considers appropriate.
- (c) The demand for a poll does not prevent a meeting from continuing in relation to any transaction or any business other than that on which a poll has been demanded. A poll demanded on the election of a chair or on the question of an adjournment must be taken immediately.

12.10 Chair has casting vote

In the event of an equality of votes on a show of hands or on a poll, the chair of the meeting has a casting vote in addition to any vote to which the chair of the meeting may be entitled as a Shareholder or as a proxy, attorney or properly appointed representative of a Shareholder.

12.11 Representation and voting of Shareholders

Subject to this Constitution and any rights or restrictions for the time being attached to any class or classes of Shares:

- (a) at meetings of Shareholders or classes of Shareholders each Shareholder entitled to attend and vote may:
 - (i) attend and vote in person; or
 - (ii) by proxy; or
 - (iii) by attorney; or
 - (iv) where the Shareholder is a body corporate, by a representative;
- (b) on a show of hands:
 - (i) subject to rules 12.11(b)(ii) and 12.11(b)(iii), each Shareholder Present has one vote;
 - (ii) where a Shareholder has appointed more than one person as representative, proxy or attorney for the Shareholder, only the first (in order of time nominated or order of name on the relevant nomination

document where nomination of more than one is made at the same time) of the representatives, proxies or attorneys is entitled to vote; and

- (iii) where a person is entitled to vote because of rule 12.11(b) in more than one capacity, that person is entitled only to one vote; and
- (c) on a poll:
 - (i) only Shareholders Present may vote;
 - (ii) every Shareholder Present having the right to vote on the resolution has:
 - (A) one vote for each fully paid Share they hold; and
 - (B) in the case of a partly paid Share, that fraction of a vote equivalent to the proportion which the amount paid up (not credited) on that Shareholder's Share bears to the total amount paid and payable for that Share (excluding amounts credited). Amounts paid in advance of a call are ignored when calculating the proportion; and
 - (iii) if a Shareholder has appointed two proxies and the appointments do not specify the proportion or number of the Shareholder's votes each proxy may exercise, each proxy may exercise half of that Shareholder's votes.

12.12 Restriction on voting rights

A Shareholder is not entitled to attend or vote at a general meeting unless all calls and other sums presently payable by the Shareholder in respect of its Shares have been paid.

12.13 Form of proxy

- (a) A Shareholder who is entitled to attend and vote at a meeting of the Company may appoint an individual or body corporate as a proxy to attend and vote for the Shareholder in accordance with the Corporations Act. A person appointed as the Shareholder's proxy may be an individual or a body corporate. A proxy appointed in accordance with the Corporations Act to attend and vote may exercise the rights of the Shareholder on the basis and subject to the restrictions provided in the Corporations Act.
- (b) The instrument appointing a proxy:
 - (i) shall be in writing (in the common or usual form) under the hand of the appointer or of his attorney duly authorised in writing or, if the appointer is a corporation, either under seal or under the hand of an officer or attorney duly authorised;

- (ii) shall be deemed to confer authority to demand or join in demanding a poll;
- (iii) must be in accordance with the Corporations Act; and
- (iv) may be in the following form or any other form (including electronic) which the Directors shall prescribe or approve:

I, [insert name] of [insert address] being a Shareholder of the Company hereby appoint [insert name] of [insert address] or, failing him/her [insert name] of [insert address] as my proxy to vote for me on my behalf at the (annual general or general as the case may be) meeting of the Company to be held on [insert date] and at any adjournment thereof.

*My proxy is hereby authorised to vote *In favour of/*against the following resolution:*

Strike out whichever is not required.

[insert resolution]

Dated: [insert date]

[Insert duly authorised execution block]

(Note: In the event of the member desiring to vote for or against any resolution he shall instruct his proxy accordingly. Unless otherwise instructed, the proxy may vote as he thinks fit).

- (c) The instrument of proxy and, if the instrument is signed by the appointer's attorney, an original certified copy of the power of attorney appointing that attorney, must be received by the Company at least 48 hours before the meeting.
- (d) Any appointment of proxy under this rule 12.13 which is incomplete may be completed by the Secretary on the authority of the Directors and the Directors may authorise completion of the proxy by the insertion of the name of any Director as the person in whose favour the proxy is given.
- (e) Where a notice of meeting provides for electronic lodgement of proxies, a proxy lodged at the electronic address specified in the notice is taken to have been received at the registered office and validated by the Shareholder if there is compliance with the requirements set out in the notice.

12.14 Number of votes exercised under proxy

- (a) A Shareholder may appoint not more than two proxies. If the Shareholder appoints two proxies and the appointment does not specify the proportion or the number of votes each proxy may exercise, each proxy may exercise half the votes.

- (b) A proxy need not be a Shareholder.

12.15 Validity of proxies

- (a) A vote exercised in accordance with the terms of an instrument of proxy, a power of attorney or other relevant instrument of appointment is valid despite:

- (i) the previous death or unsoundness of mind of the principal;
- (ii) the revocation of the instrument (or of the authority under which the instrument was executed) or the power; or
- (iii) the transfer of the Share in respect of which the instrument or power is given,

if no notice in writing of the death, unsoundness of mind, revocation or transfer (as the case may be) has been received by the Company at its registered office before the commencement of the meeting, or adjourned meeting at which the instrument is used or the power is exercised.

- (b) A proxy is not revoked by the principal attending and taking part in the meeting unless the principal actually votes at the meeting on a resolution for which the proxy is proposed to be used.

- (c) Voting instructions given by a Shareholder to a Director or employee of the Company who is appointed as proxy (**Company Proxy**) are valid only if:

- (i) the voting instructions are contained in the document form of appointment of the Company Proxy; or
- (ii) in the case of new instructions or variations to earlier instructions, the new instructions or variations to earlier instructions are either:
 - (A) received at the registered office of the Company before the meeting or adjourned meeting by a notice in writing signed by the Shareholder; or
 - (B) otherwise validated by the Shareholder in a manner acceptable to the Directors in their discretion prior to the commencement of the meeting.

12.16 Circulating resolutions

- (a) If all Shareholders entitled to receive notice of a general meeting and to vote on a resolution of Shareholders, sign a document containing a statement that they are in favour of the resolution set out in the document, a Shareholders' resolution in those terms is passed when the last Shareholder signs such a document.

- (b) For the purpose of this rule 12.16(b):
 - (i) separate copies of a document may be used for signing by Shareholders if the wording of the resolution and statement is identical in each copy; and
 - (ii) an email or facsimile containing the text of the document expressed to have been signed by a Shareholder that is sent to the Company is deemed to be a document signed by that Shareholder at the time of its receipt by the Company.

12.17 Sole Shareholder Resolutions

Where the Company has only one Shareholder it may pass a resolution by the member recording it and signing the record.

13. Directors

13.1 Number of Directors

The number of Directors (not including Alternate Directors) must be not less than three and at least two Directors must ordinarily reside in Australia. Each Director is to be a natural person. The Shareholders may, by ordinary resolution passed at a general meeting, impose or alter a maximum number of Directors.

13.2 Appointment of Director

- (a) The first Directors of the Company:
 - (i) are the persons specified in the application to register a company lodged under the Corporations Act;
 - (ii) have consented to become Directors of the Company; and
 - (iii) include the Founders.
- (b) The Founders will be entitled, but not obliged, to appoint a Director (**Nominee Director**) in the following circumstances:
 - (i) where a Founder and his Affiliates hold 10% or more of the total issued Shares, that Founder may appoint one Nominee Director; and
 - (ii) where each Founder and his respective Affiliates holds less than 10% of the total issued Shares, and the aggregated holding of the Founders and their Affiliates is 15% or more of the total issued Shares, the Founders may appoint one Nominee Director. For the avoidance of doubt, if one of the Founders and his Affiliates holds more than 10%, of the total issued Shares, then the Founders will not have a joint right to appoint a Nominee Director pursuant to this rule 13.2(b)(ii) (but that

Founder holding more than 10% of the total issued Shares may appoint a Nominee Director pursuant to rule 13.2(b)(i)).

- (c) A Founder who is entitled to appoint a Nominee Director may appoint that Nominee Director by written notice to the Company specifying the identity of the person to be appointed as the Nominee Director.
- (d) Subject to any applicable laws, the appointment of a Nominee Director takes effect immediately on receipt of the notice by the Company (or, if later, receipt by the Company of a proper consent to act signed by the appointee).
- (e) The holder or holders of a majority of the issued Shares in the capital of the Company conferring the right to vote at all general meetings of the Company may appoint any person to be a Director to fill a vacancy or as an addition to the existing Directors.
- (f) The Directors (or, where there is only one Director in office at the relevant time, that Director) may appoint any person to be a Director to fill a vacancy or as an addition to the existing Directors.

13.3 Removal of Director

- (a) A Founder may remove a Nominee Director appointed by that Founder by written notice to the Company specifying the identity of the person to be removed as the Nominee Director. The removal takes effect immediately on receipt of the notice by the Company.
- (b) A Nominee Director may only be removed by the Founder that appointed that Director.
- (c) A Founder who removes a Nominee Director or whose appointed Nominee Director ceases to be a Director for any reason, is entitled to appoint a replacement Nominee Director.
- (d) If a Founder ceases to be entitled to appoint a Nominee Director, the Founder must ensure that any Nominee Director appointed by him is immediately removed.
- (e) The Company may remove a Director other than a Nominee Director (where a Nominee Director may only be removed in accordance with rule 13.3(b)) by resolution at a general meeting.
- (f) At least two months' notice must be given to the Company of the intention to move a resolution to remove a Director (other than a Nominee Director) at a general meeting.
- (g) If notice of intention to move a resolution to remove a Director (other than a Nominee Director) at a general meeting is received by the Company, a Director must be given a copy of the notice as soon as practicable.

- (h) The Director must be informed that the Director:
 - (i) may submit a written statement to the Company for circulation to the Shareholders before the meeting at which the resolution is put to a vote; and
 - (ii) may speak to the motion to remove the Director at the general meeting at which the resolution is to be put to vote.
- (i) At least 21 days' notice must be given to the Shareholders of a general meeting at which the resolution for the removal of a Director is proposed. The notice must set out the proposed resolution and the grounds for the proposed resolution.

13.4 Cessation of Directorship

A person ceases to be a Director and the office of Director is vacated if the person:

- (a) is removed from office as a Director:
 - (i) by a resolution of the Company at a general meeting;
 - (ii) in accordance with this Constitution;
- (b) resigns as a Director in accordance with this Constitution;
- (c) is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Director;
- (d) dies;
- (e) is disqualified from acting as a Director under the Corporations Act; or
- (f) is absent from Board meetings for a continuous period of three months without leave of absence from the Board and the Board resolves that the Director's office should be vacated.

13.5 Rotation of Directors

- (a) At each annual general meeting, one-third of the Directors other than the Nominee Directors are subject to retirement by rotation (or, if the number of Directors is not a multiple of three then the number nearest to but not exceeding one-third of the Directors must retire from office as Directors). For the avoidance of doubt, a Nominee Director is not subject to retirement by rotation in accordance with this rule 13.5.
- (b) The Directors to retire by rotation at each annual general meeting must include any Director who wishes to retire and does not wish to be re-appointed as a Director. Any further Director required to retire must be the Director who has been in office the longest as Director.

- (c) If there are two or more Directors that have been in office for an equal amount of time, and an agreement cannot be reached between those Directors on who will retire, the Shareholders will determine the Director or Directors who will retire.
- (d) A retiring Director is eligible for re-appointment.
- (e) Unless a resolution is passed to appoint some other person to fill the office of Director to be vacated by the retiring Director, a retirement by rotation at a general meeting does not become effective until the end of the meeting.

13.6 Resignation of Directors

A Director may resign from the office of Director by giving notice of resignation to the Company at its registered office.

13.7 No Share qualification

Directors are not required to hold Shares in the capital of the Company.

13.8 Remuneration

- (a) The Directors are to be paid for their services as Directors.
- (b) As remuneration for services, each Director is to be paid out of the funds of the Company a sum per annum (accruing from day-to-day) determined by the Company in general meeting. The Directors may determine to suspend, reduce or postpone payment of any remuneration if they think fit. The expression **remuneration** in this rule does not include any amount which may be paid by the Company under any of rules 13.8(e), 13.8(f), 13.9 and 24.
- (c) Subject to a determination by the Company at a general meeting to the contrary, a Director who is remunerated as an executive Director shall not be paid fees under rule 13.8(a).
- (d) The remuneration to be paid or provided under rule 13.8(a) is to be divided among the Directors in the proportions as they may agree or, if they cannot agree, equally among them.
- (e) The Directors are also entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any meeting of the Directors, committee of the Directors, general meeting of the Company or otherwise in connection with the Company's business.
- (f) If any Director, with the approval of the Directors, performs extra services or makes any special exertions for the benefit of the Company, the Directors may approve the payment to that Director of special and additional remuneration as the Directors determine having regard to the value to the Company of the extra services or special exertions. Any special or additional remuneration must not include a commission on or percentage of profits or operating revenue or turnover.

- (g) A Director may be engaged by the Company in any other capacity (other than Auditor) and may be appointed on terms as to remuneration, tenure of office and otherwise as may be agreed by the Directors.

13.9 Retirement allowance for Directors

- (a) Subject to Part 2D.2 of the Corporations Act, the Company may pay, provide or make any payment, pension, retiring allowance or other benefit (whether in the form of Securities in the Company, securities in any other corporations or otherwise) to any Director of the Company or any other person in connection with the Director's retirement, resignation from or loss of office or death while in office.
- (b) Subject to rule 13.9(a), the Directors may:
 - (i) make contracts or arrangements with a Director or a person about to become a Director of the Company under which the Director or any person nominated by the Director is paid or provided with a payment, pension, retiring allowance or other benefit (whether in the form of Securities in the Company, securities in any other corporation or otherwise) on or after the Director or person about to become a Director ceases to hold office for any reason; and
 - (ii) establish any fund or scheme to provide payments, pensions, retiring allowances or other benefits (whether in the form of securities in the Company, Securities in any other corporation or otherwise) for:
 - (A) Directors, on them ceasing to hold office; or
 - (B) any person including a person nominated by the Director, in the event of the Director's death while in office,

and from time to time pay to the fund or scheme any sum as the Company considers necessary to provide those benefits.
- (c) Without limiting rules 13.9(a) and 13.9(b), the Company may pay superannuation contributions for each Director to the extent necessary for the avoidance or minimisation of any penalty, charge, tax, or other impost on the Company under any applicable legislation which imposes a penalty, charge, tax or other impost on employers if a minimum level of superannuation contributions is not paid for an employee (within the meaning of the legislation).
- (d) The Company may authorise any subsidiary to make a similar contract or arrangement with its Directors and maintain any fund or scheme, whether or not all or any of the directors of the subsidiary are also Directors of the Company.

13.10 Directors may lend to the Company

Any Director may lend money to the Company at interest with or without security or may, for a commission or profit, guarantee the repayment of any money borrowed by the Company and underwrite or guarantee the subscription of Securities of the

Company or of any corporation in which the Company may be interested without being disqualified in respect of the office of Director and without being liable to account to the Company for the commission or profit.

13.11 **Alternate Directors**

Subject to this Constitution, each Director may appoint any person (who, if there are other Directors, is approved by a majority of the other Directors) to act as an Alternate Director in the Director's place, either for a stated period or until the happening of a specified event, whenever by absence or illness or otherwise the Director is unable to attend to duties as a Director. The appointment must be in writing and signed by the Director and a copy of the appointment must be sent to the Company's registered office or given at a meeting of the Directors. The appointment takes effect on (if there are other Directors) approval by a majority of the other Directors or where the approval has been granted at any later time specified in the appointment. The following provisions apply to any Alternate Director:

- (a) the appointment of the Alternate Director is terminated or suspended on receipt at the registered office of notice in writing from the Director by whom the Alternate Director was appointed;
- (b) the Alternate Director is entitled to receive notice of meetings of the Directors and to attend and vote at the meetings if the Director by whom the Alternate Director was appointed is not present;
- (c) the Alternate Director is entitled to exercise all the powers (except the power to appoint an Alternate Director) and perform all the duties of a Director, to the extent the Director by whom the Alternate Director was appointed subject to any limitations set out in the instrument appointing the Alternate Director;
- (d) the Alternate Director is not, unless the Directors otherwise determine, (except for the right to reimbursement for expenses under rule 13.8(e)) entitled to receive any remuneration as a Director of the Company, and any remuneration (not including remuneration authorised by the Directors or reimbursement for expenses) paid to the Alternate Director by the Company is to be deducted from the remuneration of the Director by whom the Alternate Director was appointed;
- (e) the office of the Alternate Director is terminated on the death of, or termination of office by, the Director by whom the Alternate Director was appointed;
- (f) the Alternate Director is not to be taken into account in determining the number of Directors; and
- (g) the Alternate Director is, while acting as a Director, responsible to the Company for the Alternate Director's own acts and defaults and is not the agent of the Director by whom the Alternate Director was appointed.

14. Managing Director and powers of Directors

14.1 Appointment of a Managing Director

- (a) The Directors may appoint one or more Directors to the office of Managing Director for the period and on the terms as they determine. Subject to the terms of any agreement entered into in a particular case, the Directors may at any time revoke such appointment, with or without cause.
- (b) A Managing Director's appointment automatically terminates if the Managing Director ceases for any reason to be a Director.

14.2 Powers of Directors and Managing Director

- (a) The business of the Company is managed by the Directors, who may exercise all powers of the Company which are not, by the law or this Constitution, required to be exercised by the Company in general meeting.
- (b) Any two Directors of the Company (or if the Company has only one Director, that Director), may sign, draw, accept, endorse or otherwise execute a negotiable instrument. The Directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.
- (c) The Directors may, on the terms and conditions and with any restrictions as they determine, delegate to a Managing Director any of the powers exercisable by them and may at any time withdraw, suspend or vary all or any of those powers conferred on the Managing Director. Any powers which are conferred may be concurrent with or to the exclusion of their own powers. The delegation must be recorded in the Company's minute book in accordance with section 251A of the Corporations Act.

14.3 Wholly-owned subsidiary

At any time when the Company is a wholly-owned subsidiary of a body corporate (the **Holding Company**), each Director is authorised to act in the best interests of the Holding Company.

15. Proceedings of Directors

15.1 Proceedings

- (a) The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they determine.
- (b) The Directors shall hold no less than one Director's meeting per annum.

- (c) A Directors' meeting may be called by a Director giving reasonable notice individually to every other Director.
- (d) A notice may be given by mail (electronic or otherwise), personal delivery or facsimile transmission to the usual place of business or residence of the Director or at any other address given to the Secretary by the Director or by any technology agreed by all the Directors.
- (e) A Notice of the Meeting that is signed by the Company secretary is to be sent to all Directors that sets out:
 - (i) the date, time and place of the meeting; and
 - (ii) the items that are to be included on the agenda.
- (f) In the Notice of Meeting all the items that are to be discussed at the meeting must be listed in the agenda as no other business shall be discussed other than those items listed in the agenda. Directors may also request for an item to be placed on the agenda.
- (g) Subject to rule 15.1(i), unless otherwise determined by the Directors, two Directors form a quorum and the quorum must be present at all times during the meeting.
- (h) In the event of a vacancy or vacancies in the office of a Director or offices of Directors, where the number of remaining Directors is not sufficient to constitute a quorum of a meeting of Directors, they shall be deemed to constitute a quorum of a meeting of Directors to act to convene a general meeting of the Company.
- (i) Where there is only a sole Director, the sole Director may pass a resolution by recording it and signing it.

15.2 Meetings by technology

- (a) For the purposes of the Corporations Act, each Director, by consenting to be a Director (or by reason of the adoption of this Constitution), consents to the use of each of the following technologies for holding a Directors' meeting:
 - (i) video conferencing;
 - (ii) telephone;
 - (iii) any other technology which permits each Director to communicate with every other Director; or
 - (iv) any combination of these technologies.

A Director may withdraw the consent given under this rule in accordance with the Corporations Act.

- (b) Where the Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors:
 - (i) the participating Directors are, for the purpose of every provision of this Constitution concerning meetings of the Directors, taken to be assembled together at a meeting and to be present at that meeting; and
 - (ii) all proceedings of those Directors conducted in that manner are as valid and effective as if conducted at a meeting at which all of them were physically present in the one location.

15.3 Chair of Directors

- (a) The Directors may elect one of their number as their Chair and may decide the period for which the Chair is to hold office as Chair.
- (b) Where a meeting of Directors is held and:
 - (i) a Chair has not been elected as provided by rule 15.3(a); or
 - (ii) the Chair is not present within 30 minutes of the time appointed for the holding of the meeting or does not wish to chair the meeting,

the Directors present may elect one of their number to be Chair of the meeting.

15.4 Directors' voting rights and exercise of powers

- (a) Subject to this Constitution, questions arising at a meeting of Directors are decided (where there is more than one Director of the Company) by a majority of votes of Directors entitled to vote on the resolution.
- (b) In the case of an equality of votes, the Chair of the meeting does not a casting vote in addition to any vote they have in their capacity as a Director.
- (c) Subject to rule 16 and the Corporations Act, a Director:
 - (i) who has an interest in a matter may vote in respect of that matter if it comes before the Directors and be counted as part of the quorum;
 - (ii) may enter into contracts with, or otherwise have dealings with, the Company; and
 - (iii) may hold other offices in the Company.
- (d) A Director is not liable to account to the Company for any profit realised by any contract or arrangement, by reason only of holding the office of Director or of the fiduciary relationship established by the office.
- (e) Subject to the Corporations Act, a Director or any person who is an associate of a Director may participate in any issue by the Company of financial products.

- (f) Despite having an interest in any contract or arrangement a Director may participate in the execution of any document evidencing or connected with the contract or arrangement, whether by signing, sealing or otherwise.

15.5 Committees

- (a) The Directors may delegate any of their powers to committees consisting of any one or more Directors or any other person or persons as the Directors think fit. In the exercise of delegated power, any committee formed or person or persons appointed to the committee must conform to any regulations that may be imposed by the Directors. A delegate of the Directors may be authorised to sub-delegate any of the powers for the time being vested in the delegate.
- (b) The meetings and proceedings of any committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Directors so far as they are applicable and are not in conflict with or superseded by, any regulations made by the Directors under rule 15.5(a).
- (c) Nothing in this rule 15.5 limits the power of the Directors to delegate.

15.6 Circulating resolutions

A resolution in writing, signed by all of the Directors for the time being entitled to receive notice of a meeting of the Directors, shall be as valid and effectual as if it had been passed at a meeting of the Directors duly convened and held. Separate copies of a document may be used for signing by Directors if the wording of the resolution is identical in each copy. The resolution is passed when the last Director signs.

15.7 Defects in appointments

All actions at any meeting of the Directors or by a committee or by any person acting as a Director are, despite the fact that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been properly appointed and was qualified and continued to be a Director or a member of the committee.

16. Material personal interests

16.1 Declaration of interest

- (a) Any Director who has a material personal interest in a matter that relates to the affairs of the Company, including in a contract or proposed contract, any office or any property such that the Director might have duties or interests which conflict or may conflict either directly or indirectly with the Director's duties or interests as a Director, must give the Board notice of the interest at a Board meeting unless section 191(2) of the Corporations act applies.

- (b) A notice of a material personal interest must set out:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company.
- (c) The notice must be provided to the Board at a Board meeting as soon as practicable.

16.2 Voting by interested Directors

A Director who has a material personal interest in a matter that is being considered at a Board meeting must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter,

unless:

- (c) sections 191(2) or (3) of the Corporations Act allow the Director to be present; or
- (d) the interest does not need to be disclosed under section 191 of the Corporations Act.

17. Secretaries and other officers

17.1 Secretaries

- (a) The Company must have at least one Secretary. Subject to any contrary provisions of the Corporations Act, a Secretary or Secretaries of the Company may also be appointed by the Directors. The Directors may also appoint acting and assistant Secretaries.
- (b) At least one Secretary must be ordinarily resident in Australia.
- (c) A Secretary holds office on the terms and conditions, as to remuneration and otherwise, as the Directors decide.
- (d) The Directors may at any time terminate the appointment of a Secretary.

17.2 Other officers

- (a) The Directors may from time to time:
 - (i) create any other position or positions in the Company with the powers and responsibilities as the Directors may from time to time confer; and

- (ii) appoint any person, whether or not a Director, to any position or positions created under rule 17.2(a)(i).
- (b) The Directors may at any time terminate the appointment of a person holding a position created under rule 17.2(a)(i) and may abolish the position.

18. Execution of documents

18.1 Seals

- (a) The Company may have a common seal and a duplicate common seal which are to be used by the Company as determined by the Directors.
- (b) The seal must be used only by the authority of the Board.

18.2 Execution under common seal

If the Company does have a common seal then it may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:

- (a) two Directors of the Company;
- (b) a Director and a Secretary; or
- (c) any person duly authorised to sign on behalf of the Company, whether under authority of a power of attorney or otherwise.

18.3 Execution without common seal

The Company may execute a document without using a common seal if the document is signed by:

- (a) two Directors of the Company;
- (b) a Director and a Secretary; or
- (c) any person duly authorised to sign on behalf of the Company, whether under authority of a power of attorney or otherwise.

18.4 Directors' interests

A Director may sign a document to which the seal of the Company is fixed notwithstanding that the director is interested in the contract or arrangement to which the document relates.

19. Inspection of records

19.1 Inspection by Shareholders

The Directors may determine whether and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to inspection by the Shareholders (other than Directors).

19.2 Right of a Shareholder to inspect

A Shareholder does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

20. Dividends, interest and reserves

20.1 Powers to declare Dividends and pay interest

- (a) Subject to any special rights or restrictions attached to any Shares and the requirements under the Corporations Act, the Directors may determine that a Dividend is payable, and may fix:

- (i) the amount;
- (ii) the time for payment; and
- (iii) the method of payment.

The methods of payment may include the payment of cash, the issue of Securities, the grant of options and the transfer of assets.

- (b) No Dividend bears interest against the Company.
- (c) The Directors may declare and the Company may pay a Dividend in accordance with section 254T of the Corporations Act.

20.2 Crediting of Dividends

- (a) Subject to any special rights or restrictions attached to any Shares, every Dividend is to be paid according to the amounts paid or credited as paid on the Shares.
- (b) An amount paid or credited as paid on a Share in advance of a call is not taken for the purposes of rule 20.2(a) to be paid or credited as paid on the Share.
- (c) Subject to any special rights or restrictions attached to any Shares, the Directors may from time to time resolve that Dividends are to be paid out of a

particular source or particular sources, and in those circumstances the Directors may in their absolute discretion:

- (i) allow each or any Shareholder to elect from which specified sources that particular Shareholder's Dividend may be paid by the Company; and
- (ii) where elections are permitted and any Shareholder fails to make an election, identify the particular source from which Dividends are payable.

20.3 Deduction of unpaid amounts

The Directors may apply any part of any Dividend otherwise payable to a Shareholder towards satisfaction of all sums of money presently payable by the Shareholder to the Company on account of calls or otherwise in relation to Shares in the Company.

20.4 Distributions in kind

- (a) The Directors may, when declaring a Dividend, direct payment of the Dividend wholly or partly by the distribution of specific assets including paid up shares in or debentures of another body corporate.
- (b) Where a difficulty arises in regard to a distribution under rule 20.4(a), the Directors may:
 - (i) settle the matter as they determine and fix the value for distribution of the specific assets or any part of those assets;
 - (ii) decide that cash payments may be made, and make the payments to any Shareholders on the basis of the value fixed by them in order to appropriately adjust the rights of all Shareholders as the Directors determine in their discretion; or
 - (iii) vest any specific assets in trustees.

20.5 Payment of distributions

- (a) Any Dividend, interest or other money payable in cash in respect of Shares may be paid by any of the following means, in the Company's discretion, at the sole risk of the intended recipient:
 - (i) by cheque sent through the post directed to:
 - (A) the address of the member as shown in the register of members or, in the case of joint holders, to the address shown in the register of members as the address of the joint holder first named in that register of Shareholders; or
 - (B) to any other address as the Shareholder or joint holders in writing directs or direct;

- (ii) by electronic funds transfer to an account with a bank or other financial institution nominated by the Shareholder and acceptable to the Company; or
 - (iii) by any other means determined by the Directors,
- or may otherwise be paid according to law.
- (b) Payments of Dividends and other distributions by the Company may be made in Australian dollars or any other currency determined by the Directors in their discretion. Payments in different currencies may be made to different Shareholders as determined by the Directors in their discretion. If a payment is made in a currency other than Australian dollars, the Directors may determine in their discretion the appropriate exchange rate and the time of calculation to calculate the amount payable in the relevant currency. The determinations of the Directors are, in the absence of manifest error, final.
 - (c) Subject to law, all Dividends unclaimed may be invested or otherwise used by the Directors for the benefit of the Company until claimed or otherwise paid according to law.

21. Capitalisation of profits

- (a) The Company in general meeting or the Directors may resolve:
 - (i) to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account, profit and loss account or otherwise available for distribution to Shareholders; and
 - (ii) that the sum referred to in rule 21(a)(i) be applied, in any of the ways mentioned in rule 21(b), for the benefit of Shareholders in full satisfaction of their interest in the capitalised sum, in the proportions to which those Shareholders would have been entitled in a distribution of that sum by way of Dividend or if there is no proportional entitlement, as the Directors determine.
- (b) The ways in which a sum may be applied for the benefit of Shareholders under rule 21(a) are:
 - (i) in paying up any amounts unpaid on Shares held by Shareholders;
 - (ii) in paying up in full unissued Shares to be issued to Shareholders as fully paid;
 - (iii) partly as mentioned in rule 21(b)(i) and partly as mentioned in rule 21(b)(ii); or
 - (iv) any other application permitted by law.

- (c) Where the conditions of issue of a partly paid Share provide, the holder is entitled to participate in any application of a sum under rule 21(b) to a greater extent than would have been the case had those funds been distributed by Dividend but not to any greater extent than permitted by the terms of issue.
- (d) The Directors may do all things they consider necessary to give effect to the resolution and, in particular, to the extent they consider necessary to adjust the rights of the Shareholders amongst themselves, may:
 - (i) fix the value for distribution of the specific assets or any part of those assets;
 - (ii) issue fractional certificates or make cash payments in cases where Shares become issuable in fractions or determine that fractions may be disregarded or that any fractional entitlements are to be increased to the next whole number;
 - (iii) vest any cash or specific assets in trustees on trust for the persons entitled as they determine; and
 - (iv) authorise any person to make, on behalf of all the Shareholders entitled to any further Shares on the capitalisation, an agreement with the Company providing for the issue to them, credited as fully paid up, of any further Shares or for the payment by the Company on their behalf the amounts or any part of the amounts 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 that authority is effective and binding on all the Shareholders concerned.

22. Powers of Attorney

22.1 Purpose of power of attorney

The appointments of the Company as attorney in clause 22.2 are for the purposes only of any of the transactions and matters contemplated by clauses 8.2(d) and 9.2(m) (**Attorney Clauses**) and take effect from Drag Along Completion Date and the Tag Along Sale Date respectively.

22.2 Power of attorney

In consideration of, among other things, the mutual promises contained in this Constitution:

- (a) each Shareholder (**Appointor**) irrevocably appoints the Company as its, his or her attorney to receive such notices, complete and execute (under hand or under seal) such documents and take such other steps for and on its behalf as (in each case) the attorney thinks necessary or desirable to give effect to any of the transactions contemplated by the Attorney Clauses;
- (b) each Appointor agrees to ratify and confirm whatever the attorney lawfully does, or causes to be done, under the appointment;
- (c) each Appointor agrees to indemnify the attorney against all claims, demands, costs, charges, expenses, outgoings, losses and liabilities arising in any way in connection with the lawful exercise of all or any of the attorney's powers and authorities under that appointment; and
- (d) each Appointor agrees to deliver to the Company on demand any power of attorney, instrument of transfer or other document as the Company or its Directors may require for the purposes of any of the transactions contemplated by the Attorney Clauses.

23. Notices

23.1 Notice requirements

Any notice, demand, approval, consent or other communication under this agreement (**Notice**) must be in writing in English or accompanied by a certified translation into English and must be:

- (a) delivered personally;
- (b) sent by facsimile;
- (c) sent by regular post (or airmail if posted to or from a place outside Australia); or
- (d) sent by email,

to a party at the address of the party set out in the relevant Company register (**Nominated Contact Details**).

23.2 When Notices considered given and received

A Notice given in accordance with rule 23.1 takes effect when received (or such later time as specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent from and to a place within Australia by regular post, at 9:00 am on the sixth Business Day after the date of posting;
- (c) if sent from a place within Australia to a place outside Australia by airmail, at 9.00 am on the tenth Business Day after the date of posting;
- (d) if sent from a place outside Australia by airmail, at 9.00 am on the twelfth Business Day after the date of posting;
- (e) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the Notice, unless within four business hours (being a period of time between 9.00 am and 5.00 pm on a Business Day) after the transmission, the recipient informs the sender that it has not received the entire Notice; or
- (f) if sent by email, when the email (including any attachment) is sent to the receiving party at that email address, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00 pm on a Business Day, the Notice is taken to be received at 9.00 am on the next Business Day after that delivery, receipt or transmission.

24. Indemnity of officers, insurance and access

- (a) The Company is to indemnify each officer of the Company out of the assets of the Company to the extent permitted at law against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer for the period ending seven years after the date the officer ceases to be an officer of the Company, except for fraud and wilful misconduct or any liability arising out of conduct involving lack of good faith.
- (b) Subject to rule 24, where the Directors consider it appropriate, the Company may execute an indemnity document in any form in favour of any officer of the Company or a subsidiary.

- (c) Where the Directors consider it appropriate, the Company may to the relevant extent:
- (i) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company or a subsidiary against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer; and
 - (ii) bind itself in any contract or deed with any officer of the Company to make the payments.
- (d) Where the Directors consider it appropriate, the Company may:
- (i) give a former Director access to certain papers, including documents provided or available to the Directors and other papers referred to in those documents; and
 - (ii) bind itself in any contract with a Director or former Director to give the access.
- (e) In this rule 24:
- (i) **officer** means:
 - (A) a Director or Secretary or executive officer; or
 - (B) a person appointed as a trustee by, or acting as a trustee at the request of, the Company,
 and includes a former officer;
 - (ii) **duties of the officer** includes, in any particular case where the Directors consider it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the Company or, where applicable, the subsidiary of the Company to any other corporation;
 - (iii) **to the relevant extent** means:
 - (A) to the extent the Company is not precluded by law from doing so;
 - (B) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and
 - (C) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be

indemnified and is not actually indemnified out of the assets of that corporation; and

- (iv) **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.

25. Winding up

- (a) If the Company is wound up, whether voluntarily or otherwise, the liquidator may divide among all or any of the Shareholders as the liquidator thinks fit in kind any part of the assets of the Company, and may vest any part of the assets of the Company on trust for the benefit of all or any of the Shareholders as the liquidator thinks fit.
- (b) Any division may be otherwise than in accordance with the legal rights of the contributories and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part, but if any division otherwise than in accordance with the legal rights of the Shareholders is determined, any Shareholder who would be prejudiced by the division has a right to dissent and ancillary rights as if the determination were a special resolution passed under the Corporations Act relating to the sale or transfer of the Company's assets by a liquidator in a voluntary winding up.
- (c) If any Shares to be divided in accordance with rule 25(b) involve a liability to calls or otherwise, any person entitled under the division to any of the Shares may, by notice in writing within 10 Business Days after the passing of the special resolution, direct the liquidator to sell the person's proportion and pay the person the net proceeds and the liquidator is to act accordingly, if practicable.

26. Modification or repeal of this Constitution

This Constitution and any of its provisions may be modified, repealed or replaced by special resolution of the Shareholders.

Annexure A Redeemable preference Shares

1. Redeemable preference Share may be issued on the terms specified in this Constitution and any further terms specified in a certificate issued by the Company in respect of those Shares (**Redeemable Preference Share Certificate**).
2. The Redeemable Preference Share Certificate must specify the following:
 - (a) the right to payment of a Dividend (if any) applicable to the redeemable preference Share;
 - (b) the amount paid or payable and any unpaid amount on the redeemable preference Share;
 - (c) the number of votes that may be exercised by the holder in respect of the redeemable preference Share on a poll;
 - (d) time and or event upon which the redeemable preference Share may be redeemed; and
 - (e) any restriction on the right to transfer the redeemable preference Share.
3. Each redeemable preference Share shall confer on its holder:
 - (a) the right to payment on a Dividend in accordance with the Redeemable Preference Share Certificate;
 - (b) the right in a winding up or reduction of capital and immediately before redemption, to the payment of cash in priority to any other class of the amount of any Dividend accrued but unpaid on the Share at the time of the winding up, or reduction of capital, or redemption (as applicable);
 - (c) the right, in a winding up or reduction of capital or redemption, to payment in cash in priority to any other class of Shares of any amount paid on the redeemable preference Share; and
 - (d) the right to receive notices of and attend a meeting of Shareholders and receive a copy of documents to be laid before that meeting.
4. The redeemable preference Share does not confer any rights on its holder to participate in the profits or property of the Company except as set out in this Annexure A and its Redeemable Preference Share Certificate.
5. Other than at a meeting of Shareholders holding redeemable preference Shares, the holder of a redeemable preference Share may only vote at a meeting of Shareholders on a proposal:
 - (a) to reduce the Share Capital of the Company;
 - (b) that affects rights attached to the redeemable preference Share; or

- (c) to wind up the Company.
6. The Company must, at the time and place for redemption specified in, or determined in accordance with, the Redeemable Preference Share Certificate redeem the redeemable preference Share and on receiving the redeemable preference Share, pay to or at the direction of the holder the amount payable on redemption of the redeemable preference Share.