



30 June 2017

Companies Announcements Office  
Australian Securities Exchange

### **Amended Constitution**

Attached is Variscan Mines Limited's Constitution incorporating amendments approved by shareholders at the General Meeting held on 30 June 2017.

**Variscan Mines Limited**

A handwritten signature in black ink, appearing to read 'Ivo Polovineo', written over a light grey rectangular background.

**Ivo Polovineo**  
Company Secretary

***Corporations Act 2001***  
**Constitution**  
**of**  
**Variscan Mines Limited**  
**ACN 003 254 395**  
**(a company limited by shares)**

**Adopted pursuant to Shareholders' approval on 28 November 2013  
incorporating amendments pursuant to Shareholders' approval  
on 30 June 2017**

## Contents

---

1.	Compliance with the Act and the Listing Rules .....	4
2.	Share capital and variation of rights .....	4
3.	Shareholding statements and certificates for securities .....	7
4.	Calls on Shares .....	8
5.	Lien .....	10
6.	Forfeiture of Shares .....	12
7.	Transfer of Shares .....	14
8.	Transmission of Shares .....	17
9.	Alteration of capital .....	18
10.	General meetings .....	19
11.	Proceedings at general meetings .....	20
12.	Appointment and removal of Directors .....	27
13.	Remuneration of Non-Executive Directors .....	30
14.	Retirement benefits.....	30
15.	Powers of Directors .....	31
16.	Duties and interests of Directors .....	31
17.	Proceedings of Directors .....	32
18.	Alternate Directors .....	35
19.	Managing Director and Executive Directors .....	36
20.	Secretary .....	37
21.	Execution and seal .....	37
22.	Company administration .....	38
23.	Accounts and audits .....	39
24.	Dividends and reserves .....	39
25.	Plans .....	43
26.	Capitalisation of profits .....	43
27.	Notices .....	44

28.	Winding up.....	45
29.	Indemnities and insurance.....	46
30.	General authorisation .....	47
31.	Plebiscite to approve proportional takeover bids.....	47
32.	Interpretation.....	48

## **1. Compliance with the Act and the Listing Rules**

---

### **1.1 Replaceable rules**

To the extent permitted by the Act, the replaceable rules contained in the Act do not apply to the Company and are displaced in full by this Constitution.

### **1.2 Compliance with the Act and the Listing Rules**

- (a) Despite anything express or implied in this Constitution, each and every provision of this Constitution is subject to the Act and, if the Company is Listed, the Listing Rules and the ASX Settlement Operating Rules. The Company must at all times comply with the Act and, where applicable, the Listing Rules and the ASX Settlement Operating Rules.
- (b) If there is any inconsistency between any provision of this Constitution and the Act, the Listing Rules or the ASX Settlement Operating Rules, then the Act, the Listing Rules or the ASX Settlement Operating Rules (as the case may be) will prevail to the extent of the inconsistency.
- (c) Without limiting the generality of clauses 1.2(a) and 1.2(b), if the Company is Listed, the following provisions apply:
  - (i) despite anything contained in this Constitution, if the Listing Rules prohibit an act being done, that act must not be done;
  - (ii) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
  - (iii) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
  - (iv) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is taken to contain that provision;
  - (v) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is taken not to contain that provision; and
  - (vi) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

### **1.3 Listing Rules**

A reference in this Constitution to the Listing Rules, the ASX Settlement Operating Rules or the ASX has effect only for so long as the Company is Listed and must otherwise be disregarded.

## **2. Share capital and variation of rights**

---

### **2.1 Shares**

Subject to this Constitution, the Act and the ASX Listing Rules, the Directors may:

- (a) issue, allot or grant options for, or otherwise dispose of, Shares; and
- (b) decide:
  - (i) the persons to whom Shares are issued or options are granted;
  - (ii) the terms and conditions on which Shares or options are granted; and
  - (iii) the rights and restrictions attached to those Shares or options.

## **2.2 Related parties may not participate in certain securities issues**

Despite anything contained in this Constitution to the contrary, no related party of the Company within the meaning of the Act may participate directly or indirectly in an issue by the Company of unissued Shares, options or other securities to the extent that doing so would contravene the Listing Rules or the Act.

## **2.3 Partly paid Shares**

The number of partly paid Shares must be reorganised in the same proportion as the other classes of Shares. The reorganisation must not include cancellation or reduction of the total amount payable and unpaid by the holder.

## **2.4 Preference Shares**

- (a) The Company may issue preference Shares, including preference Shares that are liable to be redeemed or convertible into ordinary Shares.
- (b) The holder of a preference Share is entitled to return of capital in preference to holders of ordinary Shares when the Company is wound up.
- (c) The holder of a preference Share is entitled to a dividend in preference to ordinary shareholders, at a commercial rate and on the basis decided by the Directors under the terms of issue.
- (d) The holder of a preference Share has the right to vote at any general meeting of the Company in each of the following circumstances and in no others:
  - (i) during a period in which a dividend (or part of a dividend), in respect of the Share, is in arrears;
  - (ii) on a proposal to reduce the Company's Share capital;
  - (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 Company's property, business and undertaking;
  - (vii) during the winding up of the Company;
  - (viii) subject to the Listing Rules, in any additional circumstances specified in the terms of issue of such preference Shares by the Company relating to the Share on its allotment and issue; and

- (ix) in any other circumstances in which the Listing Rules require holders of preference Shares to be entitled to vote.
- (e) Holders of preference Shares have the same rights as holders of ordinary Shares in relation to receiving notices, reports and audited accounts, and attending general meetings of the Company.

## **2.5 Variation or cancellation of rights**

- (a) Subject to the Listing Rules, if at any time the Share capital of the Company is divided into different classes of Shares, the rights attached to Shares in any class of Shares (unless otherwise provided by the terms of issue of the Shares of that class) may, whether or not the Company is being wound up, be varied or cancelled by special resolution of the Company and:
  - (i) by special resolution passed at a separate meeting of Members holding Shares in that class; or
  - (ii) with the written consent of Members with at least 75% of the votes attaching to Shares in the class.
- (b) The Company must give written notice of the variation or cancellation to the Members of the class within seven days after the variation or cancellation is made.
- (c) The rights conferred on the holders of Shares in any class are not altered or abrogated by the creation or issue of further Shares of the same class ranking equally with or in priority to the Shares already issued, unless expressly provided in the terms of issue of the Shares already issued.

## **2.6 No recognition of trusts**

Except as required by this Constitution, the Listing Rules, the ASX Settlement Operating Rules or by Act, the Company is not bound to recognise a person as holding a Share on any trust or to recognise (whether or not it has notice of the interest or rights concerned) any equitable, future or partial interest in any Share, unit of a Share or any other right in respect of a Share, except an absolute right of ownership in the Member.

## **2.7 Joint holders**

- (a) If two or more people are registered as joint holders of any Share:
  - (i) they hold that Share as joint tenants with rights of survivorship, subject to the provisions of this Constitution as to joint holdings; and
  - (ii) the joint Member named first in the Register in respect of that Share is treated as being the sole owner of the Share in relation to the receipt of dividends, service of notices and all other matters connected with the Company except the transfer of Shares, the right to vote, delivery of certificates and liability for calls or instalments.
- (b) Except where otherwise provided by the ASX Settlement Operating Rules, the Company is not required to register more than three people as joint holders of a Share.

## 2.8 Brokerage and commission on subscriptions for unissued Shares

Subject to the Act:

- (a) the Company may exercise the power to make payments by way of brokerage or commission in connection with subscriptions for unissued Shares; and
- (b) payments by way of brokerage or commission may be satisfied by:
  - (i) the payment of cash;
  - (ii) the allotment of fully or partly paid Shares; or
  - (iii) partly by the payment of cash and partly by the allotment of fully or partly paid Shares.

## 2.9 Conversion or reclassification of Shares

Subject to clause 2.5, the Company may by resolution convert or reclassify Shares from one class to another.

## 2.10 Notification of shareholdings

- (a) While any of the Company's securities are admitted to trading on AIM, the provisions of the Relevant DTR Provisions shall be deemed to be incorporated into this Constitution and shall bind the Company and the Members and references to an "issuer" (or similar expression) in such Relevant DTR Provisions shall be deemed to be references to the Company, as if the Company had its Home State (as defined in the DTR) in the United Kingdom (and, for the avoidance of doubt, the Company shall not be deemed to be a "non-UK issuer" as defined in the Relevant DTR Provisions).
- (b) For the purposes of this clause:

**AIM** means the AIM market of the London Stock Exchange Plc.

**DTR** means the United Kingdom Financial Conduct Authority's Disclosure and Transparency Rules Sourcebook.

**Relevant DTR Provisions** means the provisions of the DTR or any successor regime (whether statutory or non-statutory) governing the disclosure of interests in securities in the United Kingdom by issuers who have their registered office in the United Kingdom, which relates to the requirement of shareholders to disclose their total proportion of voting rights (as defined in the DTR)."

## 3. Shareholding statements and certificates for securities

---

### 3.1 Uncertificated holdings

Despite any other provision of this Constitution, the Directors may determine not to issue certificates in respect of securities of the Company or may determine to cancel those certificates without issuing any replacement certificates where that practice is not contrary to the Act, the Listing Rules or the ASX Settlement Operating Rules.

### 3.2 Holding statements

Where the Directors have determined (under clause 3.1) not to issue certificates in respect of securities or to cancel existing certificates, a Member will be entitled, without payment, to

receive such statements of its holdings as the Company is required to give pursuant to the Act, the Listing Rules or the ASX Settlement Operating Rules.

### **3.3 Where certificates are issued**

Where the Directors determine to issue certificates in respect of securities of the Company, clauses 3.4 to 3.7 will apply.

### **3.4 Certificates to be issued under Seal**

Certificates of title to securities may be issued under the Seal or by two Directors or a Director and a Secretary signing the certificates of title and otherwise according to the Act and, where applicable, the Listing Rules and the ASX Settlement Operating Rules.

### **3.5 Joint holders**

The Company is not bound to issue more than one certificate or statement for Shares or options held by several persons.

### **3.6 Loss or destruction of certificates**

- (a) Where the Company receives evidence satisfactory to the Directors that a certificate of title to securities has been lost or destroyed, the Company must (on application by the owner of the securities and payment of such fee as the Directors require) issue a duplicate certificate according to the Act and the Listing Rules.
- (b) Duplicate certificates issued according to this clause must be clearly marked 'Duplicate certificate issued in replacement of certificate numbered: [number]'.

### **3.7 Worn out or defaced certificates**

Where a certificate of title to securities is worn out or defaced, then on production and delivery of it to the Company, the Company must cancel that certificate and issue a new certificate in its place.

## **4. Calls on Shares**

---

### **4.1 Directors may make calls**

Subject to compliance with the Act and the Listing Rules, the Directors may (according to the terms of issue of a Share) make calls on Members in respect of any money unpaid on the Shares held by them, unless and to the extent that the terms of those Shares require that money to be paid at fixed times.

### **4.2 Notice of call**

- (a) Notice of any call made by the Company must be given to the Member in writing.
- (b) The notice must be given according to the Listing Rules.
- (c) The non-receipt of a notice of any call or the accidental omission to give notice of any call to any Member will not invalidate the call.

### **4.3 Payments of calls**

Each Member must pay to the Company, at the times and places specified by the Directors, the amount called on that Member's Shares.

#### **4.4 Terms of call**

- (a) Subject to the Listing Rules, the Directors may revoke or postpone a call.
- (b) Subject to the Listing Rules and the terms of issue of the Shares, a call may be payable by instalments.

#### **4.5 Time of call**

A call is to be treated as having been made at the time when the resolution of the Directors authorising the call was passed.

#### **4.6 Liability of joint holders**

The joint holders of a Share are jointly and severally liable to pay calls in respect of the Share.

#### **4.7 Interest on unpaid calls**

- (a) If a sum called in respect of a Share is not paid on or before the day appointed for its payment, the person from whom the sum is due must pay interest on the sum from the day appointed for its payment to the time of actual payment at the Prescribed Rate or any other rate the Directors determine.
- (b) The Directors may waive payment of all or part of the interest payable under clause 4.7(a) in writing.

#### **4.8 Certain sums treated as calls**

If, by the terms of issue of a Share, any sum is payable on allotment or at a fixed date:

- (a) that sum is to be treated as a call duly made and payable on the date on which the sum becomes payable under the terms of issue of that Share; and
- (b) if that sum is not paid, all the relevant provisions of this Constitution relating to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

#### **4.9 Terms of issue of Shares may differ**

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

#### **4.10 Prepayment of calls**

- (a) The Directors may:
  - (i) accept from a Member the whole or part of the amount unpaid on a Share although no part of that amount has been called up; and
  - (ii) authorise payment by the Company of interest on the whole or part of an amount so accepted, until that amount becomes payable, at the rate agreed between the Directors and the Member in writing, being a rate not exceeding the Prescribed Rate.
- (b) The amount paid in advance will not confer a right to participate in dividends paid or otherwise participate in profits of the Company in respect of a period before the date on which the amount advanced would, but for such payment, have become payable.

- (c) The Directors may repay the amount advanced on giving the Member at least 14 days' notice in writing.

#### **4.11 Proof of liability for call**

- (a) On the trial or hearing of any action for the recovery of any money due for any call, it will be sufficient to prove that:
  - (i) the name of the Member sued is entered in the Register as the holder or one of the holders of the Shares in respect of the call;
  - (ii) subject to clause 4.8, the resolution making the call is duly recorded in the minute book; and
  - (iii) notice of the call was duly given to the Member sued under this Constitution.
- (b) Proof of the matters referred to in clause 4.11(a) will be conclusive evidence of the debt due in respect of a call.
- (c) It will not be necessary to prove the appointment of the Directors who made the call or any other matter.

## **5. Lien**

---

### **5.1 Lien for moneys called**

The Company has a first and paramount lien on every Share where:

- (a) an unpaid call or instalment is due but unpaid on that Share;
- (b) the Share was acquired under an employee incentive scheme and an amount is owed to the Company for acquiring that Share; or
- (c) the Company is required by the Act to pay (and has paid) an amount in respect of that Share (whether held by a Member or a deceased former Member).

### **5.2 Scope of lien**

The Company's lien (if any) on a Share extends to:

- (a) reasonable interest and expenses incurred because the amount is not paid;
- (b) all dividends payable in respect of the Share; and
- (c) the proceeds of sale of the Share.

### **5.3 Sale where lien over Shares**

- (a) The Company may sell, in the manner the Directors think fit, any Share on which the Company has a lien where:
  - (i) a sum in respect of which the lien exists is presently payable; and
  - (ii) the Company has, not less than 14 Business Days before the date of the sale, given to the Member or the person entitled to the Share by reason of the death or bankruptcy of the Member, a notice in writing setting out and

demanding payment of that part of the amount in respect of which the lien exists, as is presently payable.

- (b) In the case of Shares in a CHESS Holding, any notice under clause 5.3(a)(ii) must comply with the Listing Rules and the ASX Settlement Operating Rules.
- (c) When the Company sells a Share under this clause 5.3, the Company may receive the consideration (if any) given for the Share on any sale or disposition of the Share and may execute a transfer of the Share in favour of the person to whom the Share is sold or disposed of. On execution of the transfer, the transferee may be registered as the holder of the Share. The transferee is not bound to see to the application of any money paid as consideration. A sale of the Share by the Company is valid even if a Transmission Event occurs to the Member before the Sale or disposition of the Share.
- (d) The title of a transferee to a Share under clause 5.3 is not affected by any irregularity or invalidity in connection with the sale or disposal of the Share.
- (e) A statement in writing declaring that the person making the statement is a Director or Secretary of the Company, and that a Share in the Company has been duly sold on a date stated in the statement, is conclusive evidence of the facts stated in the statement against all people claiming to be entitled to the Share and of the right of the Company to sell or otherwise dispose of the Share.

#### **5.4 Application of proceeds of sale**

The proceeds of a sale mentioned in clause 5.3 must be applied by the Company in payment of:

- (a) first, the expenses of the sale or other disposal;
- (b) second, any expenses (including any tax liability) necessarily incurred in respect of the enforcement of the lien on the sale or other disposal; and
- (c) third, the amounts secured by the lien and all other amounts payable in respect of the relevant Share,

and the residue (if any) will be held on trust by the Company until paid to the Member or the Member's executors and administrators or assigns (as the case requires) or as that person (or if more than one person, as they) direct in writing.

#### **5.5 Lien on payments made by the Company**

- (a) If any Act imposes or purports to impose any immediate, future or possible liability on the Company to make any payment or empowers any person to require the Company to make any payment in respect of any Shares registered in the name of any Member (whether solely or jointly with others) or in respect of any dividends or other moneys to which that Member is or may become entitled to receive from the Company, the Company:
  - (i) is fully indemnified by that Member against all liability;
  - (ii) has a lien on those Shares and all dividends and other money payable in respect of those Shares for all money so paid by the Company, together with interest on that amount at the Prescribed Rate (or at such lower rate as the Directors may determine) from the date of payment to the date of repayment, and may deduct or set off against any such dividend or other moneys payable, any moneys so paid or payable by the Company together with interest;

- (iii) may recover as a debt due from that Member any money so paid by the Company together with interest calculated on the basis set out in paragraph 5.5(a)(ii); and
  - (iv) subject to the Listing Rules, may refuse to register a transfer of any Shares by that Member until the money and interest has been paid to the Company.
- (b) Nothing in this clause prejudices or affects any right or remedy which the Company may have. Any right or remedy (including those noted above) is enforceable by the Company against every Member or, if the Member is dead or bankrupt, the Member's legal personal representative or the trustee of the Member's estate (as the case may be).

## **5.6 Protection of lien under ASX Settlement Operating Rules**

The Company may do all things necessary or appropriate for it to do under the ASX Settlement Operating Rules to protect any lien, charge or other right to which it may be entitled under any Act or this Constitution.

## **5.7 Remedies limited to damages**

The remedy of any person aggrieved by a sale, re-allotment or cancellation under this clause or clauses 4 or 6 is limited to damages only and is against the Company exclusively.

## **5.8 Waiver**

The Directors may:

- (a) exempt a Share from all or part of this clause 5; and
- (b) waive or compromise all or part of any payment due to the Company under this clause 5.

## **6. Forfeiture of Shares**

---

### **6.1 Notice of forfeiture**

If a Member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the Directors may, at any time while any part of the call or instalment remains unpaid, serve a notice on that Member:

- (a) requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued;
- (b) specifying a date (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made; and
- (c) stating that, in the event of non-payment at or before the time appointed, the Shares in respect of which the call was made will be liable to be forfeited.

### **6.2 Forfeiture of Shares**

- (a) If the requirements of a notice served under clause 6.1 are not complied with, any Share in respect of which the notice has been given may at any time after the notice, but before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect.

- (b) A forfeiture under clause 6.2(a) includes all dividends in respect of the forfeited Shares which have not actually been paid before the forfeiture.
- (c) Forfeiture of Shares in a CHESS Holding must comply with the ASX Settlement Operating Rules.

### **6.3 Directors power on forfeiture**

Subject to the Listing Rules, a forfeited Share becomes the property of the Company and may be sold or otherwise disposed of on the terms and in the manner the Directors think fit, and, at any time before a sale or disposition, the forfeiture may be cancelled on the terms the Directors think fit.

### **6.4 Cancellation of forfeited Shares**

The Company may only cancel forfeited Shares according to the Listing Rules.

### **6.5 Implications of forfeiture for Member**

- (a) A person whose Shares have been forfeited ceases to be a Member in respect of the forfeited Shares, but remains liable to pay the Company all money that, at the date of forfeiture, was payable by that Member to the Company concerning the Shares (including interest at the Prescribed Rate from the date of forfeiture on the money for the time being unpaid if the Directors think fit to enforce payment of the interest).
- (b) The liability of that Member ceases if and when the Company receives payment in full of all the money (including interest) payable in respect of the Shares.
- (c) The forfeiture of a Share extinguishes all interest in, and all claims and demands against the Company relating to, the forfeited Share and all other rights attached to the Share.

### **6.6 Statement as evidence of forfeiture**

A statement in writing declaring that the person making the statement is a Director or Secretary of the Company, and that a Share in the Company has been duly forfeited on a date stated in the statement, is conclusive evidence of the facts stated in the statement against all people claiming to be entitled to the Share and of the right of the Company to forfeit, sell or otherwise dispose of the Share.

### **6.7 Transfer of forfeited Share**

The Company may receive the consideration (if any) given for a forfeited Share on any sale or disposition of the Share and may execute a transfer of the Share in favour of the person to whom the Share is sold or disposed of. On execution of the transfer, the transferee may be registered as the holder of the Share. The transferee is not bound to see to the application of any money paid as consideration. A sale of the Share by the Company is valid even if a Transmission Event occurs to the Member before the Sale or disposition of the Share.

### **6.8 Transferee's title to Share**

The title of a transferee to a Share under clause 6.7 is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the Share.

### **6.9 Additional powers**

Where a transfer following the sale of any Shares after forfeiture or for enforcing a lien, charge or right to which the Company is entitled under any Act or under this Constitution is effected by

a transfer according to clause 7.1(a), the Company may do all things necessary or desirable for it to do under the ASX Settlement Operating Rules in relation to that transfer.

#### **6.10 Waiver**

The Directors may:

- (a) exempt a Share from all or part of this clause 6;
- (b) waive or compromise all or part of any payment due to the Company under this clause 6.

#### **6.11 Proceeds of sale**

The proceeds of a sale mentioned in clause 6 must be applied by the Company in payment of:

- (a) first, any expenses (including any tax liability) necessarily incurred in respect of the forfeiture and sale of the relevant Share; and
- (b) second, all other amounts payable by the Member to the Company in respect of the relevant Share,

and the residue (if any) will be held on trust by the Company until paid to the Member or the Member's executors and administrators or assigns (as the case requires) or as that person (or if more than one person, as they) direct in writing.

## **7. Transfer of Shares**

---

### **7.1 Transfer**

Subject to this Constitution, a Member may transfer all or any of their Shares by:

- (a) any method of transferring or dealing in Shares introduced by the ASX or operated according to the ASX Settlement Operating Rules or the Listing Rules, and recognised by the Act; or
- (b) an instrument in writing in any usual or common form or in any other form that the Directors or the ASX approve.

### **7.2 Participation in CHESS**

- (a) The Directors may do anything permitted by the Act, the Listing Rules and the ASX Settlement Operating Rules which they consider necessary or appropriate in connection with the participation by the Company in any computerised or electronic system established or recognised by the Act and the Listing Rules or the ASX Settlement Operating Rules for the purpose of facilitating dealings in marketable securities.
- (b) The Company must allow holders of securities on the sub-register to maintain more than one holding on that sub-register. Each holding must be identified by a unique SRN. Each holding must be treated as a separate holding for determining the benefits and entitlements.
- (c) When the Company creates a new holding on the issuer sponsored sub-register, it must allocate a unique SRN for that holding.

- (d) If the Company participates in an electronic transfer system as provided in clause 7.2(a) then, despite any other provision of this Constitution:
  - (i) Shares may be transferred and transfers may be registered in any manner required or permitted by the Listing Rules or the ASX Settlement Operating Rules applying to that system;
  - (ii) the Company must comply with any obligations which are imposed on it by the Act, the Listing Rules or the ASX Settlement Operating Rules concerning a transfer according to clause 7.1; and
  - (iii) the Company must not prevent, delay or interfere with the registration of a transfer according to clause 7.1(a) except as permitted by the Act, the Listing Rules or the ASX Settlement Operating Rules.
- (e) The Directors may, to the extent the law permits, waive any of the requirements of clauses 7.1 and 7.3 and prescribe alternative requirements instead, to give effect to clause 7.2(a) or for another purpose.

### **7.3 Registration**

Except where the Directors determine (to comply with laws or securities exchange rules of a foreign country), where a Member seeks to transfer all or any of the Member's Shares according to clause 7.1(b), the Company may only register a transfer of Shares where an instrument satisfying that clause is delivered to the Company at the Office and the instrument:

- (a) is, where necessary, duly stamped;
- (b) is executed by or on behalf of both the transferor and the transferee, except where execution by either the transferor or transferee is not required by, or is treated as having been executed by the Act, the Listing Rules or the ASX Settlement Operating Rules;
- (c) except where otherwise permitted by the Act, the Listing Rules or the ASX Settlement Operating Rules, is accompanied by the certificate of title (if any) to the Shares the subject of the transfer together with other evidence the Directors may require to prove the title of the transferor or the transferor's right to transfer the Shares and the transferee's right to be registered as the owner of the shares; and
- (d) relates only to Shares of one class.

### **7.4 Transferor remains holder**

A transferor of Shares remains the registered holder of the Shares transferred until:

- (a) the transfer according to clause 7.1(a) has taken effect according to the ASX Settlement Operating Rules; or
- (b) the transfer is registered and the name of the transferee is entered in the Register in respect of the Shares to be transferred,

whichever occurs first.

### **7.5 Restricted Securities**

- (a) Restricted Securities cannot be disposed of by the holder of those Restricted Securities during the escrow period, except as permitted by the Listing Rules or the ASX.

- (b) The Company will refuse to acknowledge a disposal of Restricted Securities during the escrow period, except as permitted by the Listing Rules or the ASX.
- (c) During a breach of the Listing Rules relating to Restricted Securities, or a breach of a restriction agreement, the holder of the Restricted Securities is not entitled to any dividend or distribution, or voting rights, in respect of the Restricted Securities.

## 7.6 Small holdings

- (a) The Company may, once in any 12 month period, sell the Shares of a Member who has less than a Marketable Parcel of those Shares if:
  - (i) the Company has notified the Member in writing of its intention to sell those Shares;
  - (ii) the Member has been given at least six weeks from the date the notice is sent to advise the Company that the Member wishes to retain the holding;
  - (iii) the Member has not notified the Company that the Member wishes to retain the holding within that six weeks; and
  - (iv) neither a takeover offer nor a takeover announcement has been made in respect of the Company or, if one has been made in respect of the Company, the offers made under that takeover offer or takeover announcement, have been closed.
- (b) The costs of sale of the Shares of a Member who has less than a Marketable Parcel of those Shares under clause 7.6(a) must be paid by the Company or the purchaser of the Shares.
- (c) The proceeds of the sale of the Shares of a Member who has less than a Marketable Parcel of those Shares will not be sent to the Member until the Company has received the certificate of title (if any) issued in respect of those Shares (or is satisfied that the certificate has been lost or destroyed).
- (d) The Directors may, before a sale is effected under this clause 7.6, revoke a notice given or suspend or terminate the operation of this clause 7.6 either generally or in specific cases.
- (e) The Company may sell the Shares constituting less than Marketable Parcel as soon as practicable at a price which the Directors consider is the best price reasonably available for the Shares when they are sold.
- (f) The Company may receive the consideration given for a Share on any sale of the Share and may execute a transfer of the Share in favour of the person to whom the Share is sold or disposed of. On execution of the transfer, the transferee may be registered as the holder of the Share. The transferee is not bound to see to the application of any money paid as consideration. A sale of the Share by the Company is valid even if a Transmission Event occurs to the Member before the Sale or disposition of the Share.
- (g) The remedy of any person aggrieved by a sale under this clause 7.6 is limited to damages only and is against the Company exclusively.
- (h) A written statement by a Director or Secretary of the Company that a Share in the Company has been duly sold under clause 7.6 on a date stated in the statement is conclusive evidence of the facts stated as against all persons claiming to be entitled to the Share, and of the right of the Company to sell the share.

## 7.7 Directors declining registration

The Directors:

- (a) may, in their absolute discretion, decline to register a transfer of Shares (other than a transfer complying with clause 7.1(a)), where to do so would not contravene the Act, the Listing Rules or the ASX Settlement Operating Rules; and
- (b) must decline to register a transfer of Shares:
  - (i) (other than a transfer complying with clause 7.1(a)) where required by the Act, the Listing Rules or the ASX Settlement Operating Rules; or
  - (ii) that are Restricted Securities during the escrow period, except as permitted by the Listing Rules or the ASX.

## 7.8 Notice of refusal to register

- (a) If the Directors decline to register a paper based transfer under clause 7.7, the Company must notify the transferee (and the broker (if any)) of the refusal to register and the reason for the refusal within five Business Days after the day on which the transfer was lodged with the Company.
- (b) The failure to provide a notice pursuant to clause 7.8(a) will not invalidate the decision of the Directors.

## 7.9 Holding Locks

- (a) The Company may apply a Holding Lock to securities where permitted to do so under the Listing Rules and the ASX Settlement Operating Rules.
- (b) If the Company asks for a Holding Lock to be applied according to the Listing Rules and the ASX Settlement Operating Rules, the Company must notify the holder of those securities of the Holding Lock and the reason for its application within five Business Days after the day on which the Company asked for the Holding Lock.

## 7.10 Retention of instruments of transfer

On delivery of an instrument of transfer to the Company, property in and title to that instrument of transfer (but not the underlying Shares), passes to the Company. The Company will be entitled to absolute possession of that instrument.

## 7.11 Powers of attorney

Any power of attorney granted by a Member empowering the attorney to transfer Shares to which the Member is entitled that is lodged with, produced or exhibited to the Company (or any officer of the Company) will be treated as continuing and remaining in full force and effect, as between the Company and the grantor of that power. The power of attorney may be acted on, until express notice in writing that it has been revoked or notice of the death of the grantor has been given and lodged at the Office or at the place where the Register is kept.

# 8. Transmission of Shares

---

## 8.1 Title on death of Member

- (a) Subject to 8.1(c), if a Member dies, then the only person who may be recognised by the Company as having any title to or interest in the Shares held by the deceased are:

- (i) where the deceased was a sole holder - the legal personal representative of the deceased; and
  - (ii) where the deceased was a joint holder - the surviving joint holder or joint holders.
- (b) This clause does not in any way release the estate of a deceased Member from any liability in respect of any Share, whether that Share was held solely or jointly by the deceased with other persons.
- (c) The Directors may register a transfer of Shares signed by a Member before a Transmission Event even though the Company has notice of the Transmission Event.

## **8.2 Registration as holder**

- (a) Subject to the ASX Settlement Operating Rules and the *Bankruptcy Act* 1966 (Cth), any person becoming entitled to a Share as a consequence of the death, bankruptcy or mental incapacity of a Member may, on producing such evidence as the Directors require, elect either:
- (i) to be registered as the holder of the Share, in which case the person must provide the Company with written notice signed by the person stating that election; or
  - (ii) to nominate another person to be registered as the holder of the Share, in which case the person must execute a transfer of the Share to that other person.
- (b) Subject to the ASX Settlement Operating Rules, all the limitations, restrictions and provisions of this Constitution relating to the right to transfer, and the registration of a transfer of, Shares apply to any notice (under clause 8.2(a)(i)) or transfer (under clause 8.2(a)(ii)) as if the death or bankruptcy of the Member had not occurred and the notice or transfer were executed or effected by that Member.
- (c) If the Company has acted in good faith in registering a person pursuant to clause 8.2(a), the person who makes the election must indemnify the Company to the extent of any loss or damage suffered by the Company as a result of the registration.

## **8.3 Entitlement to deceased's rights**

Where a Member dies, becomes bankrupt or suffers from any mental incapacity, the personal representative of the Member or the trustee of the Member's estate (as the case may be) is entitled to the same dividends and other advantages and rights as the Member would have been entitled to if the Member had not died, become bankrupt or suffered from a mental incapacity.

## **8.4 Joint entitlement**

Where two or more persons are jointly entitled to any Share as a consequence of the death, bankruptcy or mental incapacity of a Member, they are treated as being joint holders of the Share for the purposes of this Constitution.

## **9. Alteration of capital**

---

### **9.1 Alteration of capital**

The Company in general meeting may increase, divide, consolidate or reduce its Share capital if it complies with the Act and the Listing Rules.

## 9.2 Share buy-back

The Company may buy Shares in itself on terms and at times determined by the Directors according to the Act and the Listing Rules.

## 9.3 Additional rights

- (a) Where Shares are consolidated or subdivided under clause 9.1, the Company in general meeting may determine by special resolution that, as between the Shares resulting from that consolidation or subdivision, one or more of the Shares has some preference or special advantage in relation to dividends, capital, voting or anything else over or compared with one or more of the other Shares.
- (b) Nothing in clause 9.3(a) in any way limits the operation of clause 2.3.

## 9.4 Consolidation or division

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

# 10. General meetings

---

## 10.1 Annual general meeting

Annual general meetings must be held in compliance with the Act and the Listing Rules.

## 10.2 Convening general meetings

- (a) A Director may call a general meeting at any time.
- (b) The Directors must convene a general meeting on the requisition of Members according to the Act.

## 10.3 Notice of general meeting

- (a) A notice of a general meeting must:
  - (i) set out the place, the date and the time of meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
  - (ii) state the general nature of the business to be transacted at the meeting;
  - (iii) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
  - (iv) contain a form of proxy;
  - (v) contain a statement setting out the following information:
    - (A) that the Member has a right to appoint a proxy of the Member's choice;
    - (B) whether or not the proxy needs to be a Member of the Company;

- (C) that a Member who is entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise; and
  - (D) while the Company is Listed, a place and a fax number (and, at the option of the Company, an electronic mail address) for the purposes of receipt of proxy appointments; and
- (vi) contain any other matters required by the Act.
- (b) Notice of every general meeting of the Company must be given in a manner authorised by clause 27.1 and according to the Act and the Listing Rules to:
- (i) every Member;
  - (ii) every Director and Alternate Director;
  - (iii) the auditors of the Company; and
  - (iv) the ASX,
- and no other person is entitled to receive notice of a general meeting of the Company unless the Act or the Listing Rules otherwise require.

#### **10.4 Meetings may be cancelled or postponed**

The Directors may at any time after notice of a general meeting has been given, postpone or cancel the general meeting by giving notice to everyone entitled to receive notice of that general meeting.

#### **10.5 Failure to give notice**

- (a) Subject to the Act, the accidental omission to give notice of a general meeting to or the non-receipt of notice of a general meeting by any Member does not invalidate any of the proceedings of that meeting.
- (b) Failure to give a member or any other person notice of a general meeting does not invalidate anything done or resolution passed at a general meeting if before or after the meeting, the person notifies the Company of the person's agreement to that thing or resolution.

#### **10.6 Technology**

The Company may hold a general meeting simultaneously at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate in the meeting.

## **11. Proceedings at general meetings**

---

### **11.1 Quorum required**

No business may be transacted at any general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of Eligible Members is present at the time when the meeting proceeds to business.

## 11.2 Quorum

A quorum is three Eligible Members present. For the purpose of determining whether a quorum is present, a person attending as a proxy or as a Representative appointed according to the Act of a corporation that is an Eligible Member, is treated as being an Eligible Member. If a Member has appointed more than one proxy or Representative, only one of them may be counted.

## 11.3 Absence of quorum

If a quorum is not present within 30 minutes from the time appointed for the general meeting:

- (a) where the meeting was convened on the requisition of Members, the meeting is dissolved; or
- (b) in any other case:
  - (i) the meeting stands adjourned to the date, time and place, as the Directors determine or, if no determination is made by the Directors, to the same day in the next week at the same time and same place; and
  - (ii) if at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the meeting is dissolved.

## 11.4 Chair

The chair of Directors (if any) or, in the chair's absence, the deputy chair, will preside as chair at every general meeting.

## 11.5 Decisions of the chair are final

Any questions arising at a general meeting relating to the order, business, procedure or conduct of the meeting will be referred to the chair whose decision is final.

## 11.6 Absence of chair

Where a general meeting is held and:

- (a) a chair has not been elected by the Directors; or
- (b) the chair elected by the Directors is not present within 15 minutes after the time appointed for the holding of the meeting; or
- (c) the chair is unwilling to act,

the Directors present must elect one of the Directors to be chair of the meeting or, if no Directors are present or if all Directors decline to take the chair, the Members present must elect one of their number to be chair of the meeting.

## 11.7 Adjournment of meetings

The chair may, with the consent of any general meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

**11.8 Notice of adjourned meeting**

Notice of an adjournment or of the business to be transacted at an adjourned meeting need only be given when a general meeting is adjourned for 21 days or more, in which case at least three days' notice of the adjourned meeting must be given.

**11.9 Voting at general meetings**

- (a) Subject to the Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- (b) A resolution put to the vote of any general meeting must be decided on a show of hands unless a poll is demanded (before or immediately after the declaration of the result of the show of hands):
  - (i) by the chair;
  - (ii) by at least five Eligible Members present in person, by proxy or Representative and entitled to vote on the resolution; or
  - (iii) by an Eligible Member or Eligible Members present in person, by proxy or Representative with at least 5% of the total voting rights of all the Eligible Members having the right to vote at the meeting,
 but:
  - (iv) no poll may be demanded on the election of a chair; and
  - (v) no poll may be demanded on the question of the adjournment of a meeting, except by the Chair.

**11.10 Result of voting by show of hands**

Unless a poll is demanded according to clause 11.9:

- (a) a declaration by the chair that a resolution has, on a show of hands, been carried, carried unanimously, by a particular majority, or lost; and
- (b) an entry to that effect made in the book containing the minutes of the proceedings of the Company,

is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

**11.11 Withdrawal of demand for poll**

A demand for a poll may be withdrawn.

**11.12 Taking of poll**

- (a) A poll demanded on a matter, other than the question of an adjournment, must be taken when and in the manner the chair directs.
- (b) A poll on the question of an adjournment must be taken immediately.

**11.13 Chair has a casting vote**

In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting at which the show of hands takes place or at which the poll is demanded has a casting vote.

**11.14 Right to receive notice and attend**

Subject to this Constitution and any rights or restrictions for the time being attached to any class or classes of Shares, each Member, each Director (including each Alternate Director), the ASX and the auditor of the Company are entitled to receive notice of, and to be present and to speak at, each general meeting.

**11.15 Voting entitlement**

Subject to this constitution and to any rights or restrictions for the time being attached to any class or classes of Shares, at meetings of Members or classes of Members:

- (a) each Eligible Member entitled to vote may vote in person, by proxy or Representative;
- (b) on a show of hands, every Eligible Member or person entitled to the rights of an Eligible Member according to this Constitution present in person, by proxy or Representative, has one vote; and
- (c) on a poll, every Eligible Member or person entitled to the rights of an Eligible Member according to this Constitution present in person, by proxy or Representative, has:
  - (i) one vote for each fully paid Share that Eligible Member holds; and
  - (ii) a fraction of a vote for each partly paid Share that Eligible Member holds, where the fraction is equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited) on that Share,

except that an Eligible Member is not entitled to vote at a general meeting if:

  - (iii) any calls or other sum presently payable by that Eligible Member in respect of Shares are outstanding; or
  - (iv) that Eligible Member is in breach of the Listing Rules relating to Restricted Securities, or in breach of a restriction agreement by that Eligible Member.

**11.16 Vote of joint holders**

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 of Members counts.

**11.17 Voting rights**

- (a) If a person present at a general meeting represents by proxy or Representative more than one Member, on a show of hands the person is entitled to one vote only even though he or she represents more than one Member.
- (b) A person entitled to a Share because of a Transmission Event may vote at a general meeting in respect of that Share in the same way as if that person were the registered holder of the Share if, at least 48 hours before the meeting (or such shorter time as the Directors determine), the Directors:

- (i) admitted that person's right to vote at that meeting in respect of the Share; or
- (ii) were satisfied of that person's right to be registered as the holder of, or to transfer, the Share.

Any vote duly tendered by that person must be accepted and the vote of the registered holder of those Shares must not be counted.

- (c) A Member is not entitled to vote on a resolution if, under the Act or the Listing Rules, the notice which called the meeting specified that:

- (i) the Member must not vote or must abstain from voting on the resolution; or
- (ii) a vote on the resolution by the Member must be disregarded for any purposes.

If the member or a person acting as proxy or Representative of the Member does tender a vote on that resolution, their vote must not be counted.

- (d) The chair may decide any difficulty or dispute which arises as to the number or votes which may be cast by or on behalf of any Member and the decision of the chair is final.

#### **11.18 Objection to voting rights**

An objection may be raised with the chair of the general meeting as to the qualification of a vote, but only at the meeting or adjourned meeting at which the vote objected to is given or tendered. The decision of the chair is final. A vote not disallowed under such an objection is valid for all purposes.

#### **11.19 Appointment of proxies**

- (a) An instrument appointing a proxy is valid if it is signed by the Member making the appointment and contains the information required by the Act and the Listing Rules or it is in any form approved by the Directors.
- (b) A proxy or Representative may, but need not be a Member.
- (c) A Member who is entitled to vote at a general meeting of the Company may appoint not more than two proxies to attend and vote at the general meeting on the Member's behalf.
- (d) For the purposes of this clause 11.19, a proxy appointment received at an electronic address specified in the notice of general meeting for the receipt of proxy appointment or otherwise received by the Company in accordance with the Act is taken to have been executed if the appointment:
  - (i) includes or is accompanied by a personal identification code allocated by the Company to the Member making the appointment;
  - (ii) has been authorised by the Member in another manner approved by the Directors and specified in or with the notice of meeting; or
  - (iii) is otherwise authenticated in accordance with the Act.
- (e) Unless otherwise provided in the appointment of a proxy or Representative, an appointment will be taken to confer authority:

- (i) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
- (ii) to vote on a procedural motion, including any motion to elect the chair, to vacate the chair or to adjourn the general meeting;
- (iii) to act generally at the meeting,

even though the appointment may specify the way the proxy is to vote on a particular resolution.

- (f) Unless otherwise provided in the appointment of a proxy or Representative, an appointment will be taken to confer authority, even though the instrument may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the rescheduled or adjourned meeting or at the new venue.
- (g) The appointment of a proxy is not revoked by the appointor attending and taking part in the general meeting, but if the appointor votes on a resolution, the proxy is not entitled to vote, and must not vote, as the appointor's proxy on the resolution.
- (h) Where a Member appoints 2 proxies to vote at the same general meeting:
  - (i) if the appointment does not specify the proportion or number of the Member's votes each proxy may exercise, each proxy may exercise half the member's votes;
  - (ii) on a show of hands, the proxy may not vote if more than one proxy attends; and
  - (iii) on a poll, each proxy may only exercise votes in respect of those shares or voting rights the proxy represents.

#### **11.20 Appointment of Representatives**

- (a) A body corporate which is a Member may appoint a specified person to act as its Representative to exercise all or any of the powers the body corporate may exercise:
  - (i) at meetings of the Members;
  - (ii) at meetings of creditors or debenture holders; or
  - (iii) relating to resolutions to be passed without meetings.
- (b) The appointment under clause 11.20(a) may be a standing one.

#### **11.21 Powers of proxies and Representatives**

Unless otherwise specified in the instrument of appointment, a proxy or Representative may exercise, on the Member's behalf, all of the powers that the Member could exercise at a meeting or in voting on a resolution, including the right to join in and demand for a poll.

#### **11.22 Validity of instrument of appointment**

- (a) An instrument appointing a proxy or a Representative must not be treated as valid unless this clause 11.22 has been complied with.

- (b) An instrument appointing a proxy must be received by the Company (together with any authority under which the appointment was signed or a certified copy of the authority, where the appointment is signed by the appointor's attorney):
  - (i) at least 48 hours before the time for holding the meeting;
  - (ii) if the meeting has been adjourned, at least 48 hours before the resumption of the adjourned meeting; or
  - (iii) in the case of a poll conducted at a date later than the date of the meeting at which it was demanded, at least 24 hours before the time appointed for the taking of the poll.
- (c) A copy of an instrument appointing a Representative must be received by the Company:
  - (i) at least 48 hours before the time for holding the meeting;
  - (ii) if the meeting has been adjourned, at least 48 hours before the resumption of the adjourned meeting; or
  - (iii) in the case of a poll conducted at a date later than the date of the meeting at which it was demanded, at least 24 hours before the time appointed for the taking of the poll,

and must accompany the Representative and be produced to the Secretary or another authorised person of the Company when the Representative attends the relevant meeting.

- (d) A document is received by the Company under this clause 11.22 when it is received in accordance with the Act, and to the extent permitted by the Act, if the document is produced or the transmission of the document is otherwise verified to the Company in the way specified in the notice of meeting.
- (e) The chair of a meeting may:
  - (i) permit a person claiming to be a Representative to exercise the powers of a Representative, even if the person is unable to establish to the chair's satisfaction that he or she has been validly appointed; or
  - (ii) permit the person to exercise those powers on the condition that, if required by the Company, he or she produce evidence of the appointment within the time set by the chair.
- (f) The chair of a meeting may require a person acting as a proxy or Representative to establish to the chair's satisfaction that the person is the person duly appointed to act. If the person fails to satisfy the requirement, the chair may exclude the person from attending or voting at the meeting.
- (g) The chair may delegate his or her powers under clauses 11.22(e) and 11.22(f).

### **11.23 Validity of vote of proxy notwithstanding death etc of Member**

Despite any other clause of this Constitution, a vote given according to the terms of an instrument of proxy or an instrument appointing a Representative is valid despite:

- (a) the previous death or unsoundness of mind of the appointing Member;

- (b) the revocation of the instrument (or of the authority under which the instrument was executed); or
- (c) the transfer of the Share in respect of which the instrument is given,

if no notice in writing of the death, unsoundness of mind, revocation or transfer has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

## **12. Appointment and removal of Directors**

---

### **12.1 Election of Directors**

The Company must hold an election of Directors each year.

### **12.2 Nomination of Directors**

Nominations for the election of Directors must be accepted up to 35 Business Days (in the case of a meeting that Members have requested Directors to call, 30 Business Days) before the date of a general meeting at which Directors may be elected.

### **12.3 Election of Directors – rotation**

- (a) Directors must not hold office (without re-election) after the third annual general meeting following the Director's appointment or three years, whichever is longer.
- (b) A Director appointed to fill a casual vacancy or as an addition to the board must not hold office (without re-election) past the next annual general meeting.
- (c) This clause does not apply to the Managing Director (but if there is more than one Managing Director, only one is entitled not to be subject to re-election).

### **12.4 Continuing Directors**

The Directors who hold office at the date of adoption of this Constitution continue in office, subject to this Constitution.

### **12.5 Number of Directors**

- (a) Subject to clause 12.3, the Company must have at least three Directors.
- (b) At least two Directors must ordinarily reside in Australia.
- (c) The maximum number of Directors is to be fixed by the Directors, but may not be more than 12 unless the Company in general meeting resolves otherwise. The Directors must not determine a maximum which is less than the number of Directors in office at the time the determination takes effect.

### **12.6 Variation to number of Directors**

Subject to clause 12.5, the Company may from time to time by resolution in general meeting do any or all of the following:

- (a) if the Company is Listed and there is a reduction or increase in the number of Directors, determine the rotation by which the reduced or increased number are to retire; and

- (b) appoint new Directors.

#### **12.7 Fulfilment of 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 maximum number fixed according to this Constitution.
- (b) A Director appointed under clause 12.7(a) must retire at the next following annual general meeting of the Company and will then be eligible for re-election.
- (c) Rule 12.7(b) does not apply to the Managing Director (or the first appointed Managing Director if there is more than one).

#### **12.8 Removal of Directors**

The Company in general meeting may, in addition to any power conferred by the Act, by resolution, remove any Director and may, by resolution, appoint a replacement Director.

#### **12.9 Directors need not be Members**

A Director need not be a Member.

#### **12.10 Vacation of Director's office**

In addition to the circumstances prescribed by the Act, the office of a Director becomes vacant if the Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) resigns by notice in writing to the Company;
- (c) is absent, without leave of absence from the other Directors, from meetings of the Directors for three consecutive months;
- (d) is removed as a Director under this Constitution;
- (e) becomes bankrupt or suspends payment or makes any general arrangement or composition with that Director's creditors;
- (f) is prohibited by the Act from being a Director; or
- (g) is convicted on indictment of an offence and the Directors do not within one month after that conviction resolve to confirm the Director's appointment or election (as the case may be) to the office of Director.

#### **12.11 Compulsory retirement**

- (a) Subject to the Listing Rules and clause 12.11(b), at each annual general meeting, the following Directors automatically retire and are eligible for re-appointment:
  - (i) one third of the Directors or, if their number is not a multiple of three, then the number nearest to but not exceeding one third of the Directors (excluding Directors who retire by virtue of clause 12.7(b)); and

- (ii) any Director who, if that Director did not retire at that annual general meeting, would at the next annual general meeting, have held that office for more than three years.
- (b) Rule 12.11(a) does not apply to the Managing Director (or the first appointed Managing Director if there is more than one) or an Alternate Director.
- (c) The retirement of a Director from office under this Constitution and the re-election of a Director or the election of another person to that office (as the case may be) takes effect at the conclusion of the meeting at which the retirement and re-election or election occur.

#### **12.12 Identification of rotating Directors**

- (a) The Directors who are to retire by reason of clause 12.11(a)(i) are those of the Directors the subject of that clause who have been in office the longest and, as between Directors who have been in office for an identical period, those to retire are (unless they otherwise agree among themselves) to be selected by lot.
- (b) Where a Director has previously vacated office, the length of time that that Director has been in office will be computed from the Director's last election or appointment by a general meeting.

#### **12.13 Appointment at annual general meeting**

At any annual general meeting at which a Director retires under clause 12.11, the Company may by resolution fill the office vacated by appointing a person as Director.

#### **12.14 Notice of nomination of Directors**

- (a) Except in the case of a Director retiring under clause 12.11 or a person recommended for appointment by the Directors, a person is only eligible to be appointed as a Director by resolution at a general meeting where the Company receives both:
  - (i) a nomination of the person by a Member; and
  - (ii) a consent to nomination signed by that person,
 at its Office at least 30 Business Days before the relevant general meeting.
- (b) A person recommended by the Directors to act as a Director must be nominated by a Director at least 25 Business Days before the relevant general meeting at which the appointment of that person as a Director will be considered. The nomination must be accompanied by a consent to nomination signed by that person.
- (c) Notice of the name of each candidate for election to the office of Director must be given to all Members at least seven Business Days before the meeting at which the election is to be held.

#### **12.15 Less than minimum number of Directors**

Where the office of a Director becomes vacant, the continuing Directors may continue to act except where the number of Directors falls below the minimum number set by clause 12.5 or the Act, in which case the continuing Directors may act only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a general meeting of the Company; or

- (c) in an emergency.

#### **12.16 Ineligibility**

A partner, employer or employee of an auditor of the Company may not be appointed or elected as a Director.

### **13. Remuneration of Non-Executive Directors**

---

#### **13.1 Non-Executive Directors' remuneration**

- (a) The Non-Executive Directors may be paid such aggregate remuneration which must not exceed the amount fixed from time to time by the Company in general meeting, and that remuneration accrues from day to day. The notice of meeting must include the total amount of increase, the maximum amount that may be paid to the Non-Executive Directors as a whole and any other matters required by the Listing Rules.
- (b) The remuneration may be divided among the Non-Executive Directors in such proportion as they from time to time agree and, in default of agreement, equally.
- (c) If a Non-Executive Director is paid, he or she must be paid a fixed sum. The remuneration of a Non-Executive Director must not include a commission on, or a percentage of, profits or operating revenue.

#### **13.2 Expenses incurred by Directors**

The Non-Executive Directors may be paid all travelling and other expenses properly incurred by them in attending and returning from:

- (a) meetings of the Directors or any committee of the Directors; or
- (b) general meetings of the Company,

or otherwise in connection with the business of the Company.

### **14. Retirement benefits**

---

#### **14.1 Payment of retirement benefits**

A Director may be paid a retirement benefit as determined by the Directors according to the provisions of the Act and the Listing Rules and, where required by the Act or the Listing Rules, as approved by the Company in general meeting.

#### **14.2 Retirement benefits generally**

A retirement benefit includes any benefit paid in consequence of the loss by a Director of, or the retirement of the Director from, the office of Director, or in consequence of the death of the Director.

#### **14.3 Death of Director**

Where a retirement benefit is payable in consequence of the death of a Director, that benefit may be paid to the Director's spouse, children or other people the Directors determine were financially dependant on the Director at the time of the Director's death, in such shares as determined by the Directors.

#### **14.4 Company may contract to pay retirement benefits**

The Company may enter into a contract or arrangement with a Director for the purpose of providing or making arrangements for the payment of a retirement benefit according to this clause 14.

### **15. Powers of Directors**

---

#### **15.1 Power to manage Company generally**

Subject to the Act, the Listing Rules and to any other provision of this Constitution, the business of the Company is to be managed by the Directors who may exercise all powers of the Company.

#### **15.2 Appointment of attorneys**

The Directors may by power of attorney appoint any person to be an attorney of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.

### **16. Duties and interests of Directors**

---

#### **16.1 Permitted interests of Directors**

Subject always to the Act and to compliance with clause 16.2, a Director and any firm, body or entity in which a Director has a direct or indirect interest may, in any capacity:

- (a) enter into any contract or arrangement with the Company;
- (b) be appointed to and hold any office or place of profit (other than that of auditor) under the Company, a related body corporate, or any body corporate in which the Company is a member or otherwise interested; and
- (c) act in a professional capacity other than as auditor of the Company,

and may receive and retain for their own benefit any remuneration, profits or benefits as if they were not a Director.

#### **16.2 Disclosure of interests**

- (a) A Director must declare the existence, nature, character and extent of any material personal interest in a matter that relates to the affairs of the Company at a Directors' meeting if and as required by the Act and the Listing Rules.
- (b) The Secretary must record all declarations in the minutes of the relevant Directors' meeting.
- (c) A Director's failure to make disclosure under clause 16.2(a) does not affect the validity of an act, transaction, instrument, resolution or other thing.

#### **16.3 Prohibition on voting**

- (a) A Director who has a direct or indirect material personal interest in a matter that is being considered at a Directors' meeting must not:
  - (i) vote in respect of the matter; or

- (ii) be present at the meeting while the matter is being considered, except as permitted by or under the Act.
- (b) If the Director purports to vote on any matter contemplated by clause 16.3(a), the Director's vote will not be counted.
- (c) The requirement in clause 16.3(a) is in addition to any requirements of the Act and the Listing Rules in relation to voting by an interested director of a public company.
- (d) A Director's failure to comply with clause 16.3(a) does not render void or voidable any resolution or any contract or arrangement in which the Director has a direct or indirect material interest.

#### **16.4 Execution of instruments**

A Director may execute any instrument despite any interest which that Director has in the subject matter of that instrument.

#### **16.5 Directors to keep matters confidential**

Each Director and officer of the Company must:

- (a) keep secret all aspects of all transactions of the Company except:
  - (i) to the extent necessary to enable the person to perform their duties to the Company;
  - (ii) as required by the Act or the Listing Rules; or
  - (iii) when requested to disclose information by the Directors to the auditors of the Company or a general meeting of the Company; and
- (b) if requested by the Directors, sign and make a declaration that they will not disclose or publish any aspect of any transaction of the Company.

#### **16.6 Application to Alternate Director**

The provisions of this clause 16 extend and apply to Alternate Directors.

### **17. Proceedings of Directors**

---

#### **17.1 Directors may regulate meetings**

The Directors may meet in person at a single location or at more than one location using any technology consented to by all of them for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

#### **17.2 Convening Directors' meetings**

A Director may, at any time, and a Secretary must on the request of a Director, convene a meeting of the Directors on giving notice individually to every other Director and Alternate Director.

**17.3 Notice of meetings of Directors**

Unless agreed otherwise by all Directors, 48 hours notice of every meeting of Directors must be given to each Director and to each Alternate Director (whether in Australia or not).

**17.4 Decisions resolved by majority**

At a meeting of Directors:

- (a) each Director present has one vote; and
- (b) questions arising are to be decided by a majority of votes of Directors present and entitled to vote.

**17.5 Chair does not have a casting vote**

In the case of an equality of votes, the chair of a meeting of Directors does not have a second or casting vote.

**17.6 Quorum**

At a meeting of Directors, a quorum is two Directors present.

**17.7 Number of Directors less than quorum**

In the event of a vacancy or vacancies in the office of a Director or Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of:

- (a) increasing the number of Directors to a number sufficient to constitute a quorum; or
- (b) convening a general meeting of the Company.

**17.8 Election of chair and deputy chair**

- (a) The Directors may elect one of their number to chair their meetings and may determine the period for which that Director is to hold that position.
- (b) The Directors may also elect one of their number as a deputy chair who, in the absence of the chair at a meeting of the Directors, may exercise all the powers and authorities of the chair.

**17.9 Absence of chair**

Where a Directors' meeting is held and:

- (a) a chair and deputy chair have not been elected as provided by clause 17.8;
- (b) neither the previously elected chair nor the previously elected deputy chair is present within 10 minutes after the time appointed for the holding of the meeting; or
- (c) both the previously elected chair and the previously elected deputy chair are unwilling or unable to act,

the Directors present must elect one of their number to act as chair of the meeting.

**17.10 Delegation of powers to committee**

- (a) The Directors may delegate any of their powers to a committee or committees consisting of those of their number and other people as they think fit.
- (b) A delegation of a power, or a specified class of powers, may be made either generally or as otherwise provided by the terms of the delegation.

**17.11 Powers of committee**

If any power is delegated to a committee under clause 17.10:

- (a) the committee must exercise the powers delegated according to any directions of the Directors;
- (b) any power exercised by the committee is taken to be exercised by the Directors;
- (c) the delegation does not prevent the exercise of the power by the Directors; and
- (d) where the exercise depends on the opinion, belief or state of mind of the Directors, the power may be exercised by the committee on the opinion, belief or state of mind of the committee.

**17.12 Meetings of committee**

The provisions of this Constitution relating to meetings of Directors:

- (a) apply so far as they are capable of application; and
- (b) are altered as necessary to every meeting held by a committee appointed by the Directors.

**17.13 Circular resolutions of Directors**

- (a) A resolution in writing signed by or consented to by all of the Directors, other than:
  - (i) any Director on leave of absence approved by the Directors;
  - (ii) any Director who the majority of Directors reasonably believe has not responded to the signing of the resolution within a reasonable time;
  - (iii) any Director who disqualifies themselves from considering the act, matter, thing or resolution in question on the grounds that they are not entitled at law to do so or has a conflict of interest; or
  - (iv) any Director who a majority of the Directors reasonably believe is not entitled at law to do the act, matter or thing or to vote on the resolution in question,

will be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held.

- (b) Any resolution under clause 17.13(a) may consist of several documents in like form, each signed by one or more Directors. An electronic transmission purporting to be signed by a Director will, for the purposes of this clause, be deemed to be in writing signed by that Director.
- (c) A Director may consent to a resolution by:

- (i) giving to the Company at its registered office a written notice (including by fax or other electronic means) addressed to the Secretary or to the chair of the meeting signifying assent to the resolution and either setting out its terms or otherwise clearly identifying them; or
  - (ii) telephoning the Secretary or the chair of Directors and signifying assent to the resolution and clearly identifying its terms.
- (d) The document or documents referred to in this clause will be deemed to constitute a minute of that meeting and will be entered in books kept for that purpose.

#### **17.14 Validity of Directors' actions**

All acts done by:

- (a) any meeting of the Directors;
- (b) a committee of Directors; or
- (c) any person acting as a Director,

are as valid as if the person had been duly appointed and was qualified to be a Director or to be a member of the committee, despite that it is afterwards discovered that there was some defect in the appointment of a person to be a Director or a member of the committee, or to act as a Director or a member of the committee, or that a person so appointed was disqualified. This clause 17.14 does not deal with the question whether an effective act by a Director binds the Company in its dealings with other people or makes the Company liable to another person.

#### **17.15 Directors need not be present in person**

- (a) Directors' meetings may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion. The Directors need not all be physically present in the same place. A Director who participates in a meeting held according to this clause is treated as being present and entitled to vote at the meeting. The minutes must record that a meeting was held according to this clause.
- (b) A Director will be taken to leave a Directors' meeting where the Directors are communicating with each other by any technological means if that Director's technological communication device is disconnected in such a manner that all Directors participating are, or should be, aware that the Director has ceased to participate in the meeting. Unless the Directors participating in the meeting become aware that communications have been disrupted, it will be conclusively presumed that all Directors known to have been participating in the meeting at its commencement have been present and have formed part of the quorum at all times during the meeting.
- (c) The disruption of communications during a Directors' meeting held using technological communication will not invalidate proceedings at that meeting.

## **18. Alternate Directors**

---

### **18.1 Appointment of Alternate Directors**

A Director may, with the approval of a majority of the other Directors, appoint any person (other than the auditor of the Company or a partner or employee of the auditor of the Company) who need not be a Member, to be an Alternate Director in the Appointor's place during such period as the Appointor thinks fit.

**18.2 Entitlement to notice and to vote**

An Alternate Director is entitled to notice of meetings of the Directors and, if the Appointor is not present at such meeting, is entitled to attend and vote in place of the Appointor. Any vote of the Alternate Director is in addition to any vote the Alternate Director may have in that person's capacity as a Director.

**18.3 Powers of Alternate Director**

- (a) An Alternate Director may exercise any powers that the Appointor may exercise and is subject to the duties of the Appointor.
- (b) An Alternate Director is liable for their own acts or defaults in performing the duties and responsibilities of an alternate director and is not for any purpose to be taken to be the agent of, or required to act according to the instructions of, the Alternate Director's Appointor.

**18.4 Termination of appointment**

The appointment of an Alternate Director may be terminated at any time by the Appointor, even though the period of the appointment of the Alternate Director has not expired, and terminates in any event if the Appointor vacates office as a Director.

**18.5 Mode of appointment and termination**

An appointment, or the termination of any appointment, of an Alternate Director must be effected by notice in writing signed by the Appointor of that Alternate Director and served on the Company.

**19. Managing Director and Executive Directors**

---

**19.1 Appointment of Managing Director**

The Directors may from time to time appoint one or more of their number to the office of Managing Director for such period and on such terms as they think fit and, subject to the terms of any agreement entered into a particular case, may revoke any such appointment.

**19.2 Automatic termination of Managing Director's appointment**

The Managing Director's appointment as an employee under clause 19.1 is automatically terminated if the Managing Director ceases to be a Director for any reason.

**19.3 Vacation of Managing Director's office**

The office of Managing Director becomes vacant if any of the circumstances set out in clause 12.10 apply to the Managing Director.

**19.4 Remuneration of Managing Director and Executive Directors**

A Managing Director or Executive Director is (subject to the terms of any agreement entered into in a particular case) entitled to receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the Directors determine. If the Company is Listed, that remuneration must not include a commission on or percentage of operating revenue.

## **19.5 Managing Director's and Executive Directors' powers**

The Directors may at any time, on such terms and conditions and with such restrictions as they think fit:

- (a) confer on a Managing Director or an Executive Director any of the powers exercisable by them, and any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Directors; and
- (b) withdraw or vary any of those powers.

## **20. Secretary**

---

### **20.1 Appointment of Secretary**

- (a) The Directors must appoint at least one person to be a Secretary.
- (b) The Directors may vest in a Secretary the powers, duties and authorities as they may from time to time determine. The Secretary must exercise all those powers and authorities subject at all times to the control of the Directors.
- (c) At least one Secretary must be ordinarily resident in Australia.
- (d) The Directors may suspend or remove a Secretary.
- (e) A Secretary is entitled to attend all meetings of the Directors and all general meetings of the Company and may be heard on any matter.

### **20.2 Acting Secretary**

The Directors may appoint a person as acting Secretary or as a temporary substitute for a Secretary who for the purpose of this Constitution will be treated as being a Secretary.

## **21. Execution and seal**

---

### **21.1 Execution of documents**

Without limiting the ways in which the Company can execute documents under the Act and subject to this Constitution, the Company may execute a document without using the Seal if the document is signed by:

- (a) two Directors; or
- (b) a Director and a Secretary.

### **21.2 Safe custody of Seal**

If the Directors elect to use or retain a common seal, they must provide for the safe custody of the Seal.

### **21.3 Authority to use Seal**

- (a) The Seal may be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the Seal

- (b) Every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

#### **21.4 Official Seal**

The Company may have one or more official seals for use in particular localities, each of which must be a facsimile of the Seal with the addition on its face of the name of every place where it may be used.

#### **21.5 Duplicate common Seal**

The Company may have a duplicate common seal that must be a facsimile of the Seal with the addition on its face of the words 'Duplicate Seal' and the name of the place where it is to be used. A certificate referring to or relating to securities of the Company sealed with such a duplicate seal is to be treated as being sealed with the Seal.

#### **21.6 Non-autographic signatures**

The Directors may determine by resolution (either generally or in respect of a particular case) that where the Seal or duplicate common seal of the Company is to be affixed to any instrument, or where an instrument is to be executed without using the Seal, the signature of any Director or the Secretary or any other person may be affixed by some mechanical or other non-autographic means.

## **22. Company administration**

---

### **22.1 Minutes of meeting**

The Directors must cause minutes containing the following information to be entered into the Company's minute books within one month after the event whose proceedings are recorded in the minutes:

- (a) the names of the Directors present at each meeting of Directors;
- (b) the names of the committee members present at each meeting of a committee formed under clause 17.10;
- (c) all resolutions and proceedings of each general meeting;
- (d) all resolutions and proceedings of each meeting of Directors;
- (e) all resolutions and proceedings of each meeting of a committee formed under clause 17.10; and
- (f) all resolutions passed by Directors without a meeting.

### **22.2 Evidence of meetings**

Any minutes made under clause 22.1 that purport to be signed by the chair of the meeting to which they relate or by the chair of the next succeeding meeting are presumed to be an accurate record of the relevant proceedings, unless the contrary is proved.

**22.3 Inspection of records**

- (a) Except as otherwise required by the Act, the Directors may determine whether and to what extent, at what time and place and under what conditions, the accounting records and other documents of the Company will be open to the inspection of Members.
- (b) A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by the Act or authorised by the Directors or by the Company in general meeting.

**22.4 Execution of cheques and negotiable instruments**

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed (as the case may be) by any two Directors, or in such other manner as the Directors determine.

**23. Accounts and audits**

---

**23.1 Duty to keep accounts**

The Directors must cause to be kept such accounting records as correctly record and explain the transactions (including any transactions as trustee) and financial position of the Company and otherwise prepare the Company's financial statements according to the Act and the Listing Rules.

**23.2 Accounts to be laid before annual general meeting**

The Directors must cause the financial statements for the last financial year of the Company, together with such other accounts, reports and statements as required by the Act, to be laid before the annual general meeting.

**23.3 Audit**

- (a) The Directors must cause the accounts of the Company and the Register to be audited as required by the Act and the Listing Rules.
- (b) The Directors must send a copy of the auditor's report to the Members and lay that report before general meetings of the Company as required by the Act and the Listing Rules.
- (c) The auditors of the Company will be appointed and may be removed as provided in the Act.
- (d) The auditors of the Company will perform the duties and have the rights and powers provided in the Act.

**24. Dividends and reserves**

---

**24.1 Reserve fund**

The Directors may, before recommending any dividend:

- (a) set aside out of the profits of the Company those sums they think proper as reserves to be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied;

- (b) pending any such application, use those sums in the business of the Company or invest them in investments (which may be dealt with and varied) as they think fit;
- (c) carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve; or
- (d) appropriate to the Company's profits any amount previously set aside as a reserve.

#### **24.2 Determination of dividend**

- (a) The Directors may determine a dividend to be paid to the Members according to their rights and interests in the profits of the Company and may fix the amount and the time for and the method of payment. The Directors may rescind a decision to pay a dividend if they decide, before the payment date, that the Company's financial position no longer justifies the payment.
- (b) The Directors may fix the time and record date for determining entitlements to, and for the payment of, the dividend.
- (c) The people entitled to be paid a dividend will be:
  - (i) in the case of uncertificated holdings of Shares, those people so entitled according to the ASX Settlement Operating Rules; and
  - (ii) in the case of certificated holdings of Shares, people who are the registered holders of the Shares at the time and date fixed for determining entitlements to dividends according to clause 24.2(b).
- (d) A declaration by the Directors as to the amount of profits available for distribution by way of dividend is conclusive and binding on all Members.
- (e) When resolving to pay a dividend, the Directors may, unless prevented by the Listing Rules, direct payment of the dividend to particular Members wholly or partly out of any particular fund or reserve or out of profits derived from any particular source, and to the other Members wholly or partly out of any other particular fund or reserve or out of profits derived from any other particular source.

#### **24.3 Interim dividend**

The Directors may authorise the payment by the Company to the Members of such interim dividends as appear to the Directors to be justified by the profits of the Company.

#### **24.4 Interest not payable**

Interest is not payable by the Company in respect of any dividend.

#### **24.5 Dividend amount**

Subject to the Listing Rules and the rights of any persons entitled to Shares with special rights as to dividends, any profits of the Company are to be divided among Members in proportion to the aggregate amounts paid up on the Shares held by them respectively. An amount paid on a Share in advance of a call that attracts interest is not to be taken for the purposes of this clause to be paid up on the Share.

#### **24.6 Amounts deducted from dividends**

The Directors may deduct from any dividend payable to a Member any sums of money presently payable by that Member to the Company.

#### **24.7 Distribution of assets**

The Directors may pay any part of a dividend by the distribution of specific assets including paid up Shares in, or securities of, any other corporation, either generally or to specific Members. Where a difficulty arises in regard to such a distribution, the Directors may settle the matter as they think fit and may:

- (a) fix the value of any specific asset so distributed;
- (b) determine that cash payments will be made to any Members on the basis of any value so fixed in order to adjust the rights of all parties;
- (c) vest any such specific assets in trustees;
- (d) make cash payments in cases where members are entitled to fractions of shares or other securities and decide that amounts or fractions of less than a particular value decided by the Directors may be disregarded to adjust the rights of all parties; and
- (e) authorise any person to make, on behalf of all the Members entitled to any specific assets, cash, Shares or other securities as a result of the distribution, an agreement with the Company or another person which provides, as appropriate, for the distribution or issue to them of Shares or other securities credited as fully paid up for payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing Shares or other securities by applying their respective proportions of the amount resolved to be distributed. Any agreement made under this authority is effective and binding on all the Members concerned.

#### **24.8 Manner of payment**

- (a) The Directors may decide the method of any dividend or other amount in respect of a Share, including by payment in cash, by the issue of Shares, by the grant of options or by the transfer of assets. Different methods of payment may apply to different Members or groups of Members (such as overseas Members).
- (b) Without limiting any other method of payment which the Company may adopt, a dividend payable in cash in respect of Shares may be paid:
  - (i) by cheque sent by post directed to the address of the Member as shown in the Register or, in the case of joint holders, to the address notified to the Company for receipt of such money (and in default of notification, to the address shown in the Register as the address of the joint holder first named in that Register);
  - (ii) by cheque sent by post directed to such other address as the Member or joint holders in writing direct; or
  - (iii) by some other method of direct credit determined by the Directors to the Member or joint holders shown on the Register or to such person or place directed by them.

#### **24.9 Receipt from joint holders**

Any one of two or more joint holders may give effective receipts for any dividends, interest or other money payable in respect of the Shares held by them as joint holders.

**24.10 Unclaimed dividends**

All unclaimed dividends may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed or dealt with under any Act relating to unclaimed money. An amount credited to an account of the Company for the purpose of this clause 24.10 is to be treated as having been paid to the Member at the time it is credited to that account. The Company will not be a trustee of the money and no interest will accrue on the money.

**24.11 Effect on dividends of transfer of Shares**

Subject to the ASX Settlement Operating Rules, a transfer of Shares registered after the relevant record date for a dividend but before the dividend is paid, will not pass the right to the dividend.

**24.12 Restricted Securities**

During a breach of the Listing Rules relating to Restricted Securities, or a breach of a restriction agreement entered into under the Listing Rules, the Member holding the Restricted Securities is not entitled to any dividends, distribution or voting rights in respect of those Restricted Securities.

**24.13 Transmission Event**

Subject to the ASX Settlement Operating Rules, where a person is entitled to a Share because of a Transmission Event, the Directors may, but need not, retain any dividends payable on that Share until that person becomes registered as the holder of that Share or transfers it.

**24.14 Risk of cheque sent**

A cheque sent under clause 24.8(b):

- (a) may be made payable to bearer or to the order of the Member to whom it is sent or any other person the Member directs; and
- (b) is sent at the Member's risk.

**24.15 Unpresented cheque**

- (a) If a cheque for an amount payable under clause 24.8(b) is not presented for payment for 11 calendar months after issue or an amount is held in an account under clause 24.10 for 11 calendar months, the Directors may reinvest the amount, after deducting reasonable expenses, into Shares in the Company on behalf of, and in the name of, the Member concerned and may stop payment on the cheque. The Shares may be acquired on market or by way of new issue at a price the Directors accept is market price at the time. Any residual sum which arises from the reinvestment may be carried forward or donated to charity on behalf of the Member, as the Directors decide.
- (b) The Company's liability to pay the relevant amount is discharged by an application under this clause 24.15.
- (c) The Directors may do anything necessary or desirable (including executing any document) on behalf of the Member to effect the application of an amount under this clause 24.15.
- (d) The Directors may determine other rules to regulate the operation of this clause 24.15 and may delegate their power under this clause 24.15 to any person.

## **24.16 Non-Marketable Parcel**

If a distribution or issue of specific assets, Shares or securities to a particular Member or Members is, in the Directors' discretion, considered impracticable or would give rise to parcels of securities which do not constitute a Marketable Parcel, the Directors may make a cash payment to those Members or allocate the assets, Shares or securities to a trustee to be sold on behalf of, and for the benefit of, those members, instead of making the distribution or issue to those Members.

## **25. Plans**

---

### **25.1 Directors may implement plans**

The Directors may adopt and implement any number of plans on terms they determine by which a Member may elect to receive Shares as, or instead of, dividends.

### **25.2 Types of plans**

The plans that the Directors may adopt and implement under clause 25.1 include:

- (a) a dividend reinvestment plan (which, unless otherwise permitted by the Act or the Listing Rules, must be authorised by the Company in general meeting) where any Member or any number or class of Members eligible according to the plan may elect to reinvest dividends payable by the Company by subscribing for fully paid ordinary Shares in the capital of the Company according to the plan; and
- (b) a bonus Share plan where any Member or any number or class of Members eligible according to the plan may elect to forego any dividends that may be payable on all or some of the ordinary Shares held by that Member, and to receive instead some other entitlement according to the plan, including the allotment to the Member of fully paid ordinary Shares in the capital of the Company.

### **25.3 Plans may be amended, suspended etc.**

The Directors have all powers necessary or desirable to implement and carry out fully any plan adopted by them under this clause 25 and may (without limitation):

- (a) amend the terms of any plan as they desire; and
- (b) suspend for any period or terminate the operation of any plan as they desire.

## **26. Capitalisation of profits**

---

### **26.1 Application of capitalised amount**

- (a) Subject to the Act, the Listing Rules, any rights or restrictions attached to any Shares or class of Shares and any special resolution of the Company, the Directors may capitalise and distribute among those Members who would be entitled to receive dividends and in the same proportions, any amount:
  - (i) forming part of the undivided profits of the Company;
  - (ii) representing profits arising from an ascertained accretion to capital or a revaluation of the assets of the Company;
  - (iii) arising from the realisation of any assets of the Company; or

- (iv) otherwise available for distribution to Members.
- (b) The Directors may resolve that all or any part of such capitalised amount is to be applied:
  - (i) in paying up any amounts unpaid on Shares or other securities of the Company held by Members;
  - (ii) in paying up in full unissued Shares or securities of the Company to be issued to Members fully paid;
  - (iii) partly as mentioned in paragraph (i) and partly as mentioned in paragraph (ii); or
  - (iv) for any other purpose approved by the Company in general meeting,
 and any such application under clause 26.1(b) must be accepted by the Members entitled to share in the distribution in full satisfaction of their interests in the capitalised amount.

## **26.2 Adjustment of rights**

- (a) The Directors may do all things necessary to give effect to the application and resolution referred to in clause 26.1.
- (b) To the extent necessary to adjust the rights of the Members among themselves, the Directors may authorise any person to make, on behalf of all the Members entitled to any further Shares or other securities of the Company on the capitalisation:
  - (i) an agreement with the Company providing for the issue to them, credited as fully paid up, of any such further Shares or other securities of the Company; or
  - (ii) an agreement with the Company for the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing Shares by the application of their respective proportions of the sum resolved to be capitalised.
- (c) Any agreement made under this authority is effective and binding on all the Members concerned.

## **26.3 Options**

Where in accordance with the terms and conditions on which options to take up Shares are granted (and being options existing at the date of the passing of the resolution referred to in clause 26.1(b)) a holder of those options will be entitled to an issue of bonus Shares under this clause 26, the Directors may in determining the number of unissued Shares to be so issued, allow in an appropriate manner for the future issue of bonus Shares to option holders.

## **27. Notices**

---

### **27.1 Giving of notices by the Company**

The Company may serve a notice on any Member:

- (a) personally;

- (b) by sending it by post (air mail for Members residing outside Australia) to the address for the Member in the Register or the alternative address (if any) nominated in writing by the Member; or
- (c) by sending it to the fax number or electronic address (if any) nominated by the Member in writing.

### **27.2 Effecting of notices**

A notice is treated as being effectively served by the Company:

- (a) where sent by post, on the day after its date of posting;
- (b) where sent by air mail, on the seventh day after its date of posting;
- (c) where sent by fax and a complete and correct transmission report is received, on the day of transmission;
- (d) where sent by electronic means and no delivery failure report is received, on the day it is sent; and
- (e) where served personally or left at the Member's registered address, when delivered.

### **27.3 Notice to joint holders**

The Company may give a notice to the joint holders of a Share by giving the notice to the joint holder first named in the Register in respect of the Share.

### **27.4 Person entitled on death, bankruptcy or mental incapacity**

The Company may give a notice to a person entitled to a Share in consequence of the death, bankruptcy or mental incapacity of a Member by serving it on that person:

- (a) by any of the methods noted in clause 27.1 if that person has supplied an address (including an electronic address) or fax number within the State for the service of such notices; or
- (b) if such an address has not been supplied, in any manner in which notice might have been given if the death, bankruptcy or mental incapacity had not occurred.

### **27.5 Signature**

Subject to the Act, the signature to a notice given by the Company need not be handwritten.

## **28. Winding up**

---

### **28.1 Liquidator's powers on winding up**

If the Company is wound up, the liquidator may, with the sanction of a special resolution:

- (a) divide among the Members in kind the whole or any part of the property of the Company and may, for that purpose, set such value as the liquidator considers fair on any property to be so divided and may determine how the division is to be carried out between the Members or different classes of Members; and
- (b) vest the whole or any part of any property in trustees on trusts for the benefit of the contributories as the liquidator thinks fit.

**28.2 Distribution in proportion to issued capital paid up**

If, on a winding up of the Company, there remains a surplus, that surplus will be divided among the Members in proportion to the issued Share capital paid up on their Shares, whether or not the liquidator exercises the power under clause 28.1.

**28.3 Special rights prevail**

Rules 28.1 and 28.2 are without prejudice to the rights of holders of Shares issued on special terms and conditions.

**28.4 Member need not accept encumbered property**

No Member will be compelled by the provisions of this clause 28 to accept any property, including Shares or other securities, in respect of which there is any liability.

**29. Indemnities and insurance**

---

In this clause:

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

**Officer** means a person who is or has been a Director, secretary, Managing Director, Executive Director of the Company or any such other officers of the Company as the Directors in each case determine.

**29.1 Directors' and Officers' indemnities**

- (a) The Company must indemnify each Officer on a full indemnity basis and to the full extent permitted by law against all liability incurred by the Officer as an officer of the Company.
- (b) The indemnity in clause 29.1(a) does not operate in respect of any liability of the Officer to the extent that liability is covered by insurance.
- (c) The indemnity in clause 29.1(a):
  - (i) is enforceable without the Officer having to first incur any expense or make any payment;
  - (ii) is a continuing obligation and is enforceable by the Officer even though the Officer may have ceased to be an officer of the Company; and
  - (iii) applies to liability incurred both before and after the adoption of this Constitution.

**29.2 Insurance**

To the extent permitted by law, and where the Board considers it appropriate, the Company may pay, or agree to pay, a premium to arrange and maintain a contract insuring an Officer of the Company against any liability, on such terms as it considers appropriate for the Company.

## 30. General authorisation

---

The Company may, in any way the Act permits:

- (a) exercise any power;
- (b) take any action; or
- (c) engage in any conduct or procedure,

which, under the Act a company limited by shares may exercise, take or engage in.

## 31. Plebiscite to approve proportional takeover bids

---

### 31.1 Definitions

The meanings of the terms used in this clause 31 are set out below:

<b>Term</b>	<b>Meaning</b>
Approving Resolution	in relation to a Proportional Takeover Bid; a resolution to approve the Proportional Takeover bid passed in accordance with clause 31.3.
Approving Resolution Deadline	in relation to a Proportional Takeover Bid, the day that is 14 days before the last day of the bid period, during which the offers under the Proportional Takeover Bid remain open or a later day allowed by the Australian Securities and Investments Commission.
Proportional Takeover Bid	a takeover bid that is made or purports to be made under section 618(1)(b) of the Act in respect of securities included in a class of securities in the Company.
Relevant Class	in relation to a Proportional Takeover Bid, the class of securities in the Company in respect of which offers are made under the Proportional Takeover Bid.

### 31.2 Takeovers not to be-registered

Despite clause 7.7, a transfer giving effect to a contract resulting from the acceptance of an offer made under a Proportional Takeover Bid must not be registered unless an Approving Resolution to approve the Proportional Takeover Bid has been passed or is taken to have been passed in accordance with clause 31.3.

### 31.3 Approving Resolution

- (a) Where offers have been made under a Proportional Takeover Bid, the Directors must, before the Approving Resolution Deadline:
  - (i) convene a meeting of the persons entitled to vote on the Approving Resolution for the purpose of considering and, if thought fit, pass a resolution to approve the Proportional Takeover Bid; and
  - (ii) ensure that the resolution is voted on in accordance with this clause 31.3.

- (b) The provisions of this Constitution relating to general meetings apply, with such modification as the circumstances require, to a meeting that is convened under 31.3(a), as if that meeting were a general meeting of the Company.
- (c) The bidder under a Proportional Takeover Bid and any associates of the bidder are not entitled to vote on the Approving Resolution and if they do vote, their votes must not be counted.
- (d) Subject to clause 31.3(c), a person who, as at the end of the day on which the first offer under the Proportional Takeover Bid was made, held securities of the relevant class, is entitled to vote on the Approving Resolution relating to the Proportional Takeover Bid.
- (e) An Approving Resolution that has been voted on is taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than 50%, and otherwise is taken to have been rejected.
- (f) If an Approving Resolution has not been voted on in accordance with this clause 31.3 as at the end of the day before the Approving Resolution Deadline, an Approving Resolution will be taken to have been passed in accordance with this clause 31.3 on the Approving Resolution Deadline.

#### 31.4 Sunset

Clauses 31.1, 31.2 and 31.3, cease to have effect at the end of 3 years beginning:

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

## 32. Interpretation

---

### 32.1 Definitions

In this Constitution, unless the context otherwise requires:

**Alternate Director** means a person for the time being holding office as an alternate director of the Company under clause 18.1;

**Appointor** means, in respect of an Alternate Director, the Director who appointed the Alternate Director under clause 18.1;

**ASIC** means the Australian Securities and Investments Commission;

**Act** means the *Corporations Act 2001* (Cth), as amended or replaced from time to time;

**ASX** means ASX Limited ACN 008 624 691;

**ASX Settlement** means ASX Settlement Pty Limited ACN 008 504 532;

**ASTC Settlement Operating Rules** mean the operating rules of the settlement facility provided by ASX Settlement and any other rules of ASX Settlement which are applicable while the Company is Listed, each as amended or replaced from time to time, except to the extent of any express written waiver by the ASX;

**Board** means the board of Directors of the Company;

**Business Day** has the meaning given in the Listing Rules if the Company is Listed and otherwise means a day on which banks are open for the conduct of normal banking business in the capital city of the State (other than a Saturday, Sunday or public holiday);

**Chess Holding** has the meaning given in section 2 of the ASX Settlement Operation Rules;

**Chief Executive Officer** means the Managing Director unless otherwise agreed by the Board;

**Company** means Variscan Mines Limited ACN 003 254 395;

**Constitution** means this constitution of the Company, as amended from time to time;

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

**Eligible Member** means, in relation to a meeting of the Company (including a meeting of any class of Members), any person who is or was the registered holder of a Share at the time prescribed for that purpose in the notice convening the meeting;

**Executive Director** means a Director who is an employee (whether full-time or part-time) of the Company or of any related body corporate of the Company. It does not include a person acting solely as a Director;

**Holding Lock** has the meaning given in section 2 of the ASX Settlement Operating Rules;

**Listed** means having been admitted to the official list of the ASX and at the relevant time still being so admitted even though, for the avoidance of doubt, the quotation of the Company's securities may be suspended;

**Listing Rules** means the official listing rules of the ASX, and any other rules of the ASX which are applicable while the Company is Listed, each as amended or replaced from time to time, except to the extent of any express written waiver by the ASX;

**Managing Director** means a person holding office as a managing director of the Company under clause 19.1 and who may be known as the Chief Executive Officer;

**Marketable Parcel** has the meaning given to it in Listing Rule 19.12;

**Member** means a person entered on the Register as the holder of one or more Shares;

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

**Office** means the registered office of the Company for the time being;

**paid up** includes credited as paid up;

**Prescribed Rate** means the lower of 15% per annum and the rate prescribed under the rules of the Supreme Court of the State for the relevant period;

**Register** means the register of Members kept under the Act and where appropriate, includes a sub-register conducted by or for the Company under the Act and any branch register;

**Representative** means a person appointed pursuant to section 250D of the Act under clause 11.20;

**Restricted Securities** has the meaning given to it in Listing Rule 19.12;

**Seal** means the common seal of the Company and, as the context allows, includes an official seal, a share seal, a duplicate seal and a certificate seal;

**Secretary** means the secretary for the time being of the Company, and if there are joint secretaries, any one or more of those joint secretaries;

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

**SRN** has the meaning given in section 2 of the ASX Settlement Operation Rules;

**State** means New South Wales; and

**Transmission Event** means:

- (a) for a Member who is an individual, the Member's death, the Member's bankruptcy, or a Member becoming of unsound mind, or a person who, or whose estate, is liable to be dealt with in any way under the law relating to mental health; or
- (b) for a Member who is a body corporate, the dissolution of the Member or the succession by another body corporate to the assets and liabilities of the Member.

### **32.2 Application of the definitions in the Act, the Listing Rules and the ASX Settlement Operating Rules**

Unless the contrary intention appears in this Constitution:

- (a) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the Listing Rules or the ASX Settlement Operating Rules, the same meaning as in that provision of the Act, the Listing Rules or ASX Settlement Operating Rules (as the case may be); and
- (b) words that are given a general meaning in the Act have the same meaning in this Constitution.

### **32.3 General interpretation**

In this Constitution, unless the context otherwise requires:

- (a) the table of contents and headings are used only for convenience and do not affect interpretation;
- (b) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (c) a reference to any legislation or legislative provision, regulation, constitution or by-Act (including the Listing Rules and the ASX Settlement Operating Rules) includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (d) the singular includes the plural and vice versa;
- (e) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (f) a reference to any gender includes all genders;

- (g) a reference to this Constitution includes any schedule, annexure or exhibit to this Constitution and a reference to a rule, clause, schedule or paragraph is to a rule, clause, schedule or paragraph of this Constitution;
- (h) the schedules form part of this Constitution;
- (i) a reference to any instrument (such as a deed, agreement or document) is to that instrument (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time and from time to time; and
- (j) **including** and similar expressions are not and must not be treated as words of limitation.