

## Constitution



Revised : 



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# Constitution



## 1. Preliminary

### 1.1 Definitions and Interpretation

Schedule 1 applies and forms part of this Constitution.

### 1.2 Nature of the Company

The Company is a public company limited by shares.

### 1.3 Replaceable rules

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

## 2. Shares

### 2.1 Issue of Shares and options

- (a) Subject to any rights and restrictions attached to a class of Shares, the Company may, on any terms, at any time and for any consideration, as the Directors resolve:
  - (i) allot and issue unissued Shares; and
  - (ii) grant options over unissued Shares.
- (b) The powers of the Company under Article 2.1(a) may only be exercised by the Directors.

### 2.2 Preference Shares

- (a) The Company may issue any Shares as preference Shares, including:
  - (i) preference Shares which are liable to be redeemed in a manner permitted by the Corporations Act; and
  - (ii) preference Shares in accordance with the terms of Schedule 4.
- (b) Holders of preference Shares have the same rights as holders of ordinary Shares in relation to receiving notices, reports and audited accounts, and attending meetings of Members.
- (c) A holder of a preference Share only has the right to vote:
  - (i) during a period during which a dividend (or part of a dividend) in respect of the Share is in arrears;
  - (ii) on a proposal to reduce the share capital of the Company;
  - (iii) on a resolution to approve the terms of a buy back agreement;
  - (iv) on a proposal that affects rights attached to the Share;

- (v) on a proposal to wind up the Company;
- (vi) on a proposal for the disposal of the whole of the property, business and undertaking of the Company; and
- (vii) during the winding up of the Company.

### 2.3 Variation of classes and class rights

- (a) Subject to the terms of issue of Shares in a particular class, the Company may:
  - (i) vary or cancel rights attached to Shares in that class; or
  - (ii) convert Shares from one class to another,by a special resolution of the Company and:
  - (iii) a special resolution passed at a meeting of the Members holding Shares in that class; or
  - (iv) the written consent of Members who are entitled to at least 75% of the votes that may be cast in respect of Shares in that class.
- (b) The provisions in this Constitution concerning meetings of Members (with the necessary changes) apply to a meeting held under Article 2.3(a)(iii).

### 2.4 Converting Shares

The Company may by ordinary resolution passed at a general meeting convert all or any of its Shares into a larger or smaller number of Shares.

### 2.5 Reductions of capital and buy backs

- (a) Subject to the Corporations Act, the Company may by on any terms and at any time:
  - (i) reduce its share capital; and
  - (ii) buy back Shares in itself.
- (b) The method of distribution of a reduction of the share capital of the Company may include any or all of the payment of cash, the issue of shares, the grant of Company options or other Company securities, the transfer of shares or any other securities in any other body corporate or units in any unit trust or the transfer of any other assets.
- (c) If a distribution of a reduction of the share capital of the Company includes an issue or transfer of shares in a body corporate, each Member:
  - (i) agrees to become a member of that body corporate; and
  - (ii) in the case of transfer, appoints the Company and each Director as its agent to execute an instrument of transfer or other document required to transfer those shares to that Member.

### 2.6 Registered holder is absolute owner

Except as required by law or this Constitution, the Company is not required to recognise any interest in, or right in respect of, a Share except an absolute right of legal ownership of the Member registered as the holder of that Share.

## 2.7 Certificates

- (a) The Company must issue to each Member, free of charge and in accordance with the Corporations Act, one certificate in respect of each class of Shares registered in the Member's name.
- (b) If a Share is jointly held:
  - (i) the Company is not required to issue more than one certificate for the Share; and
  - (ii) delivery of a certificate for the Share to any one of the joint holders of the Share is delivery to all the joint holders.
- (c) The Company must issue a replacement certificate for a Share if:
  - (i) the Company receives and cancels the existing certificate; or
  - (ii) the Company is satisfied that the existing certificate is lost or destroyed, and the Member complies with all conditions set out in the Corporations Act and pays any fee as the Directors resolve.

## 3. Pre-emptive right on issue of Shares

### 3.1 Exempt Issues

This Article 3 does not apply to an Exempt Issue.

### 3.2 Offer of new Shares

If this Article 3 applies, the Company must not issue any new Shares of a particular class (**Offer Securities**) to a person unless the Company has first offered the Offer Securities to the existing Members of that class at the time of the offer to issue the Offer Securities is made (**Existing Members**) on identical terms, in accordance with this Article 3 (**Issue Offer**).

### 3.3 Entitlement

Each Existing Member is entitled to subscribe for that Existing Member's Respective Proportion of the Offer Securities.

### 3.4 Offer period

The Issue Offer must remain open for acceptance by the Existing Members for at least 21 days (**Offer Period**).

### 3.5 Shortfall

- (a) If any Existing Members do not accept the Issue Offer within the Offer Period and part of the Offer Securities remain unallocated (**Shortfall**), the Company must offer the Shortfall to the Existing Members that accepted the Issue Offer, at the same offer price per Offer Security and otherwise on the same terms as the Issue Offer (**Shortfall Offer**).
- (b) The Shortfall Offer must remain open for acceptance by the Existing Member for at least 14 days.

- (c) If the Company receives more acceptances for the Shortfall Offer than the Shortfall available, then the Shortfall will be allocated to those Existing Members who apply for the Shortfall in accordance with their Respective Proportions.
- (d) Subject to Article 3.5(e), if the calculation of an Existing Member's entitlement to the Shortfall under Article 3.5(c) results in an entitlement to a fraction of an Offer Security, that fraction will be rounded:
  - (i) to the nearest whole number; or
  - (ii) if the fraction is exactly one half, down to the nearest whole number.
- (e) If the aggregate of applicant Existing Member's entitlements to the Shortfall calculated in accordance with Articles 3.5(c) and 3.5(d) results in a number of Offer Securities that is greater than or less than the number of Offer Securities comprised in the Shortfall, then the Shortfall will be increased or decreased (as applicable) so that the aggregate entitlements of those applicant Existing Members equal the number of Offer Securities comprised in the Shortfall.

#### **4. Calls, Company Payments, Forfeiture and Liens**

Schedule 2 applies and forms part of this Constitution.

#### **5. Transfer of Shares**

##### **5.1 Restriction on transfer**

A Member must not transfer its Shares except in accordance with this Constitution.

##### **5.2 Electronic transfer systems**

Subject to this Constitution, the Company may do any act, matter or thing permitted under the Corporations Act to facilitate involvement by the Company in any clearing and settlement facility provided under the Corporations Act for the transfer of securities.

##### **5.3 Forms of transfer**

Subject to this Constitution, a Member may transfer one or more Shares the Member holds by:

- (a) an instrument of transfer in compliance with this Constitution; or
- (b) any other method permitted by the Corporations Act.

##### **5.4 Instrument of transfer**

An instrument of transfer of a Share referred to in Article 5.3(a) must be:

- (a) in writing;
- (b) in any usual form or in any other form approved by the Directors that is otherwise permitted by law;
- (c) subject to the Corporations Act, executed by or on behalf of the transferor, and if required by the Company, the transferee;



- (d) stamped, if a law about stamp duty requires that the transfer of Shares be stamped prior to registration; and
- (e) delivered to the Company, at the place where the Register is kept, together with the certificate (if any) of the Share to be transferred and any other evidence as the Directors require to prove:
  - (i) the title of the transferor to that Share;
  - (ii) the right of the transferor to transfer that Share; and
  - (iii) the proper execution of the instrument of transfer.

#### **5.5 Transferor is holder until transfer registered**

A person transferring a Share remains the registered holder of that Share until the transfer for that Share is registered and the name of the person to whom the Share is being transferred is entered in the Register as the holder of that Share.

#### **5.6 Refusal to register transfers**

- (a) Subject to the Corporations Act, the Company may refuse to register a transfer of Shares without giving any reason for that refusal.
- (b) The Company must refuse to register a transfer of Shares where the Corporations Act or a law about stamp duty requires the Company to do so.
- (c) The Company must give notice in writing of any refusal to register a transfer of Shares to the person transferring those Shares within two months after the date on which the transfer was lodged with the Company.
- (d) Failure by the Company to give notice under Article 5.6(c) of this Constitution does not invalidate the refusal to register the transfer.
- (e) The powers of the Company under Article 5.6(b) of this Constitution may only be exercised by the Directors.

#### **5.7 No registration fee**

The Company must not charge a fee to register a transfer of a Share in compliance with this Constitution except as permitted by the Corporations Act.

#### **5.8 Transmission of Shares**

Schedule 3 applies and forms part of this Constitution.

### **6. Pre-emptive rights on transfer**

#### **6.1 Permitted transfers**

- (a) A Member may undertake any of the following transfers without first complying with the procedure in this Article 6:
  - (i) a transfer to the Company under a buy-back and cancellation of Shares conducted in accordance with the Corporations Act;

- (ii) a redemption and cancellation of Shares pursuant to a reduction of capital conducted in accordance with the Corporations Act;
  - (iii) a transfer by one Founding Member to another Founding Member arising from or connected with any agreement or arrangement between the Founding Members prior to 30 November 2019, with the prior approval of the Board;
  - (iv) a transfer of the whole of the legal and beneficial interest in one or more Shares to a third party with the sanction of a special resolution of the Members;
  - (v) a transfer of Shares expressly permitted or required under this Constitution, including a transfer of Shares under Articles 7 or 8; or
  - (vi) a transfer by the Member to an Exempt Transferee of all (but not part) of the Shares held by that Member.
- (b) If a Member intends to transfer Shares to an Exempt Transferee:
- (i) that Member must provide prior written notice to that effect to each other Member specifying the name of the Exempt Transferee and why the Exempt Transferee qualifies as an Exempt Transferee; and
  - (ii) the transfer of Shares is conditional upon the Exempt Transferee covenanting by deed in favour of the Company and the other Members that the Shares received must be re-transferred to the relevant Member if that Exempt Transferee ceases to be an Exempt Transferee.

## 6.2 Offer to other Members

- (a) A Member (**Transferor**) that proposes to sell, transfer or otherwise dispose of some or all of the Transferor's Shares (**Transfer Interest**) must first give written notice (**Transfer Notice**) to the Company detailing the Transfer Interest and the sale price per Share that the Transferor is willing to accept (**Sale Price**).
- (a) A Transfer Notice is deemed to constitute an offer by the Transferor to each other Member (**Continuing Member**) to sell some or all of the Transfer Interest for the Sale Price, in accordance with this Article 6 (**Transfer Offer**).
- (b) With effect from receipt of the Transfer Notice, the Transferor appoints the Company as its agent for the purposes of effecting the sale and transfer of the Transfer Interest in accordance with this Article 6.
- (c) The Company must give a Transfer Notice received under Article 6.2(a) to each Continuing Member no later than 5 Business Days after receipt.

## 6.3 Acceptance by Continuing Member

- (a) The Transfer Offer must remain open for acceptance by a Continuing Member for at least 25 Business Days from the date of the Transfer Notice (**Transfer Offer Period**).
- (b) A Continuing Member may accept the Transfer Offer at any time prior to 5:00pm on the last day of the Transfer Offer Period, by giving the Company written notice to that effect (**Acceptance Notice**).
- (c) An Acceptance Notice must:
  - (i) state the number of Shares comprised in the Transfer Interest that the Transferee wishes to purchase; and

- (ii) unconditionally accept the terms and conditions of the Transfer Offer.

#### 6.4 Entitlements

- (a) If Acceptance Notices are received under Article 6.3 in relation to more Shares than those comprising the Transfer Interest, then each Transferee is entitled to purchase a portion of the Transfer Interest that reflects the percentage calculated as follows:

$$\textit{Entitlement} = (A / B) \times C$$

where:

**A** is the total number of Shares held by the relevant Transferee on the date of the Transferee's Acceptance Notice;

**B** is the total number of Shares held by all other Continuing Members that have accepted the Transfer Offer as at the date of that Transferee's Acceptance Notice; and

**C** is the total number of Shares comprised in the Transfer Interest.

- (b) If the Company receives Acceptance Notices under Article 6.3 in relation to less Shares than those comprising the Transfer Interest, then:
- (i) the Company must notify the Transferor and each Continuing Member of the number of Shares comprising the shortfall;
  - (ii) the Continuing Members may apply for all or part of such shortfall; and
  - (iii) if applications are received for more than the shortfall available, then such shortfall will be allocated by the Company to those Continuing Members who apply for the shortfall on the same basis as the entitlement allocation formula in Article 6.4(a).
- (c) The calculation of a Continuing Member's entitlement under Article 6.4 results in an entitlement to a fraction of a Share, that fraction will be rounded:
- (i) to the nearest whole number; or
  - (ii) if the fraction is exactly one half, down to the nearest whole number.

#### 6.5 Completion

- (a) If a Continuing Member accepts a Transfer Offer, there will be an unconditional, irrevocable, valid and binding agreement for the sale and purchase of that part of the Transfer Interest for which Acceptance Notices have been received and a binding agreement to transfer the legal and beneficial ownership of that Transfer Interest from the Transferor to the relevant Transferee free from any security interest or encumbrance.
- (b) The Transferor and each relevant Transferee must effect settlement of the sale and transfer of that part of the Transfer Interest for which Acceptance Notices have been received (**Completion**), at a location, time and date nominated by the Company acting reasonably, being not greater than 30 days following the expiry of the Transfer Offer Period.

## 6.6 Transfer to third party

- (a) If all or any part of the Transfer Interest is not purchased by the Continuing Members under this Article 6:
  - (i) the Company must inform the Transferor of the remaining balance of the Transfer Interest that is unsold; and
  - (ii) the Transferor may, within 60 days of the expiry of the Transfer Offer Period sell the remaining balance of the Transfer Interest to a third party purchaser on terms and conditions that are not more favourable to that purchaser than the terms and conditions of the Transfer Offer.
- (b) The Transferor must provide the Company with a copy of the draft agreement for the sale of the Transfer Interest to a third party purchaser under Article 6.6(a) at least 10 Business Days prior to entering such agreement.

## 7. Drag along right

### 7.1 Application

This Article 7 applies if:

- (a) Members holding at least 75% of the Shares on issue (**Drag Sellers**) receive a bona fide cash offer from a person (other than a Member and a Related Party of a Member) (**Drag Purchaser**) to purchase, on arm's length terms or better, 100% of the Shares on issue (**Drag Offer**); and
- (b) the Drag Sellers wish to accept the Drag Offer.

### 7.2 Exercise of drag along right

- (a) If this Article applies, the Drag Sellers may require all of the Members who are not Drag Seller (**Minority Members**) to sell all of their respective Shares to the Drag Purchaser in accordance with this Article 7.2 (**Drag Along Right**).
- (b) The Drag Sellers may exercise the Drag Along Right by providing written notice (**Drag Along Notice**) to the Company and each Minority Member that:
  - (i) confirms the Drag Offer Terms and the name of the Drag Purchaser;
  - (ii) states that the Drag Sellers are exercising the Drag Along Right under this Article 7.2;
  - (iii) states that the Minority Members are required to sell and transfer all of their Shares to the Drag Purchaser on the Drag Offer Terms; and
  - (iv) states the proposed date of transfer of the Minority Members' Shares, being not less than 15 Business Days from the date of the Drag Along Notice unless otherwise directed by the Drag Sellers.
- (c) Each Minority Member must deliver to the Company (as attorney for the Drag Sellers) within 15 Business Days of the date of service of the Drag Along Notice:
  - (i) duly executed transfers and Share certificates in respect of the Shares held by that Minority Member; and

- (ii) signed discharges and releases as are necessary for those Shares to be transferred free from all Encumbrances (which may be held in escrow pending settlement of the sale and purchase of the Minority Member's Shares.

### 7.3 Power of Attorney

Each Minority Shareholder irrevocably appoints:

- (a) the Company; and
- (b) each Director,

jointly and each of them individually to be its attorney for the purposes of:

- (c) applying for and obtaining all consents, approvals or clearances required in respect of the sale of the relevant Shares to the Drag Purchaser pursuant to the Drag Offer; and
- (d) executing and delivering, in the name of the Minority Member and on its behalf, all documents required to be executed and delivered by that Member in connection with the transfer of the Minority Member's Shares in accordance with and as contemplated by this Article 7.

### 7.4 The Company agent to receive Drag Purchase Price

- (a) Each Minority Member irrevocably appoints the Company to be its agent to receive the relevant Drag Purchase Price from the Drag Purchaser.
- (b) When the Company receives the relevant Drag Purchase Price from the Drag Purchaser it will hold that amount in trust for the Minority Member.

## 8. Tag along

### 8.1 Application

- (a) This Article 8 applies if:
  - (i) Members holding at least 75% of the Shares on issue (**Tag Sellers**) receive an offer from a person (other than a Member and a Related Party of a Member) (**Tag Purchaser**) to purchase, on arm's length terms or better, the Tag Sellers' Shares on issue (**Tag Offer**); and
  - (ii) the Tag Sellers wish to accept the Tag Offer.
- (b) A Member's rights under this Article 8.3 will not apply if a Drag Along Notice is validly given.

### 8.2 Tag Along Notice

- (a) If this Article 8 applies, then the Tag Sellers must give a notice (**Proposed Sale Notice**) to the Company in accordance with this Article 8.
- (b) A Proposed Sale Notice must specify:
  - (i) the price per Share at which the Tag Purchaser proposes to purchase the Tag Sellers' Shares (**Tag Purchase Price**);

- (ii) any other terms and conditions on which the Tag Purchaser proposes to purchase the Tag Sellers' Shares (**Tag Offer Terms**);
  - (iii) the identity and description of the Tag Purchaser; and
  - (iv) the number of Shares which the Tag Purchaser has offered to purchase.
- (c) The Company must give a Proposed Sale Notice received under Article 8.2(a) to each Member other than the Tag Sellers (**Tag Minority Members**) no later than 5 Business Days after receipt of the Proposed Sale Notice.

### 8.3 Tag Along Rights

- (a) A Tag Minority Member may, within 21 days of the Tag Minority Member receiving a Proposed Sale Notice under Article 8.2(c), exercise the Tag Along Right by giving written notice to the Company to that effect (**Tag Along Notice**).
- (b) The Company must give a Tag Along Notice received under Article 8.3(a) to the Tag Sellers no later than 2 Business Days after receipt of the Tag Along Notice.
- (c) If a Tag Minority Member serves a Tag Along Notice under Article 8.3(a):
- (i) the Tag Sellers must procure that, in relation to each Tag Along Notice, the request of the relevant Tag Minority Member under Article 8.3(a) is a condition precedent to the sale of the Tag Sellers' Shares to the Tag Purchaser; and
  - (ii) the Tag Sellers must use all reasonable endeavours to procure that the Tag Purchaser purchases all the Tag Minority Members' Shares for which the Tag Sellers have received Tag Along Notices, as well as the Tag Sellers' Shares the subject of the Proposed Sale Notice, at the Tag Purchase Price and otherwise on the terms and conditions specified in the Tag Along Notice.
- (d) If the Tag Purchaser does not agree to purchase the total number of Shares specified in the Proposed Sale Notice and each Tag Along Notice, then the Tag Sellers must not transfer, sell or otherwise dispose of any Shares to the Tag Purchaser unless otherwise agreed between the Tag Purchaser, the Tag Sellers and the Minority Members.

## 9. Proceedings of Members

### 9.1 Who can call meetings of Members

- (a) The Directors may call a meeting of Members at a time and place as the Directors resolve.
- (b) Subject to the Corporations Act, a Director may call a meeting of Members at a time and place as that Director determines.
- (c) The Directors must call and arrange to hold a general meeting of the Company on the request of Members made in accordance with the Corporations Act.
- (d) The Members may call and arrange to hold a general meeting of the Company as provided by the Corporations Act.

### 9.2 Annual General Meeting

The Company must hold an annual general meeting if required by, and in accordance with, the Corporations Act.

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### 9.3 How to call meetings of Members

- (a) The Company must give not less than Prescribed Notice of a meeting of Members.
- (b) Notice of a meeting of Members must be given to each Member, each Director, each Alternate Director and any auditor of the Company.
- (c) Holders of Preference Shares have the same rights as holders of ordinary Shares to:
  - (i) receive notice of a meeting of Members; and
  - (ii) receive notices, reports and financial reports of the Company.
- (d) Subject to Article 9.11(h), a notice of a meeting of Members must include:
  - (i) date and time for the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
  - (ii) the general nature of the business of the meeting;
  - (iii) the date and time (being not more than 48 hours before the meeting) at which persons will be taken for the purposes of the meeting to hold Shares; and
  - (iv) any other information or documents specified by the Corporations Act.
- (e) A person may waive notice of any meeting of Members by notice in writing to the Company to that effect.
- (f) Anything done (including the passing of a resolution) at a meeting of Members is not invalid because either or both a person does not receive notice of the meeting or the Company accidentally does not give notice of the meeting to a person.

### 9.4 Right to attend meetings

- (a) Each Eligible Member and any auditor of the Company is entitled to attend any meetings of Members.
- (b) Holders of preference Shares have the same rights as holders of ordinary Shares to attend a meeting of Members.
- (c) Subject to this Constitution, each Director is entitled to attend and speak at all meetings of Members.
- (d) The chairperson of a meeting of Members may refuse any person admission to, or require a person to leave and remain out of, the meeting if that person:
  - (i) in the opinion of the chairperson, is not complying with the reasonable directions of the chairperson;
  - (ii) has any audio or visual recording device;
  - (iii) has a placard or banner;
  - (iv) has an article the chairperson considers to be dangerous, offensive or liable to cause disruption;
  - (v) refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;

- (vi) behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (vii) is not:
  - A. an Eligible Member;
  - B. a proxy, attorney or representative of an Eligible Member;
  - C. a Director; or
  - D. an auditor of the Company.

#### 9.5 Meeting at more than one place

- (a) A meeting of Members may be held in 2 or more places linked together by any technology that:
  - (i) gives the Eligible Members as a whole in those places a reasonable opportunity to participate in proceedings;
  - (ii) enables the chairperson to be aware of proceedings in each place; and
  - (iii) enables the Eligible Members in each place to vote on a show of hands and on a poll.
- (b) If a meeting of Members is held in 2 or more places under Article 9.5(a):
  - (i) an Eligible Member present at one of the places is taken to be present at the meeting; and
  - (ii) the chairperson of that meeting may determine at which place the meeting is taken to have been held.

#### 9.6 Quorum

- (a) A quorum for a meeting of Members is 15% of Eligible Members entitled to vote at that meeting, except that if the Company has only one Eligible Member, a quorum for a meeting of Members is one Eligible Member.
- (b) In determining whether a quorum for a meeting of Members is present:
  - (i) where more than one proxy, attorney or representative of an Eligible Member is present, only one of those persons is counted;
  - (ii) where a person is present as an Eligible Member and as a proxy, attorney or representative of another Eligible Member, that person is counted separately for each appointment provided that there is at least one other Eligible Member present; and
  - (iii) where a person is present as a proxy, attorney or representative for more than one Eligible Member, that person is counted separately for each appointment provided that there is at least one other Eligible Member present.
- (c) A quorum for a meeting of Members must be present at the commencement of the meeting. If a quorum is present at the commencement of a meeting of Members, it is taken to be present throughout the meeting unless the chairperson otherwise determines.



- (d) If a quorum is not present within 30 minutes after the time appointed for a meeting of Members:
- (i) if the meeting was called under Article 9.1(c) or Article 9.1(d), the meeting is dissolved; and
  - (ii) any other meeting is adjourned to the date, time and place as the Directors may by notice to the Members appoint, or failing any appointment, to the same day in the next week at the same time and place as the meeting adjourned.
- (e) If the minimum number of Eligible Members required for a quorum is not present within 30 minutes after the nominated time for the adjourned meeting of Members under Article 9.6(d)(ii), those Eligible Members present and entitled to vote at that reconvened meeting of Members will not be restricted under Article 9.6(a) from passing any resolution the subject of the relevant meeting of Members .

### 9.7 Chairperson

- (a) The chairperson of Directors (if any) must (if present within 15 minutes after the time appointed for the holding of the meeting and willing to act) chair each meeting of Members.
- (b) If there is no chairperson of Directors or the chairperson of Directors will be unable to attend a meeting of Members, the Directors may, by majority vote at any time prior to a meeting of Members, elect a person to chair a meeting of Members.
- (c) If at a meeting of Members:
- (i) there is no chairperson of Directors;
  - (ii) the chairperson of Directors is not present within 15 minutes after the time appointed for the holding of a meeting of Members; or
  - (iii) the chairperson of Directors is present within that time but is not willing to chair all or part of that meeting,
- the Directors present may, by majority vote of those present, elect a person present to chair all or part of the meeting of Members.
- (d) Subject to Article 9.7(a) or Article 9.7(c), if at a meeting of Members:
- (i) a chairperson of that meeting has not been elected by the Directors under Article 9.7(b) or Article 9.7(c); or
  - (ii) the chairperson elected by the Directors is not willing to chair all or part of a meeting of Members,

the Eligible Members present must elect another person present and willing to act to chair all or part of that meeting.

### 9.8 General conduct of meetings

- (a) The chairperson of a meeting of Members is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The chairperson of a meeting of Members may:

- (i) make rulings or adjourn a meeting of Members without putting the question (or any question) to the vote if that action is required to ensure the orderly conduct of the meeting;
  - (ii) determine the procedures to be adopted for the casting or recording of votes;
  - (iii) determine any dispute concerning the admission, validity or rejection of a vote at a meeting of Members;
  - (iv) terminate debate or discussion on any matter being considered at the meeting and require that matter be put to a vote;
  - (v) refuse to allow debate or discussion on any matter which is not business referred to in the notice of that meeting or is not business allowed to be discussed in accordance with the Corporations Act;
  - (vi) subject to the Corporations Act, refuse to allow any amendment to be moved to a resolution set out in the notice of that meeting; or
  - (vii) determine who may speak at Meetings of Members.
- (c) The chairperson of a meeting of Members may delegate any power conferred by this Article to any person.
- (d) The powers conferred on the chairperson of a meeting of Members under this Article 9.8 do not limit the powers conferred by law.

#### 9.9 Resolutions of Members

- (a) Unless otherwise specified in this Constitution or the Corporations Act, a resolution at a meeting of Members is passed if the number of votes cast in favour of the resolution by Members entitled to vote on the resolution exceeds the number of votes cast against the resolution by Members entitled to vote on the resolution.
- (b) Unless a poll is requested in accordance with Article 9.10, a resolution put to the vote at a meeting of Members must be decided on a show of hands.
- (c) A declaration by the chairperson of a meeting of Members that a resolution on a show of hands is passed, passed by a particular majority, or not passed, and an entry to that effect in the minutes of the meeting, are sufficient evidence of that fact, unless proved incorrect.

#### 9.10 Polls

- (a) A poll may be demanded on any resolution at a meeting of Members.
- (b) A poll on a resolution at a meeting of Members may be demanded by:
- (i) one or more Eligible Members present at that meeting and who are together entitled to at least 10% of the votes that may be cast on that resolution on a poll; or
  - (ii) the chairperson of that meeting.
- (c) A poll on a resolution at a meeting of Members may be demanded:
- (i) before a vote on that resolution is taken; or

- (ii) before or immediately after the results of the vote on that resolution on a show of hands are declared.
- (d) A demand for a poll may be withdrawn.
- (e) A poll demanded on a resolution at a meeting of Members other than for the election of a chairperson of that meeting or the adjournment of that meeting must be taken in the manner and at the time and place the chairperson directs.
- (f) A poll demanded on a resolution at a meeting of Members for the election of a chairperson of that meeting or the adjournment of that meeting must be taken immediately.
- (g) The result of a poll demanded on a resolution of a meeting of Members is a resolution of that meeting.
- (h) A demand for a poll on a resolution of a meeting of Members does not prevent the continuance of that meeting or that meeting dealing with any other business.

#### 9.11 **Adjourned, cancelled and postponed meetings**

- (a) The chairperson:
  - (i) may adjourn a meeting of Members to any day, time and place; and
  - (ii) must adjourn a meeting of Members if the Eligible Members present with a majority of votes that may be cast at that meeting agree or direct the chairperson to do so. The chairperson may adjourn that meeting to any day, time and place.
- (b) No person other than the chairperson of a meeting of Members may adjourn that meeting.
- (c) The Company is only required to give notice of a meeting of Members resumed from an adjourned meeting if the period of adjournment exceeds 28 days.
- (d) Only business left unfinished is to be transacted at a meeting of Members resumed after an adjournment.
- (e) Subject to this Article 9.11, the Directors may at any time postpone or cancel a meeting of Members by giving notice not less than 5 Business Days before the time at which the meeting was to be held to each person who is, at the date of the notice:
  - (i) a Member;
  - (ii) a Director or Alternate Director; or
  - (iii) an auditor of the Company.
- (f) A general meeting called under Article 9.1(c) must not be cancelled by the Directors without the consent of the Members who requested the meeting.
- (g) A general meeting called under Article 9.1(d) must not be cancelled or postponed by the Directors without the consent of the Members who called the meeting.
- (h) A notice under Article 9.1(c) of a meeting of Members resumed from an adjourned meeting and a notice postponing a meeting of Members must set out the place, date

and time for the revised meeting (and if the revised meeting is to be held in 2 or more places, the technology that will be used to facilitate this).

#### 9.12 Number of votes

- (a) Subject to this Constitution and any rights or restrictions attached to a class of Shares, on a show of hands at a meeting of Members, every Eligible Member present has one vote.
- (b) Subject to this Constitution and any rights or restrictions attached to a class of Shares, on a poll at a meeting of Members, every Eligible Member present has:
  - (i) one vote for each fully paid up Share (whether the issue price of the Share was paid up or credited or both) that the Eligible Member holds; and
  - (ii) a fraction of one vote for each partly paid up Share that the Eligible Member holds, where the fraction is equal to the proportion which the amount paid up on that Share (excluding amounts credited) is to the total amounts paid up and payable (excluding amounts credited) on that Share.
- (c) Amounts paid in advance of a call on a Share are ignored when calculating the proportion under Article 9.12(b)(ii).
- (d) If the total number of votes to which an Eligible Member is entitled on a poll does not constitute a whole number, the Company must disregard the fractional part of that total.
- (e) If a Share is held jointly and more than one Member votes in respect of that Share, only the vote of the Member whose name appears first in the Register counts.
- (f) A person may vote in respect of a Share at a meeting of Members if:
  - (i) the person is entitled to be registered as the holder of that Share because of a Transmission Event; and
  - (ii) the person satisfied the Directors of that entitlement not less than 48 hours before that meeting.
- (g) An Eligible Member present at a meeting of Members is not entitled to vote on any resolution in respect of any Shares on which any calls due and payable in respect of those Shares have not been paid.
- (h) An Eligible Member present at a meeting of Members is not entitled to vote on a resolution at that meeting where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction.
- (i) The Company must disregard any vote on a resolution purported to be cast by a Member present at a meeting of Members where that person is not entitled to vote on that resolution.
- (j) The authority of any proxy or attorney for an Eligible Member to speak or vote at a meeting of Members in respect of the Shares to which the authority relates is suspended while the Eligible Member is present in person at that meeting.
- (k) If more than one proxy or attorney for an Eligible Member is present at a meeting of Members:
  - (i) none of them is entitled to vote on a show of hands; and

- (ii) on a poll, the vote of each one is of no effect where the aggregate number or proportion of the Eligible Member's votes for which they have been appointed exceeds the total number or proportion of votes that could be cast by the Eligible Member.

#### 9.13 **Objections to qualification to vote**

- (a) An objection to the qualification of any person to vote at a meeting of Members may only be made:
  - (i) before that meeting, to the Directors; or
  - (ii) at that meeting (or any resumed meeting if that meeting is adjourned), to the chairperson of that meeting.
- (b) Any objection under Article 9.13(a) must be decided by the Directors or the chairperson of the meeting of Members (as the case may be), whose decision, made in good faith, is final and conclusive.

#### 9.14 **Proxies, attorneys and representatives**

- (a) An Eligible Member, who is entitled to attend and cast a vote at a meeting of Members, may vote on a show of hands and on a poll:
  - (i) in person or, if the Member is a body corporate, by its representative appointed in accordance with the Corporations Act;
  - (ii) by proxy or, if the Member is entitled to cast two or more votes at the meeting, by not more than 2 proxies; or
  - (iii) by attorney or, if the Member is entitled to cast two or more votes at the meeting, by not more than 2 attorneys.
- (b) A proxy, attorney or representative of a Member need not be a Member.
- (c) A Member may appoint a proxy, attorney or representative for:
  - (i) all or any number of meetings of Members; or
  - (ii) a particular meeting of Members.
- (d) An instrument appointing a proxy is valid if it is signed by the Member making the appointment and contains:
  - (i) the name and address of that Member;
  - (ii) the name of the Company;
  - (iii) the name of the proxy or the name of the office of the proxy; and
  - (iv) the meetings of Members at which the proxy may be used.
- (e) The chairperson of a meeting of Members may determine that an instrument appointing a proxy is valid even if it contains only some of the information specified in Article 9.14(d).
- (f) The decision of the chairperson of a meeting of Members as to the validity of an instrument appointing a proxy, attorney or representative is final and conclusive.

- (g) Unless otherwise provided in the Corporations Act or in the instrument appointing a proxy or attorney, a proxy or attorney may:
- (i) agree to a meeting of Members being called by shorter notice than is required by the Corporations Act or this Constitution;
  - (ii) speak on any resolution at a meeting of Members on which the proxy or attorney may vote;
  - (iii) vote at a meeting of Members (but only to the extent allowed by the appointment);
  - (iv) demand or join in demanding a poll on any resolution at a meeting of Members on which the proxy or attorney may vote; and
  - (v) attend and vote at any meeting of Members which is rescheduled or adjourned.
- (h) Unless otherwise provided in the instrument appointing a proxy or attorney, a proxy or attorney may vote on:
- (i) any amendment to a resolution on which the proxy or attorney may vote;
  - (ii) any motion not to put that resolution or any similar motion; and
  - (iii) any procedural motion relating to that resolution, including a motion to elect the chairperson of a meeting of Members, vacate the chair or adjourn that meeting, even if the appointment directs the proxy or attorney how to vote on that resolution.
- (i) The Company must only send a form of proxy to Eligible Members in respect of a meeting of Members which provides for the Eligible Member:
- (i) to appoint proxies of the Eligible Member's choice, but may specify who is to be appointed as proxy if the Eligible Member does not choose; and
  - (ii) to vote for or against each resolution, and may also provide for the Eligible Member to abstain from voting on each resolution or for the proxy to exercise a discretion to vote for or against each resolution.
- (j) If the name of the proxy or the name of the office of the proxy in a proxy form of an Eligible Member is not filled in, the proxy of that Eligible Member is:
- (i) the person specified by the Company in the form of proxy in the case the Eligible Member does not choose; or
  - (ii) if no person is so specified, the chairperson of that meeting.
- (k) An Eligible Member may specify the manner in which a proxy or attorney is to vote on a particular resolution at a meeting of Members.
- (l) The appointment of a proxy or attorney by an Eligible Member may specify the proportion or number of the Eligible Member's votes that the proxy or attorney may exercise.
- (m) If an Eligible Member appoints 2 persons as proxy or attorney, and the appointment does not specify the proportion or number of the Eligible Member's votes those persons may exercise, those persons may exercise one half of the votes of the Eligible Member.

- (n) If the total number of votes to which a proxy or attorney is entitled to exercise does not constitute a whole number, the Company must disregard the fractional part of that total.
- (o) An appointment of proxy or attorney for a meeting of Members is effective only if the Company receives the appointment (and any authority under which the appointment was signed or a certified copy of the authority) not less than:
  - (i) 48 hours before the time scheduled for commencement of that meeting; or
  - (ii) in the case of a meeting which has been adjourned, 48 hours before the time scheduled for resumption of the meeting.
- (p) Unless the Company has received notice in writing of the matter not less than 48 hours before the time scheduled for the commencement of a meeting of Members, a vote cast at that meeting by a person appointed by an Eligible Member as a proxy, attorney or representative is, subject to this Constitution valid even if, before the person votes:
  - (i) there is a Transmission Event in respect of that Eligible Member;
  - (ii) that Eligible Member revokes the appointment of that person;
  - (iii) that Eligible Member revokes the authority under which the person was appointed by a third party; or
  - (iv) that Eligible Member transfers the Shares in respect of which the appointment is made.

## **10. Directors**

### **10.1 Number of Directors**

- (a) The Company must have not less than 3, and not more than 5, Directors.
- (b) The Company must use its reasonable endeavours to ensure that at least 1 Director is Independent. The fact that the Board does not at a particular time include an Independent Director does not effect the validity of any resolution, determination, decision or other action of the Board at a duly convened meeting of Directors.
- (c) The Company in general meeting may by special resolution alter the maximum or minimum number of Directors provided that the minimum is not less than 3.
- (d) Subject to this Article 10.1, the Directors must determine the number of Directors provided that the Directors cannot reduce the number of Directors below the number in office at the time that determination takes effect.
- (e) If the number of Directors is below the minimum fixed by this Constitution, the Directors must not act except for the purpose of appointing one or more directors in order to make up a quorum for a meeting of Directors, or to call and arrange to hold a meeting of Members for the purpose of appointing one or more directors in order to make up a quorum for a meeting of Directors.

### **10.2 Appointment of Directors**

- (a) Subject to Article 10.1 and 10.4:
  - (i) the Board may appoint a person as Director under clause 10.3; and

- (ii) the Company in general meeting may by ordinary resolution appoint up to 5 Directors.
- (b) A person may be elected to the office of a Director at a general meeting only by one of the following ways:
  - (i) that person is a director appointed under clause 10.3 and is standing for re-election at that meeting;
  - (ii) that person has been nominated by the Board for election at that meeting;
  - (iii) that person is a Member who nominates themselves for election at that meeting; or
  - (iv) that person is nominated by a Member for election at that meeting.
- (c) The Company must accept nominations for the election of a Director under Article 10.2:
  - (i) in the case of a meeting of Members called under Article 9.1(c), 30 Business Days;
  - (ii) otherwise, 35 Business Days; or
  - (iii) in either case, a shorter period before the meeting of Members which the directors in their discretion may approve,before the date of the meeting of Members at which the Director may be elected.
- (d) A nomination of a person for election as a Director under Article 10.2 must be:
  - (i) in writing;
  - (ii) signed by a Member entitled to attend and vote at the meeting of Members at which the election is proposed;
  - (iii) accompanied by a notice in writing signed by the nominee consenting to the nomination;
  - (iv) in the case of a nomination of a person as an Independent Director, accompanied by a notice from the Board confirming that the Board has determined that that the person is Independent; (if applicable to the nomination); and
  - (v) lodged with the Company at its registered office.
- (e) A Director need not be a Member.
- (f) Subject to Article and 10.4, a Director holds office until the Director dies or is removed from office pursuant to this Constitution.

### 10.3 Casual vacancy

- (a) The Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, but so that the total number of Directors does not at any time exceed the number determined in accordance with Article 10.1.



- (b) Any Director appointed under Article 10.3(a) holds office until the next annual general meeting of the Company and is then eligible for re-election.

#### 10.4 Retirement of Directors and vacation of office

- (a) A Director may resign from office by giving the Company notice in writing.
- (b) Subject to this Constitution, the Company may by ordinary resolution passed at a general meeting remove any Director, and if thought fit, appoint another person in place of that Director.
- (c) In addition to the circumstances prescribed by the Corporations Act, this Constitution or by the terms of a Director's appointment, a Director ceases to be a Director if:
  - (i) the Director resigns or is removed under this Constitution;
  - (ii) the Director becomes an insolvent under administration;
  - (iii) the Corporations Act so provides; or
  - (iv) the Director becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health.

#### 10.5 Alternate Directors

- (a) With the approval of a majority of the other Directors, a Director may appoint a person as an alternate director of that Director for any period.
- (b) An Alternate Director need not be a Member.
- (c) The appointing Director may terminate the appointment of his or her Alternate Director at any time.
- (d) A notice of appointment, or termination of appointment, of an Alternate Director is effective only if:
  - (i) the notice is in writing;
  - (ii) the notice is signed by the Director who appointed that Alternate Director; and
  - (iii) the Company is given a copy of the notice.
- (e) If the Director who appointed an Alternate Director is not present at a meeting of Directors, that Alternate Director may, subject to this Constitution and the Corporations Act:
  - (i) attend, count in the quorum of, speak at, and vote at that meeting in place of that appointing Director; and
  - (ii) exercise any other powers (except the power under Article 10.5(a)) that the appointing Director may exercise.
- (f) An Alternate Director cannot exercise any powers of his or her appointing Director if that appointing Director ceases to be a Director.
- (g) Subject to Article 10.6(e), the Company is not required to pay any remuneration to an Alternate Director.

- (h) An Alternate Director is an officer of the Company and not an agent of his or her appointing Director.

#### 10.6 Remuneration of Directors

- (a) The Company may pay to the Directors a maximum total amount of director's fees, determined by the Company in general meeting, or until so determined, as the Directors resolve.
- (b) The Directors may determine the manner in which all or part of the amount in Article 10.6(a) is divided between the Directors, or until so determined, the amount in Article 10.6(a) must be divided between the Directors equally.
- (c) The remuneration of the Executive Directors must, subject to the provisions of any contract between each of them and the Company, be fixed by the Directors.
- (d) If a Director performs extra or special services, including being a member on a committee of Directors or the chairperson of Directors or deputy chairperson of Directors, the Company may, subject to this Article 10.6, pay additional remuneration or provide benefits to that Director as the Directors resolve.
- (e) The Company must pay all reasonable travelling, accommodation and other expenses that a Director or Alternate Director properly incurs:
- (i) in attending meetings of Directors or any meetings of committees of Directors;
  - (ii) in attending any meetings of Members; and
  - (iii) in connection with the business of the Company.
- (f) Any Director may participate in any fund, trust or scheme for the benefit of:
- (i) past or present employees or Directors of the Company or a related body corporate of the Company; or
  - (ii) the dependants of, or persons connected with, any person referred to in Article 10.6(f)(i).
- (g) The Company may give, or agree to give, a person a benefit in connection with that person's, or someone else's, retirement from a board or managerial office in the Company or a related body corporate of the Company.

#### 10.7 Interests of Directors

- (a) A Director may:
- (i) hold an office or place of profit (except as auditor) in the Company, on any terms as the Directors resolve;
  - (ii) hold an office or otherwise be interested in any related body corporate of the Company or other body corporate in which the Company is interested; or
  - (iii) act, or the Director's firm may act, in any professional capacity for the Company (except as auditor) or any related body corporate of the Company or other body corporate in which the Company is interested,

and retain the benefits of doing so if the Director discloses in accordance with the Corporations Act the interest giving rise to those benefits.

- (b) If a Director discloses the interest of the Director in accordance with the Corporations Act:
- (i) the Director may contract or make an arrangement with the Company, or a related body corporate of the Company or a body corporate in which the Company is interested, in any matter in any capacity;
  - (ii) the Director may, subject to the Corporations Act, be counted in a quorum for a meeting of Directors considering the contract or arrangement;
  - (iii) the Director may, subject to the Corporations Act, vote on whether the Company enters into the contract or arrangement, and on any matter that relates to the contract or arrangement;
  - (iv) the Director may sign on behalf of the Company, or witness the affixing of the common seal of the Company to, any document in respect of the contract or arrangement;
  - (v) the Director may retain the benefits under the contract or arrangement; and
  - (vi) the Company cannot avoid the contract or arrangement merely because of the existence of the Director's interest.

## 11. Officers

### 11.1 Managing Director

- (a) The Directors may appoint one or more of themselves as a managing director, for any period and on any terms (including as to remuneration) as the Directors resolve.
- (b) Subject to any agreement between the Company and a managing director and without prejudice to any other Article in the Constitution, the Directors may remove or dismiss a managing director (without removing him as a Director) at any time, with or without cause.
- (c) The Directors may delegate any of their powers (including the power to delegate) to a managing director.
- (d) The Directors may revoke or vary the appointment of a managing director or any power delegated to a managing director, without removing the Director as a Director.
- (e) A managing director must exercise the powers delegated to him or her in accordance with any directions of the Directors.
- (f) The exercise of a delegated power by a managing director is as effective as if the Directors exercised the power.
- (g) A person ceases to be a managing director if the person ceases to be a Director.
- (h) Subject to Article **Error! Reference source not found.**, removal as managing director under this Article 11.1 does not remove the managing director as a Director.

### 11.2 Secretary

- (a) The Secretary is the person who is the Secretary holding office at the time this Constitution is adopted.

- (b) The Directors may appoint one or more Secretaries, for any period and on any terms (including as to remuneration) as the Directors resolve.
- (c) Subject to any agreement between the Company and a Secretary, the Directors may remove or dismiss a Secretary at any time, with or without cause.
- (d) The Directors may revoke or vary the appointment of a Secretary.

### 11.3 Indemnity and insurance

- (a) To the extent permitted by law, the Company must indemnify each Relevant Officer against:
  - (i) a Liability of that person; and
  - (ii) Legal Costs of that person.
- (b) To the extent permitted by law, the Company may make a payment (whether by way of advance, loan or otherwise) to a Relevant Officer in respect of Legal Costs of that person.
- (c) To the extent permitted by law, the Company may pay, or agree to pay, a premium for a contract insuring a Relevant Officer against:
  - (i) a Liability of that person; and
  - (ii) Legal Costs of that person.
- (d) To the extent permitted by law, the Company may enter into an agreement or deed with:
  - (i) a Relevant Officer; or
  - (ii) a person who is, or has been an officer of the Company or a subsidiary of the Company,under which the Company must do all or any of the following:
  - (iii) keep books of the Company and allow either or both that person and that person's advisers access to those books on the terms agreed;
  - (iv) indemnify that person against any Liability of that person;
  - (v) make a payment (whether by way of advance, loan or otherwise) to that person in respect of Legal Costs of that person; and
  - (vi) keep that person insured in respect of any act or omission by that person while a Relevant Officer or an officer of the Company or a subsidiary of the Company, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

## **12. Powers of the Company and Directors**

### **12.1 General powers**

- (a) The Company may exercise in any manner permitted by the Corporations Act any power which a public company limited by shares may exercise under the Corporations Act.
- (b) The business of the Company is managed by or under the direction of the Directors.
- (c) The Directors may exercise all the powers of the Company except any powers that the Corporations Act or this Constitution requires the Company to exercise in general meeting.

### **12.2 Execution of documents**

- (a) The Company may execute a document in any way provided for by the Corporations Act or any other applicable law.
- (b) The Directors may resolve, generally or in a particular case, that where an instrument or resolution must be signed by an officer of the Company, the signature of that officer may be affixed to a document by mechanical, electronic or other means instead of that officer physically signing the document itself, subject to applicable law.
- (c) Negotiable instruments may be signed, drawn, accepted, endorsed or otherwise executed by or on behalf of the Company in the manner and by the persons as the Directors resolve.

### **12.3 Adoption and use of common seal**

- (a) The Directors may determine that the company has a common seal or that the company no longer has a common seal.
- (b) Adoption of a common seal does not limit the ways in which the Company may validly execute documents in accordance with the Corporations Act or any other law.
- (c) If the Company adopts a common seal, the seal must be used only:
  - (i) by the authority of the directors; or
  - (ii) by a delegate of the directors authorised by the Directors to use the seal.
- (d) The Directors may decide on other procedures for the use of the common seal.

### **12.4 Committees and delegates**

- (a) The Directors may delegate any of their powers (including this power to delegate) to a committee of Directors, a Director, an employee of the Company or any other person.
- (b) The Directors may revoke or vary any power delegated under Article 12.4(a).
- (c) A committee or delegate must exercise the powers delegated in accordance with any directions of the Directors.
- (d) The exercise of a delegated power by the committee or delegate is as effective as if the Directors exercised the power.
- (e) Article 13 applies with the necessary changes to meetings of a committee of Directors.

**12.5 Attorney or agent**

- (a) The Directors may appoint any person to be attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) as the Directors resolve.
- (b) The Directors may delegate any of their powers (including the power to delegate) to an attorney or agent.
- (c) The Directors may revoke or vary:
  - (i) an appointment under Article 12.5(a); or
  - (ii) any power delegated to an attorney or agent.

**13. Proceedings of Directors****13.1 Written resolutions of Directors**

- (a) The Directors may pass a resolution without a meeting of the Directors being held if all of the Directors entitled to vote on the resolution assent to a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of the document referred to in Article 13.1(a) may be used for assenting to by Directors if the wording of the resolution and the statement is identical in each copy.
- (c) A Director may signify assent to a document under this Article 13.1 by signing the document or by notifying the Company of the assent of the Director:
  - (i) in a manner permitted by Article 16.3; or
  - (ii) by any technology including email or telephone.
- (d) Where a Director signifies assent to a document under Article 13.1(c) other than by signing the document, the Director must by way of confirmation sign the document before or at the next meeting of Directors attended by that Director.
- (e) The resolution the subject of a document under Article 13.1(a) is not invalid if a Director does not comply with Article 13.1(d)).

**13.2 Meetings of Directors**

- (a) The Directors may meet, adjourn and otherwise regulate their meetings as they think fit.
- (b) A meeting of Directors may be held using any technology.
- (c) If a meeting of Directors is held in 2 or more places linked together by any technology:
  - (i) a Director present at one of the places is taken to be present at the meeting unless and until the Director states to the chairperson of the meeting that the Director is discontinuing her or her participation in the meeting; and
  - (ii) the chairperson of that meeting may determine at which place the meeting will be taken to have been held.

**13.3 Who can call meetings of Directors**

- (a) A Director may call a meeting of Directors at any time.
- (b) On request of any Director, a Secretary of the Company must call a meeting of the Directors.

**13.4 How to call meetings of Directors**

- (a) Notice of a meeting of Directors must be given to each Director and Alternate Director.
- (b) The Company must give not less than 12 hours' notice of a meeting of Directors, unless all Directors agree otherwise.
- (c) A Director or Alternate Director may waive notice of a meeting of Directors by notice in writing to the Company to that effect.

**13.5 Quorum**

- (a) Subject to the Corporations Act, a quorum for a meeting of Directors is:
  - (i) if the Directors have fixed a number for the quorum, that number of Directors; and
  - (ii) in any other case, more than 50% of the Directors entitled to vote on a resolution that may be proposed at that meeting.
- (b) In determining whether a quorum for a meeting of Directors is present:
  - (i) where a Director has appointed an Alternate Director, that Alternate Director is counted if the appointing Director is not present;
  - (ii) where a person is present as Director and an Alternate Director for another Director, that person is counted separately provided that there is at least one other Director or Alternate Director present; and
  - (iii) where a person is present as an Alternate Director for more than one Director, that person is counted separately for each appointment provided that there is at least one other Director or Alternate Director present.
- (c) A quorum for a meeting of Directors must be present at all times during the meeting.
- (d) If the minimum number of Directors required for a quorum is not present within 30 minutes after the nominated time for a meeting of the Directors:
  - (i) that meeting will be adjourned to the same location and time on the date falling 5 Business Days from the original meeting date (or such other time, date or location as mutually agreed by the Directors); and
  - (ii) those Directors present and entitled to vote at that reconvened meeting of the Directors will not be restricted under Article 13.5(a) from passing any resolution.
- (e) If there are not enough persons to form a quorum for a meeting of Directors, one or more of the Directors (including those who have an interest in a matter being considered at that meeting) may call a general meeting of the Company and the general meeting may pass a resolution to deal with the matter.

### 13.6 Chairperson

- (a) The Directors may elect a Director as chairperson of Directors or deputy chairperson of Directors for any period they resolve, or if no period is specified, until that person ceases to be a Director.
- (b) The Directors may remove the chairperson of Directors or deputy chairperson of Directors at any time.
- (c) The chairperson of Directors must (if present within 15 minutes after the time appointed for the holding of the meeting and willing to act) chair each meeting of Directors.
- (d) If:
  - (i) there is no chairperson of Directors; or
  - (ii) the chairperson of Directors is not present within 15 minutes after the time appointed for the holding of a meeting of Directors; or
  - (iii) the chairperson of Directors is present within that time but is not willing to chair all or part of that meeting,then the Directors present must elect one of themselves to chair all or part of the meeting of Directors.

### 13.7 Resolutions of Directors

- (a) Subject to this Constitution, a resolution of Directors is passed if more votes are cast in favour of the resolution than against it.
- (b) Subject to Article 10.7 and this Article 13.7, each Director has one vote on a matter arising at a meeting of the Directors.
- (c) In determining the number of votes a Director has on a matter arising at a meeting of Directors:
  - (i) where a person is present as Director and an Alternate Director for another Director, that person has one vote as a Director and, subject to Article 10.5(e), one vote as an Alternate Director; and
  - (ii) where a person is present as an Alternate Director for more than one Director, that person has, subject to Article 10.5(e), one vote for each appointment.
- (d) Subject to the Corporations Act, in case of an equality of votes on a resolution at a meeting of Directors, the chairperson of that meeting has a casting vote on that resolution in addition to any vote the chairperson has in his or her capacity as a Director in respect of that resolution.

### 13.8 Reserved matters for Member approval

- (a) A decision of the Directors on any of the following matters must be approved by an ordinary resolution of Members:
  - (i) **restructure**: an agreement or arrangement to undertake a solvent restructure of the Group or a member of the Group; and



- (ii) **Business change:** the substantial change to the business or the activities of the Group, or a decision to carry on a new business that is not similar to the business or activities of the Group at the relevant time.
- (b) A decision of the Directors in relation to the sale of the whole or substantially the whole of the assets and undertaking of the Group or a member of the Group must be approved by a special resolution of Members.

## 14. Dividends and Profits

### 14.1 Payment of dividends

- (a) Subject to any rights or restrictions attached to a class of Shares and the Corporations Act, the Company may pay dividends on Shares as the Directors resolve but only to the extent that:
  - (i) the Company's assets exceed its liabilities by at least the amount of the dividend to be paid;
  - (ii) it is fair and reasonable to the Members as a whole; and
  - (iii) the payment of the dividend does not materially prejudice the Company's ability to pay its creditors
- (b) The Directors may determine that a Dividend is payable on Shares and fix:
  - (i) the amount of the Dividend;
  - (ii) whether the Dividend is franked, the franking percentage and the franking class;
  - (iii) the time for determining entitlements to the Dividend;
  - (iv) the time for the payment of the Dividend; and
  - (v) the method of payment of the Dividend.
- (c) The method of payment of a Dividend may include any or all of the payment of cash, the issue of shares, the grant of Company options or other Company securities, the transfer of shares or any other securities in any other body corporate or units in any unit trust or the transfer of any other assets.
- (d) If the method of payment of a Dividend includes an issue or transfer of shares in a body corporate, each Member:
  - (i) agrees to become a member of that body corporate; and
  - (ii) in the case of a transfer, appoints the Company and each Director as its agent to execute instrument of transfer or other document required to transfer those shares to that Member.
- (e) A Dividend in respect of a Share must be paid to the person whose name is entered in the Register as the holder of that Share:
  - (i) where the Directors have fixed a time under Article 14.1(b)(iii), at that time; or
  - (ii) in any other case, on the date the Dividend is paid.

#### 14.2 Dividends for different classes

The Directors may determine that Dividends be paid:

- (a) on Shares of one class but not another class; and
- (b) at different rates for different classes of Shares.

#### 14.3 Dividends proportional to paid up capital

- (a) Subject to any rights or restrictions attached to a class of Shares, the person entitled to a Dividend on a Share is entitled to:
  - (i) if the Share is fully paid (whether the issue price of the Share was paid or credited or both), the entire Dividend; or
  - (ii) if the Share is partly paid, a proportion of that Dividend equal to the proportion which the amount paid (excluding amounts credited) on that Share is of the total amounts paid or payable (excluding amounts credited) on that Share.
- (b) Amounts paid in advance of a call on a Share are ignored when calculating the proportion under Article 14.3(a)(ii).

#### 14.4 Effect of a transfer on Dividends

If a transfer of a Share is registered after the time determined for entitlements to a Dividend on that Share but before the Dividend is paid, the person transferring that Share is entitled to that Dividend.

#### 14.5 No interest on Dividends

The Company is not required to pay any interest on a Dividend.

#### 14.6 Unpaid amounts

The Company may retain the whole or part of any Dividend on which the Company has a lien and apply that amount in total or part satisfaction of any amount secured by that lien.

#### 14.7 Capitalisation of profits

- (a) The Directors may capitalise any profits of the Company and distribute that capital to the Members, in the same proportions as the Members are entitled to a distribution by Dividend.
- (b) The Directors may fix the time for determining entitlements to a capitalisation of profits.
- (c) The Directors may decide to apply capital under Article 14.7(a) in either or both of the following ways:
  - (i) in paying up an amount unpaid on Shares already issued; and
  - (ii) in paying up in full any unissued Shares or other securities in the Company.
- (d) The Members must accept an application of capital under Article 14.7(c) in full satisfaction of their interests in that capital.

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## 14.8 Ancillary powers

- (a) The Directors may settle as they think expedient any difficulty that may arise in making a distribution of dividends or capitalisation of profits. This may include:
  - (i) rounding amounts up or down to the nearest whole number;
  - (ii) ignoring fractions;
  - (iii) valuing assets for distribution;
  - (iv) paying cash to any Member on the basis of that valuation; and
  - (v) vesting assets in a trustee on trust for the Members entitled.
- (b) If the Company distributes to a Member shares or other securities in the company or another body corporate or a trust (whether as a dividend or otherwise and whether or not for value), the Member appoints the Company as its agent to do anything needed to give effect to that distribution, including agreeing to become a Member of that other body corporate or trust.

## 14.9 Dividend plans

- (a) The Directors may establish a dividend selection plan or bonus share plan on any terms, under which participants may elect in respect of all or part of their Shares:
  - (i) to receive a Dividend from the Company paid in whole or in part out of a particular fund or reserve or out of profits derived from a particular source; or
  - (ii) to forego a Dividend from the Company and receive some other form of distribution or entitlement (including securities) from the Company or another body corporate or a trust.
- (b) The Directors may establish a dividend reinvestment plan on any terms, under which participants may elect in respect of all or part of their Shares to apply the whole or any part of a Dividend from the Company in subscribing for securities of the Company or a related body corporate of the Company.
- (c) The Directors may implement, amend, suspend or terminate a plan established under this Article 14.8(b).

## 15. Inspection of and access to records

- (a) Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the Company or any of them will be open to the inspection of Members other than Directors.
- (b) Each Member must provide the Company with such information as is required for the Company to administer all registers required to be kept by the Company in accordance with the Corporations Act. If events occur that would cause any information contained in a register maintained by the Company to be inaccurate, the Member must notify the company in writing of the change within 10 Business Days of such change occurring.

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## 16. Notices and Payments

### 16.1 Notice to Members

- (a) The Company may give Notice to a Member:
  - (i) in person;
  - (ii) by sending it by post to the address of the Member in the Register or the alternative address (if any) nominated by that Member;
  - (iii) by sending it to the fax number or electronic address (if any) nominated by that Member; or
  - (iv) such other means as permitted by the Corporations Act.
- (b) If the address of a Member in the Register is not within Australia, the Company must send all documents to that Member by air-mail, air courier or by fax.
- (c) The Company must give any Notice to Members who are joint holders of a Share to the person named first in the Register in respect of that Share, and that notice is notice to all holders of that Share.
- (d) The Company may give Notice to a person entitled to a Share because of a Transmission Event in any manner specified in Article 16.1(a).
- (e) Notice to a person entitled to a Share because of a Transmission Event is taken to be notice to the Member of that Share.
- (f) A Notice to a Member is sufficient, even if:
  - (i) a Transmission Event occurs in respect of that Member (whether or not a joint holder of a Share); or
  - (ii) that Member is an externally administered body corporate,and regardless of whether or not the Company has notice of that event.
- (g) A person entitled to a Share because of a transfer, Transmission Event or otherwise, is bound by every Notice given in respect of that Share.
- (h) Any Notice required or allowed to be given by the Company to one or more Members by advertisement is, unless otherwise stipulated, sufficiently advertised if advertised once in a daily newspaper circulating in the states and territories of Australia.

### 16.2 Notice to Directors

The Company may give Notice to a Director or Alternate Director:

- (a) in person;
- (b) by sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person;
- (c) by sending it to the fax number or electronic address (if any) nominated by that person; or
- (d) by any other means agreed between the Company and that person.

### 16.3 Notice to the Company

A person may give Notice to the Company:

- (a) by leaving it at the registered office of the Company during a time when the registered office is open;
- (b) by sending it by post to the registered office of the Company;
- (c) by sending it to a fax number at the registered office of the Company nominated by the Company for that purpose;
- (d) by sending it to the electronic address (if any) nominated by the Company for that purpose; or
- (e) by any other means permitted by the Corporations Act.

### 16.4 Time of service

- (a) A notice sent by post to an address within Australia is taken to be given:
  - (i) in the case of a notice of meeting, three days after it is posted; or
  - (ii) in any other case, at the time at which the notice would be delivered in the ordinary course of prepaid post.
- (b) A notice sent by post or air mail to an address outside Australia is taken to be given:
  - (i) in the case of a notice of meeting, three days after it is posted; or
  - (ii) in any other case, at the time at which the notice would be delivered in the ordinary course of prepaid post or air mail.
- (c) A notice sent by air courier to a place outside Australia is taken to be given two days after delivery to the air courier.
- (d) A notice sent by fax is taken to be given on the day it is sent, provided that the sender's transmission report shows that the whole notice was sent to the correct fax number.
- (e) A notice sent to an electronic address is taken to be given on the date it is sent unless a delivery failure message is received by the Company.
- (f) The giving of a notice by post, air mail or air courier is sufficiently proved by evidence that the notice:
  - (i) was addressed to the correct address of the recipient; and
  - (ii) was placed in the post or delivered to the air courier.
- (g) A certificate by a Director or Secretary of a matter referred to in Article 16.4(f) is sufficient evidence of the matter, unless it is proved to the contrary.

### 16.5 Signatures

The Directors may decide, generally or in a particular case, that a notice given by the Company be signed by mechanical or other means.

## 16.6 Payments

- (a) The Company may pay a person entitled to an amount payable in respect of a Share (including a Dividend) by:
  - (i) crediting an account nominated in writing by that person;
  - (ii) cheque made payable to bearer, to the person entitled to the amount or any other person the person entitled directs in writing; or
  - (iii) any other manner as the Directors resolve.
- (b) The Company may post a cheque referred to in Article 16.6(a)(ii) to:
  - (i) the address in the Register of the Member of the Share;
  - (ii) if that Share is jointly held, the address in the Register of the Member named first in the Register in respect of the Share; or
  - (iii) any other address which that person directs in writing.
- (c) Any joint holder of a Share may give effective receipt for an amount (including a Dividend) paid in respect of the Share.

## 17. Winding Up

### 17.1 Distributions proportional to paid up capital

Subject to any rights or restrictions attached to a class of Shares, on a winding up of the Company, any surplus must be divided among the Members in the proportions which the amount paid (including amounts credited) on the Shares of a Member is of the total amounts paid and payable (including amounts credited) on the Shares of all Members.

### 17.2 Distributions of assets

- (a) Subject to any rights or restrictions attached to a class of Shares, on a winding up of the Company, the liquidator may, with the sanction of a special resolution of the Members:
  - (i) distribute among the Members the whole or any part of the property of the Company; and
  - (ii) decide how to distribute the property as between the Members or different classes of Members.
- (b) The liquidator of the Company may settle any problem concerning a distribution under Article 17 in any way. This may include:
  - (i) rounding amounts up or down to the nearest whole number;
  - (ii) ignoring fractions;
  - (iii) valuing assets for distribution;
  - (iv) paying cash to any Member on the basis of that valuation; and
  - (v) vesting assets in a trustee on trust for the Members entitled.



- (c) A Member need not accept any property, including shares or other securities, carrying a liability.

## Schedule 1 – Definitions and Interpretation

### 1. Definitions

In this Constitution, unless expressly stated otherwise:

**Acceptance Notice** has the meaning given to it in Article 6.3(b).

**Alternate Director** means a person for the time being holding office as an alternate director of the Company under Article 10.5.

**Board** means the Directors of the Company or those of them who are present at a meeting of the Directors at which there is a quorum.

**Business Day** means a day except a Saturday, Sunday or public holiday in Western Australia.

**Company** means the company named [REDACTED] whatever its name may be from time to time.

**Continuing Member** has the meaning given to it in Article 6.2 **Error! Reference source not found.**

**Corporations Act** means the *Corporations Act 2001* (Cth), except to the extent of any exemption, modification, declaration or order made in respect of that legislation which applies to the Company.

**Director** means a director of the Company for the time being.

**Dividend** includes an interim dividend and a final dividend.

**Drag Along Notice** has the meaning given to it in Article 7.2(b).

**Drag Along Right** has the meaning given to it in Article 7.2(a).

**Drag Offer** has the meaning given to it in Article 7.1(a).

**Drag Purchaser** has the meaning given to it in Article 7.1(a).

**Drag Sellers** has the meaning given to it in Article 7.1(a).

**Eligible Member** means, in respect of a meeting of Members:

- (a) if a date and time is specified under Article 9.3(d)(iii) in the notice of that meeting, a person who is a Member at that time; or
- (b) otherwise, a person who is a Member at the time appointed for the holding of that meeting.

**Equity Incentive Scheme** means, in respect of the Company, a scheme under which Securities may be acquired:

- (a) by, or for the benefit of, eligible employees, directors, officers or contractors of a member of the Group; or
- (b) by a body corporate, all of whose members are eligible employees, directors, officers or contractors of a member of the Group,



on terms and conditions approved by the Board.

**Executive Director** means a Director who is an employee (whether full-time or part-time) of a member of the Group other than by virtue of being a Director of the Company.

**Exempt Issue** means an issue of Securities:

- (a) arising in connection with the conversion of any convertible Securities issued by the Company prior to the date of adoption of this Constitution, or any other agreement by the Company to issue Shares prior to the date of adoption of this Constitution;
- (b) for the purpose of repaying (in full or in part) any indebtedness of the Company or its Subsidiaries which was first incurred prior to the date of adoption of this Constitution;
- (c) made pursuant to an agreement or undertaking to which the Company is a party and that has been approved by an ordinary resolution passed at a general meeting;
- (d) under an Equity Incentive Scheme, provided that at the time of issue the Board consider, on reasonable grounds, that the Securities so issued will not result in the issue of 10% or more of the fully diluted share capital of the Company (or such other amount approved by an ordinary resolution of Members in general meeting);
- (e) in connection with share splits or the issue of dividends approved by the Board; and
- (f) constituting all or part of the consideration for:
  - (i) a bona-fide acquisition of assets or shares by the Company which is approved by an ordinary resolution passed at a general meeting; or
  - (ii) services provided by a person to a member of the Group on terms approved by the Board, provided that at the time of issue the Board consider, on reasonable grounds, that the Securities so issued will not result in the issue of 5% or more of the fully diluted share capital of the Company.

**Exempt Transferee** means, in relation to a Member:

- (a) a company of which more than 50% of the ordinary voting shares are owned and controlled by the Member;
- (b) a unit trust of which more than 50% of the ordinary voting units are owned and controlled by the Member; or
- (c) a discretionary trust of which the Member:
  - (i) is a trustee of that trust and there is not more than 1 trustee; and
  - (ii) holds the exclusive authority and power to appoint and remove the trustee of that trust;
- (d) where the Member is the trustee of a trust and holds the exclusive authority and power to appoint and remove the trustee of that trust, a new trustee who is replacing that Member as trustee of the trust; or
- (e) where the Member is a joint holder of Shares, the other joint holder of those Shares.

**Existing Members** has the meaning given to it in Article 3.2.

**Founding Members** means each of [REDACTED]

**Founding Member** means one of the Founder Members (as the case requires).

**Group** means the Company and its Subsidiaries, and a member of the Group means one of them

**Independent** means a person that the Board is satisfied is, as at the date of appointment of the person as a Director, not an employee of the Company and is, and will be during the person's term as Director, free of any business, pecuniary or other relationship with the Company or any of the Members that could materially interfere with, or could reasonably be perceived to materially interfere with, the independent exercise of the person's judgement as a Director of the Company. An Independent Director may, during their term as a Director, loan monies to the Company or hold shares or other equity in the Company provided that it does not materially interfere with, or could reasonably be perceived to materially interfere with, the independent exercise of the person's judgement as a Director of the Company.

**Independent Director** means a Director who is deemed to be Independent.

**Issue Offer** has the meaning given to it in Article 3.2.

**Legal Costs** of a person means legal costs incurred by that person in defending an action for a Liability of that person.

**Liability** of a person means any liability incurred by that person as an officer of the Company or another member of the Group.

**Member** means a person whose name is entered in the Register as the holder of a Share.

**Minority Member** has the meaning given to it in clause 7.2(a).

**Non-Executive Directors** means all Directors other than Executive Directors.

**Notice** means a notice given pursuant to, or for the purposes of, this Constitution or the Corporations Act.

**Offer Securities** has the meaning given to it in Article 3.2.

**Offer Period** has the meaning given to it in Article 3.4.

**Personal Representative** means the legal personal representative, executor or administrator of the estate of a deceased person.

**Prescribed Notice** means 21 days or any shorter period of notice for a meeting of members of the Company allowed under the Corporations Act.

**Proposed Sale Notice** has the meaning given to it in Article 8.2(a).

**Respective Proportion** means, in respect of a Member, the proportion of the issued Shares held by that Member in relation to the total issued Shares, expressed as a percentage rounded to two decimal places.

**Register** means the register of Members kept under the Corporations Act and, where appropriate, includes any sub-register and branch register.

**Relevant Officer** means a person who is, or has been, a Director or Secretary.

**Sale Price** has the meaning given to it in Article 6.2(a).

**Secretary** means a company secretary of the Company for the time being.

**Securities** means a security in the Company and includes all Shares, options, convertible notes, warrants or other securities capable of conversion into Shares.

**Share** means a share in the capital of the Company.

**Shortfall** has the meaning given to it in Article 3.5(a).

**Shortfall Offer** has the meaning given to it in Article 3.5(a).

**Tag Along Notice** has the meaning given to it in Article 8.3(a).

**Tag Minority Member** has the meaning given to it in Article 8.2(c).

**Tag Offer** has the meaning given to it in Article 8.1(a)(i).

**Tag Offer Terms** has the meaning given to it in Article 8.2(b).

**Tag Purchase Price** has the meaning given to it in Article 8.2(b).

**Tag Purchaser** has the meaning given to it in Article 8.1(a)(i).

**Tag Seller** has the meaning given to it in Article 8.1(a)(i).

**Transferee** means a Continuing Member that accepts a Transfer Offer (as the case requires).

**Transferor** has the meaning given to it in Article 6.2(a).

**Transfer Interest** has the meaning given to it in Article 6.2(a).

**Transfer Notice** has the meaning given to it in Article 6.2(a).

**Transfer Offer** has the meaning given to it in Article 6.2**Error! Reference source not found.**

**Transfer Offer Period** has the meaning given to it in Article 6.3(a).

**Transmission Event** means:

- (a) if a Member is an individual:
  - (i) death or bankruptcy of that Member; or
  - (ii) that Member becoming of unsound mind or becoming a person whose property is liable to be dealt with under a law about mental health;
- (b) if a Member is a body corporate, the deregistration of that Member under the laws of the jurisdiction of its registration; or
- (c) in any case, the vesting in, or transfer to, a person of the Shares of a Member without that person becoming a Member.

## 2. Interpretation

- (a) In this Constitution:

- (i) a reference to a partly paid Share is a reference to a Share on which there is an amount unpaid;
  - (ii) a reference to a call or an amount called in respect of a Share includes an amount that, by the terms of issue of a Share or otherwise, is payable at one or more fixed times;
  - (iii) a reference to a Share which is jointly held is a reference to a Share for which there is more than one Member;
  - (iv) a reference to a meeting of Members includes a meeting of any class of Members;
  - (v) a Member is taken to be present at a meeting of Members if the Member is present in person or by proxy, attorney or representative; and
  - (vi) a reference to a notice or document in writing includes a notice or document given by fax or another form of written communication.
- (b) In this Constitution, headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:
- (i) words importing the singular include the plural (and vice versa);
  - (ii) words indicating a gender include every other gender;
  - (iii) the word "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
  - (iv) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
  - (v) the word "includes" in any form is not a word of limitation.
- (c) Unless the context indicates a contrary intention, in this Constitution:
- (i) a reference to an Article or a Schedule is to an article or a schedule of this Constitution;
  - (ii) a reference in a Schedule to a paragraph is to a paragraph of that Schedule;
  - (iii) a Schedule is part of this Constitution; and
  - (iv) a reference to this Constitution is to this Constitution (and where applicable any of its provisions) as modified or repealed from time to time.
- (d) Unless the context indicates a contrary intention, in this Constitution a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it.
- (e) Unless the context indicates a contrary intention:
- (i) an expression in a provision of this Constitution which deals with a matter dealt with by a provision of the Corporations Act has the same meaning as in that provision of the Corporations Act; and

- (ii) an expression in a provision of this Constitution that is defined in section 9 of the Corporations Act has the same meaning as in that section.

### **3. Exercise of Powers**

Where this Constitution confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.

### **4. Takeovers**

The provisions of Article 6 (Pre-emptive right on transfer), Article 7 (Drag along) and Article 8 (Tag along), cease to apply and have no effect during the period in which the Company:

- (a) is a listed company; or
- (b) is an unlisted company with more than 50 members.

### **5. Articles of this Constitution**

- (a) Unless the Corporations Act provides that the Constitution may contain a provision contrary to the Corporations Act, the Articles of this Constitution are subject to the Corporations Act such that any Article of this Constitution that is inconsistent with or contrary to the Corporations Act will be read down to the extent of the inconsistency with the Corporations Act.
- (b) If an Article is inconsistent with or contrary to the Corporations Act and is not capable of being read down to the extent of the inconsistency under paragraph 4(a), the relevant Article will be severed from this Constitution.
- (c) If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that does not affect or impair:
  - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
  - (ii) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Constitution.

## Schedule 2 – Calls, Company Payments, Forfeiture and Leins

### 1. Exercise of powers

The powers of the Company under this Schedule 2 may only be exercised by the Directors.

### 2. Calls

#### 2.1 Making a call

- (a) Subject to the terms of issue of a Share, the Company may at any time make calls on the Members of a Share for all or any part of the amount unpaid on the Share as the Directors resolve.
- (b) The Company may make calls payable for one or more Members for different amounts and at different times.
- (c) Subject to the terms of issue of a Share:
  - (i) a call may be made payable by instalments; and
  - (ii) the Company may revoke or postpone a call or extend the time for payment of a call.
- (d) A call is made when the Directors resolve to make the call.

#### 2.2 Notice of a call

- (a) The Company must give Members at least 10 Business Days notice of a call.
- (b) A notice of a call must be in writing and specify the amount of the call, the due date for payment, the manner in which payment of the call must be made, the consequences of non-payment of the call and any other information required by the Corporations Act.
- (c) A call is not invalid if either or both a Member does not receive notice of the call or the Company accidentally does not give notice of the call to a Member.

#### 2.3 Payment of a call

- (a) A Member must pay to the Company the amount of each call made on the Member on the date and in the manner specified in the notice of the call.
- (b) If an amount unpaid on a Share is payable, by the terms of issue of the Share or otherwise, in one or more fixed amounts on one or more fixed dates, the Member of that Share must pay to the Company those amounts on those dates.
- (c) A Member must pay to the Company:
  - (i) interest at the rate specified in paragraph 7(a) on any amount referred to in paragraphs 2.3(a) or 2.3(b) which is not paid on or before the time appointed for its payment, from the time appointed for payment to the time of the actual payment; and
  - (ii) expenses incurred by the Company because of the failure to pay or late payment of that amount.

- (d) The Company may waive payment of all or any part of an amount payable under paragraph 2.3(c).
- (e) The joint holders of a Share are jointly and severally liable for the payment of all calls due in respect of that Share.

#### 2.4 Recovery of a call

- (a) The Company may recover an amount due and payable under this paragraph 2 from a Member by:
  - (i) commencing legal action against the Member for all or part of the amount due;
  - (ii) enforcing a lien on the Share in respect of which the call was made; or
  - (iii) forfeiting the Share in respect of which the call was made.
- (b) The debt due in respect of an amount payable under this paragraph 2 in respect of a Share is sufficiently proved by evidence that:
  - (i) the name of the Member sued is entered in the Register as one or more of the holders of that Share; and
  - (ii) there is a record in the minute books of the Company of:
    - A. in the case of an amount referred to in paragraph 2.3(b), that amount; or
    - B. in any other case, the resolution making the call.

#### 2.5 Payment in advance of a call

- (a) The Company may:
  - (i) accept from any Member all or any part of the amount unpaid on a Share held by the Member before that amount is called for;
  - (ii) pay interest at any rate the Directors resolve, on the amount paid before it is called, from the date of payment until and including the date the amount becomes actually payable; and
  - (iii) repay the amount paid to that Member.
- (b) An amount paid pursuant to paragraph 2.5(a)(i) does not confer a right to participate in:
  - (i) a Dividend determined to be paid from the profits of the Company; or
  - (ii) any surplus of the Company in a winding up of the Company,for the period before the date when the amount paid would have otherwise become payable.

### **3. Company Payments on Behalf of a Member**

#### **3.1 Rights of the Company**

- (a) A Member or, if the Member is deceased, the Member's Personal Representative, must indemnify the Company against any liability which the Company has under any law to make a payment (including payment of a tax) in respect of:
  - (i) a Share held by that Member (whether solely or jointly);
  - (ii) a transfer or transmission of Shares by that Member;
  - (iii) a Dividend or other money which is, or may become, due or payable to that Member; or
  - (iv) that Member.
- (b) A Member or, if the Member is deceased, the Member's Personal Representative, must pay to the Company immediately on demand:
  - (i) the amount required to reimburse the Company for a payment referred to in paragraph 3.1(a); and
  - (ii) pay to the Company interest at the rate specified in paragraph 7(a) on any amount referred to in paragraph 3.1(a) paid by the Company, from the date of payment by the Company until and including the date the Company is reimbursed in full for that payment.
- (c) Subject to the Corporations Act, the Company may refuse to register a transfer of any Shares by a Member referred to in paragraph 3.1(a), or that Member's Personal Representative, until all money payable to the Company under this paragraph 3.1 has been paid.
- (d) The powers and rights of the Company under this paragraph 3.1 are in addition to any right or remedy that the Company may have under the law which requires the Company to make a payment referred to in paragraph 3.1(a).

#### **3.2 Recovery of Company payments**

- (a) The Company may recover an amount due and payable under paragraph 3.1 from the Member or the Member's Personal Representative by any or all of:
  - (i) deducting all or part of that amount from any other amount payable by the Company to that person in respect of the Shares of that person;
  - (ii) commencing legal action against that person for all or part of that amount; or
  - (iii) enforcing a lien on one or more of the Shares of that person.
- (b) The Company may waive any or all its rights under paragraph 3.

### **4. Forfeiture**

#### **4.1 Forfeiture procedure**

The Company may forfeit a Share of a Member by a resolution of the Directors if:



- (a) that Member does not pay a call or instalment on that Share on or before the date for its payment;
- (b) the Company gives that Member notice in writing:
  - (i) requiring the Member to pay that call or instalment, any interest on it and all expenses incurred by the Company by reason of the non-payment; and
  - (ii) stating that the Share is liable to be forfeited if that Member does not pay to the Company, at the place specified in the notice, the amount specified in the notice, within 10 Business Days (or any longer period specified) after the date of the notice; and
- (c) that Member does not pay that amount in accordance with that notice.

#### 4.2 Notice of forfeiture

- (a) When any Share has been forfeited, the Company must:
  - (i) give notice in writing of the forfeiture to the Member registered as its holder before the forfeiture; and
  - (ii) record the forfeiture with the date of forfeiture in the Register.
- (b) Failure by the Company to comply with any requirement in paragraph 4.2(a) does not invalidate the forfeiture.

#### 4.3 Effect of forfeiture

- (a) The forfeiture of a Share extinguishes:
  - (i) all interests in that Share of the former Member; and
  - (ii) all claims against the Company in respect of that Share by the former Member, including all Dividends determined to be paid in respect of that Share and not actually paid.
- (b) A former Member of a forfeited Share must pay to the Company:
  - (i) all calls, instalments, interest and expenses in respect of that Share at the time of forfeiture; and
  - (ii) interest at the rate specified in paragraph 7(a) on those amounts from the time of forfeiture until and including the date of payment of those amounts.

#### 4.4 Sale or reissue of forfeited Shares

The Company may sell, otherwise dispose of or reissue, a Share which has been forfeited on any terms and in any manner as the Directors resolve.

#### 4.5 Cancellation of forfeited Shares

The Company may by ordinary resolution passed at a general meeting cancel a Share which has been forfeited under the terms on which the Share is on issue.

#### 4.6 Proof of forfeiture

A certificate in writing from the Company signed by a Director or Secretary that a Share was forfeited on a specified date is sufficient evidence of:

- (a) the forfeiture of that Share; and
- (b) the right and title of the Company to sell, dispose or reissue that Share.

#### 4.7 Waiver or cancellation of forfeiture

The Company may:

- (a) waive any or all of its rights under paragraph 4; and
- (b) at any time before a sale, disposition, reissue or cancellation of a forfeited Share, cancel the forfeiture on any terms as the Directors resolve.

### 5. Liens

#### 5.1 First ranking lien

The Company has a first ranking lien on:

- (a) each Share registered in the name of a Member;
- (b) the proceeds of sale of those Shares; and
- (c) all Dividends determined to be payable in respect of those Shares,  
for:
  - (d) each unpaid call or instalment which is due but unpaid on those Shares;
  - (e) if those Shares were acquired under an employee incentive scheme, all amounts payable to the Company by the Member under loans made to enable those Shares to be acquired;
  - (f) all amounts which the Company is required by law to pay, and has paid, in respect of those Shares (including any payment under paragraph 3) or the forfeiture or sale of those Shares; and
  - (g) all interest and expenses due and payable to the Company under this Schedule 2.

#### 5.2 Enforcement by sale

The Company may sell a Share of a Member to enforce a lien on that Share if:

- (a) an amount secured by that lien is due and payable;
- (b) the Company gives that Member or the Member's Personal Representative notice in writing:
  - (i) requiring payment to the Company of that amount, any interest on it and all expenses incurred by the Company by reason of the non-payment; and
  - (ii) stating that the Share is liable to be sold if that person does not pay to the Company, in the manner specified in the notice, the amount specified in the

notice within 10 Business Days (or any longer period specified) after the date of the notice; and

- (c) that Member or the Member's Personal Representative does not pay that amount in accordance with that notice.

### 5.3 Release or Waiver of lien

- (a) Registration of a transfer of a Share by the Company releases any lien of the Company on that Share in respect of any amount owing on that Share, unless the Company gives notice in writing, to the person to whom that Share is transferred, of the amount owing.
- (b) The Company may waive any or all of its rights under paragraph 5.

## 6. Sales, Disposals and Reissues

### 6.1 Sale procedure

- (a) The Company may:
  - (i) receive the purchase money or consideration for Shares sold or disposed of under this Schedule 2;
  - (ii) appoint a person to sign a transfer of Shares sold or disposed of under this Schedule 2;
  - (iii) do all things necessary or desirable under the Corporations Act to effect a transfer of Shares sold or disposed of under this Schedule 2; and
  - (iv) enter in the Register the name of the person to whom Shares are sold or disposed.
- (b) The person to whom a Share is sold or disposed under this Schedule 2 need not enquire whether the Company:
  - (i) properly exercised its powers under this Schedule 2 in respect of that Share; or
  - (ii) properly applied the proceeds of sale or disposal of those Shares,and the title of that person is not affected by those matters.
- (c) The remedy (if any) of any person aggrieved by a sale or other disposal of Shares under this Schedule 2 is in damages only and against the Company exclusively.
- (d) A certificate in writing from the Company signed by a Director or Secretary that a Share was sold, disposed of or reissued in accordance with this Schedule 2 is sufficient evidence of those matters.

### 6.2 Application of proceeds

The Company must apply the proceeds of any sale, other disposal or reissue of any Shares under this Schedule 2 in the following order:

- (a) the expenses of the sale, other disposal or reissue;
- (b) the amounts due and unpaid in respect of those Shares; and

- (c) the balance (if any) to the former Member or the former Member's Personal Representative, on the Company receiving the certificate (if any) of those Shares or other evidence satisfactory to the Company regarding the ownership of those Shares.

## **7. Interest**

- (a) A person must pay interest under this Schedule 2 to the Company:
  - (i) at a rate the Directors resolve; or
  - (ii) if the Directors do not resolve, at 15% per annum.
- (b) Interest payable to the Company under this Schedule 2 accrues daily.
- (c) The Company may capitalise interest payable under this Schedule 2 at any interval the Directors resolve.

## Schedule 3 – Transmission

### 1. Deceased Members

#### 1.1 Effect of death

- (a) If a Member in respect of a Share which is not jointly held dies, the Company must recognise only the Personal Representative of that Member as having any title to or interest in, or any benefits accruing in respect of, that Share.
- (b) If a Member in respect of a Share which is jointly held dies, the Company must recognise only the surviving Members of that Share as having any title to or interest in, or any benefits accruing in respect of, that Share.

#### 1.2 Estates and Personal Representatives

- (a) The estate of a deceased Member is not released from any liability in respect of the Shares registered in the name of that Member.
- (b) Where 2 or more persons are jointly entitled to any Share as a consequence of the death of the registered holder of that Share, they are taken to be joint holders of that Share.

### 2. Transmission Events

#### 2.1 Transmittor right to register or transfer

- (a) Subject to the *Bankruptcy Act 1966* (Cth) if a person entitled to a Share because of a Transmission Event gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the Share, that person may:
  - (i) elect to be registered as a Member in respect of that Share by giving a signed notice in writing to the Company; or
  - (ii) transfer that Share to another person.
- (b) On receiving a notice under paragraph 2.1(a)(i), the Company must register the person as the holder of that Share.
- (c) A transfer under paragraph 2.1(a)(ii) is subject to all provisions of this Constitution relating to transfers of Shares.

#### 2.2 Other transmute rights and obligations

- (a) A person registered as a Member as a consequence of paragraph 2.1 must indemnify the Company to the extent of any loss or damage suffered by the Company as a result of that registration.
- (b) A person who has given to the Directors the information referred to in paragraph 2.1(a) in respect of a Share is entitled to the same rights to which that person would be entitled if registered as the holder of that Share.

## Schedule 4 – Preference Shares

Preference Shares have, in addition to any rights or restrictions specified in this Constitution, the following rights and restrictions:

- (a) **repayment of capital:** the right in priority to any other class of Shares to repayment on the amount paid on the preference Share:
  - (i) in a winding up or reduction of capital; and
  - (ii) in the case of a redeemable preference Share, on redemption;
- (b) **dividends:** the right to receive a cumulative preferential dividend, in priority to the payment of any dividend on any other class of Shares, accruing from day to day and payable on the amount paid on the preference Share at the times and at the rate, which may be fixed or variable, specified or determined in the certificate for the preference Share;
- (c) **accrued dividends:** the right in priority to any other class of Shares to the amount of any dividend accrued but unpaid on the preference Share:
  - (i) in a winding up or reduction of capital; and
  - (ii) in the case of a redeemable preference Share, on redemption;
- (d) **participation in surplus assets and profits:** unless otherwise decided by the Board under the terms of issue, no rights to participate in the profits or property of the Company other than as set out in this Schedule 4 whether on a winding up, reduction of capital or, in the case of a redeemable preference Share, on redemption;
- (e) **numbering votes:** the holder of a preference Share who is entitled to vote in respect of that Share is, on a poll, entitled to the number of votes specified in, or determined in accordance with, the terms of issue for the preference Share;
- (f) **redemption:** in the case of a redeemable preference Share, the right to require the Company to redeem the preference Share, at the time and place specified in the certificate for the preference Share;
- (g) **transfer:** a holder of a preference Share must not transfer, or purport to transfer, a preference Share if the transfer would contravene any restrictions on the right to transfer the Share set out in the terms of issue for the Share;
- (h) **registration:** the Board must not register a transfer of a preference Share if the transfer would contravene any restrictions on the right to transfer the Share set out in the terms of issue for the Share;
- (i) **conversion:** if the preference Share is to have rights of conversion to another class of Securities, the following rights to be specified by the directors as the terms of issue:
  - (i) the class of security into which the preference Share converts;
  - (ii) whether, and in what circumstances, conversion is at the option of the holder or the Company or is fixed to some other date or event;
  - (iii) the dates on which, or the circumstances in which, the preference Share will convert, or may be converted;
  - (iv) the method of conversion of the preference Share, which may include:



- A. the manner in which the number of securities into which the preference Share converts is to be calculated; and
  - B. any right to be issued with additional Securities of the class into which the preference Share may be converted and the manner in which that number of Securities is to be calculated;
- (v) the treatment of the preference Share and conversion rights on the occurrence of specified events in respect of the class of securities into which the preference Share may convert, which may include, without limitation:
  - A. the announcement of any dividend or distribution or other entitlement in respect of those securities;
  - B. a new issue of those securities;
  - C. a bonus or rights issue of those securities; and
  - D. return or reorganisation of capital in respect of those securities; and
- (j) **restrictions:** the restrictions, if any, specified in the certificate for the preference Share.