



# Constitution of Bhagwan Marine Limited

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# Bhagwan Marine Limited ACN 009 154 349

## Constitution

### Preliminary

#### 1. Definitions

In this Constitution:

**Applicable Law** means the Corporations Act, the Listing Rules and the Settlement Rules.

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

**Board** means the Directors of the Company from time to time.

**Business Day** has the meaning given in the Listing Rules if the Company is included in the official list of ASX at the time, and otherwise means a day except a Saturday, Sunday or public holiday in the state or territory in which the Company is taken to be registered for the purposes of the Corporations Act.

**Chair** means in respect of a meeting of Shareholders (or part of such meeting), the person authorised to chair that meeting (or part of that meeting) in accordance with Clause 31.

**Corporate Representative** means a person authorised in accordance with the Corporations Act (or a corresponding previous law) by a Shareholder which is a body corporate to act as its representative at a meeting of Shareholders.

**Corporations Act** means the Corporations Act 2001 (Commonwealth).

**CSF Operator** means ASX Settlement Pty Ltd ACN 008 504 532 or its successor as the operator of the clearing and settlement facility for the financial market operated by ASX.

**Direct Vote** means a notice of a Shareholder's voting intention delivered to the Company by post, fax, electronic or other means approved by the Board and otherwise in accordance with this Constitution and the Direct Voting Rules.

**Direct Voting Rules** means any rules determined by the Board pursuant to Clause 38(a).

**Director** means a person appointed or elected to the office of director of the Company in accordance with this Constitution including, where appropriate, an alternate director of the Company.

**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.

**Jointly Held** means, in relation to a Share, a Share which the Register records 2 or more persons as the holders of that Share.

**Legal Costs** of a person means legal costs calculated on a solicitor-and-client basis incurred by that person in defending or resisting any proceedings (whether criminal, civil, administrative or judicial), appearing before or responding to actions taken by any court, tribunal, government authority or agency, other body or commission, a liquidator, an administrator, a trustee in bankruptcy or other authorised official, where that proceeding, appearance or response relates to a Liability of that person.

**Liability** of a person means any liability including negligence (except a liability for legal costs) incurred by that person in or arising out of the discharge of duties as an officer of the Company or in or arising out of the conduct of the business of the Company, including as result of appointment or nomination by the Company or a subsidiary as a trustee or as a director, officer or employee of another body corporate.

**Listing Rules** means the listing rules of ASX and any other rules of ASX which are applicable while the Company is admitted to the official list of ASX.

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

**Notice** means a notice or document given pursuant to, or for the purposes of, this Constitution or the Applicable Law.

**Participating Shareholder** means in respect of a meeting of Shareholders (or a meeting of a class of Shareholders):

- (a) a Shareholder present at the meeting in person, by proxy, attorney or Representative;
- (b) a Shareholder who has duly lodged a valid Direct Vote in relation to the meeting pursuant to Clause 38; and
- (c) a Shareholder who participates in the meeting using any one or more of the Virtual Meeting Technologies by which the meeting is being held.

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

**Register** means the register of Shareholders kept pursuant to the Applicable Law and, where appropriate, includes any subregister and branch register.

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

**Secretary** means a person appointed as, or to perform the duties of, secretary of the Company for the time being.

**Settlement Rules** means the operating rules of the clearing and settlement facility for the financial market operated by ASX.

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

**Shareholder** means a person whose name is entered in the Register as the holder of a Share and **registered holder** has a corresponding meaning.

**Transmission Event** means:

- (a) if a Shareholder is an individual, the death or bankruptcy of that Shareholder or that Shareholder becoming of unsound mind or becoming a person whose property is liable to be dealt with pursuant to a law about mental health; or
- (b) if a Shareholder is a body corporate, the deregistration of that Shareholder pursuant to the laws of the jurisdiction of its registration or the succession by another body corporate to the assets and liabilities of the Shareholder.

**Virtual Meeting Technology** means any technology (including online platforms) that allows a person to participate in a meeting without being physically present at the meeting.

## 2. Interpretation

Headings are for convenience only and do not affect interpretation. Unless the context indicates a contrary intention, in this Constitution:

- (a) a reference to a Clause is a reference to a clause of this Constitution;
- (b) a word importing the singular includes the plural (and vice versa);

- (c) a word indicating a gender includes every other gender;
- (d) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (e) the word "includes" in any form is not a word of limitation;
- (f) a reference to a partly paid Share is a reference to a Share on which there is an amount unpaid;
- (g) a reference to a call or an amount called in respect of a Share includes an amount that, by the terms of issue of a Share or otherwise, is payable at one or more fixed times;
- (h) a reference to a Shareholder for the purposes of a meeting of Shareholders or a meeting of a class of Shareholders is a reference to a registered holder of Shares or the class of Shares (as the case maybe) as at:
  - (i) in respect of a meeting of holders of Shares or a meeting of holders of a class of Shares for which the person calling the meeting has determined under the Corporations Act that Shares or a Share of that class (as the case may be) are taken to be held by the persons who held them at a specified time before the meeting, that time; or
  - (ii) otherwise, 48 hours before the relevant meeting, or if this time would fall on a trading day, 7.00pm (Sydney time) on that day or such other time specified in the Settlement Rules;
- (i) a reference to something being "written" or "in writing" includes that thing being represented or reproduced in any mode in a visible form;
- (j) a reference to a document being 'signed' or to 'signature' includes that document being executed or execution, under hand or under seal or by any other method permitted by applicable law, and in the case of an electronic copy of the document or a communication of the document in electronic form, includes the document being authenticated in accordance with applicable law or any other method the Board resolves;
- (k) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (l) a reference to a person being "present" at a meeting includes participating in the meeting using a Virtual Meeting Technology by which the meeting is being held; and
- (m) a reference to a "venue" of a meeting may be, but need not be, a physical place.

### **3. Application of Applicable Law**

- (a) Unless the context indicates a contrary intention, in this Constitution:
  - (i) a reference to the Applicable Law is to the Applicable Law in force in relation to the Company after taking into account any waiver, modification or exemption which is in force either generally or in relation to the Company;
  - (ii) a word or phrase given a meaning in the Applicable Law has the same meaning in this Constitution where it relates to the same matters as the

matters for which it is defined in the Applicable Law, unless that word or phrase is otherwise defined in this Constitution; and

- (iii) a reference to the Listing Rules or the Settlement Rules includes any amendment or replacement of those rules from time to time.
- (b) The replaceable rules in the Corporations Act do not apply to the Company.
- (c) In this Constitution, a reference to the Listing Rules, the Settlement Rules or ASX only applies while the Company is included in the official list of ASX.
- (d) If the Company is included in the official list of ASX, then:
  - (i) notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the 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 that 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 taken not to contain that provision to the extent of the inconsistency.

## **4. Enforcement**

- (a) Each Shareholder submits to the non-exclusive jurisdiction of the courts of Western Australia, the Federal Court of Australia and the courts competent to determine appeals from those courts with respect to any proceedings that may be brought at any time relating to this Constitution.
- (b) If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect pursuant to the law of any jurisdiction, then that does not affect or impair:
  - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
  - (ii) the legality, validity or enforceability pursuant to the law of any other jurisdiction of that or any other provision of this Constitution.

## **Capital**

### **5. Issue of securities**

- (a) Subject to the Applicable Law, this Constitution and any rights and restrictions attached to a class of Shares or other securities, the Company may by resolution of the Board issue Shares, options to acquire Shares, and other securities with rights

of conversion to Shares on any terms, to any person, at any time and for any consideration, as the Board resolves.

- (b) The Company may issue preference Shares (including those which may be, or at the option of either or both the Company and the holder are, liable to be redeemed) and may convert any issued Shares into preference Shares, if the rights of the holders of the preference Shares are as set out in Clause 6 or are approved in accordance with the Applicable Law.

## 6. Preference Shares rights

If the Company at any time proposes to issue any preference Shares with the terms set out in this Clause 6, each preference Share confers on the holder:

- (a) the right to convert the preference Share into an ordinary Share if and on the basis the Board resolves under the terms of issue;
- (b) the right to receive a dividend at the rate or of the amount (which may be fixed or variable) and on the conditions (including conditions which may be changed or reset at certain times or upon certain events) that the Board resolves under the terms of issue unless, and to extent that, the Board resolves under the terms of issue that there is no right to receive a dividend, and any such dividend:
  - (i) is non-cumulative unless, and to the extent that, the Board resolves otherwise under the terms of issue;
  - (ii) will rank for payment in priority to ordinary Shares unless, and to the extent that, the Board resolves otherwise under the terms of issue; and
  - (iii) will rank for payment in relation to Shares in any other class of Shares as the Board resolves under the terms of issue;
- (c) in addition to the rights (if any) to receive a dividend, the right to participate equally with the ordinary Shares in the distribution of profits (or other amounts) available for dividends if and on the basis the Board resolves under the terms of issue;
- (d) if, and to the extent that any dividend on the preference Share is cumulative, the right in a winding up or on a reduction of capital, and on redemption in the case of a redeemable preference Share, to payment of the amount of any dividends accrued but unpaid on the preference Share at the date of winding up or reduction of capital or, in the case of a redeemable preference share, the date of redemption, with the same priority in relation to each other class of Shares as the priority that applies in relation to the payment of the dividend;
- (e) if, and to the extent that any dividend on the preference Share is non-cumulative, and if, and to the extent that, the Board resolves under the terms of issue, the right in a winding up or on a reduction of capital, and on redemption in the case of a redeemable preference Share, to payment of the amount of any dividends accrued but unpaid on the preference Share for the period commencing on the dividend payment date which has then most recently occurred and ending on the date of winding up or reduction of capital or, in the case of a redeemable preference share, the date of redemption, with the same priority in relation to each other class of Shares as the priority that applies in relation to the payment of the dividend;
- (f) the right in a winding up or on a reduction of capital, and on redemption in the case of a redeemable preference Share, to payment of any amount (which may include the amount paid or agreed to be considered as paid on the preference Share) that the Board resolves at the time of issue, and payment of such amount:

- (i) will rank for payment in priority to ordinary Shares unless, and to the extent that, the Board resolves otherwise under the terms of issue; and
  - (ii) will rank for payment in relation to any other class of Shares as the Board resolves under the terms of issue;
- (g) the right to a bonus issue or capitalisation of profits in favour of preference Shareholders only, if and to the extent the Board resolves under the terms of issue;
- (h) in addition to the rights pursuant to Clauses 6(b), 6(c), 6(d), 6(e), 6(f) and 6(g), the right to participate with the ordinary Shares in profits and assets of the Company, including on a winding up, if and to the extent that the Board resolves under the terms of issue;
- (i) the right to receive notices, reports and accounts and to attend and be heard at all meetings of Shareholders on the same basis as the holders of ordinary Shares;
- (j) no right to vote at meetings of Shareholders except on the questions, proposals or resolutions or during the periods of time or in the circumstances that the Board resolves under the terms of issue, which, unless the Board resolves otherwise under the terms of issue, are:
- (i) on any matter considered at a meeting if, at the date of the meeting, the dividend on the preference Shares is in arrears;
  - (ii) on a proposal to reduce the share capital of the Company;
  - (iii) on a resolution to approve the terms of a buy-back agreement;
  - (iv) on a proposal that affects rights attached to the preference Shares;
  - (v) on a proposal to wind up the Company;
  - (vi) on a proposal for the disposal of the whole of the property, business and undertaking of the Company; and
  - (vii) on any matter considered at a meeting held during the winding up of the Company; and
- (k) if voting on any matter in respect of which the holder is entitled to vote is by poll the right to cast the number of votes specified in, or determined in accordance with, the terms of issue for the preference Share.

In the case of a redeemable preference Share, the Company must if required by the terms of issue for that Share but subject to the Corporations Act, at the time for redemption specified in, or determined in accordance with, those terms of issue, redeem that Share and, subject to the giving or receiving of a valid redemption notice or other document (if any) required by those terms of issue, pay to or at the direction of the registered holder the amount payable on redemption of that Share.

## **7. Class rights**

- (a) Subject to the Corporations Act and the terms of issue of Shares in a particular class, the Company may vary or cancel rights attached to Shares in that class:
- (i) by a special resolution passed at a meeting of the Shareholders holding Shares in that class; or
  - (ii) with the written consent of Shareholders who are entitled to at least 75% of the votes that may be cast in respect of Shares in that class.

- (b) Clause 45 applies to a meeting held pursuant to Clause 7(a)(i).
- (c) The issue of any new Shares ranking equally, or any conversion of existing securities to Shares ranking equally, with existing Shares is not a variation of the rights conferred on the holders of the existing Shares, unless otherwise provided by the terms of issue of the existing Shares or required by the Applicable Law.
- (d) The issue of any new Shares ranking in priority, or any conversion of existing securities to Shares ranking in priority, to an existing class of preference Shares is a variation of the rights conferred on the holders of the existing preference Shares, unless the issue or conversion is expressly permitted by the terms of the existing preference Shares.

## **8. Alterations of capital**

- (a) The Company may by resolution convert Shares from one class to another, subject to the Corporations Act, this Constitution and the terms of issue of a class of Shares.
- (b) The Company may reduce, alter or buy-back its share capital in any manner provided by the Applicable Law. The Board may do anything which is required to give effect to any resolution authorising a reduction, alteration or buy-back of the share capital of the Company, including where a Shareholder becomes entitled to a fraction of a Share on a consolidation or subdivision:
  - (i) making cash payments;
  - (ii) ignoring fractions;
  - (iii) appointing a trustee to deal with any fractions on behalf of Shareholders; and
  - (iv) rounding up each fractional entitlement to the nearest whole Share by capitalising any amount available for capitalisation pursuant to Clause 67 even though only some Shareholders participate in the capitalisation.

## **9. Registered holder**

- (a) Except as required by law, the Settlement Rules or this Constitution, the Company is not required to recognise any interest in, or right in respect of, a Share except an absolute right of legal ownership of the Shareholder registered as the holder of that Share, regardless of whether the Company has notice of the interest or right.
- (b) The Company is not bound to register more than 3 persons as the registered holder of a Share.
- (c) If the Company registers two or more persons as the registered holders of a Share, those persons are taken to hold that Share as joint tenants.

## **10. Certificates and statements**

- (a) Subject to the Applicable Law, the Company need not issue certificates for Shares while the Company is admitted to the official list of ASX if the Board so resolves. Each Shareholder is entitled without payment to receive a certificate for shares issued as required under the Corporations Act while the Company is not admitted to the official list of ASX.

- (b) Subject to the Applicable Law, the Company may issue certificates for Shares, cancel any certificates for Shares, and replace lost or destroyed or defaced certificates for Shares, on the basis and in the form which the Board resolves.
- (c) If the Company determines to issue certificates for Shares, only the Shareholder whose name appears first in the Register in respect of a Jointly Held Share is entitled to a certificate in respect of that Share and delivery of the certificate to that person is taken to be delivery to all holders of that Share.
- (d) The Company must issue to a Shareholder any statements of the holdings of Shares registered in the Shareholder's name as required by the Applicable Law.

## 11. Restricted Securities

- (a) In this Clause 11, unless the context requires otherwise:

**dispose** has the meaning given in the Listing Rules.

**Escrow Period** means, in relation to Restricted Securities, the escrow period applicable to those Restricted Securities under the Listing Rules.

**Restricted Securities** has the meaning given in the Listing Rules.

**Restriction Deed** means, in relation to Restricted Securities, a restriction deed applicable to those Restricted Securities, in a form set out in the Listing Rules or otherwise approved by ASX.

- (b) A holder of Restricted Securities must not dispose of, or agree or offer to dispose of, the Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.
- (c) The Company must refuse to acknowledge any disposal (including to register a transfer) of Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.
- (d) If the Restricted Securities are in the same class as quoted securities, the holder of the Restricted Securities will be taken to have agreed in writing that the Restricted Securities will be kept on the Company's issuer sponsored sub-register and are to have a holding lock applied for the Escrow Period.
- (e) A holder of Restricted Securities is not entitled to participate in any return of capital on those Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.
- (f) During a breach of a Restriction Deed or a provision of this Constitution restricting a disposal of Restricted Securities, the holder of the Restricted Securities is not entitled to any dividend or distribution, or to exercise any voting rights, in respect of the Restricted Securities.

## Calls

### 12. Making of calls

- (a) Subject to the Applicable Law and the terms of issue of a Share, the Company may by resolution of the Board make calls on the registered holders of a Share for any amount unpaid on that Share which is not by the terms of issue of that Share made payable at fixed times, on any terms and at any times as the Board resolves, including payment by instalments.

- (b) The Company may when it issues Shares make calls payable for one or more Shareholders for different amounts to be paid and at different times of payment as the Board resolves.
- (c) Subject to the Listing Rules, the Company may by resolution of the Board revoke or postpone a call or extend the time for payment of a call, at any time prior to the due date for payment of that call.
- (d) A call is made at the time of or as specified in the resolution of the Board authorising the call.
- (e) Subject to the requirements of the Applicable Law and the terms of issue of the relevant Shares, the Company must give notice of a call to the Shareholder upon whom the call is made before the due date for payment. The notice must specify the amount of the call, the due date for payment, the details for making the payment and any other information as the Board resolves and the Listing Rules require.
- (f) The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any Shareholder does not invalidate the call.

### **13. Payment of calls**

- (a) The registered holder of a Share must pay to the Company the amount of each call on that Share on or before the due date for payment and in accordance with the details for making the payment specified in the notice of the call.
- (b) The registered holders of a Jointly Held Share are jointly and severally liable in respect of all payments which are required to be made in respect of that Share.
- (c) If the terms of issue of a Share require an amount to be paid in respect of a Share on the date of issue or any other fixed date, the registered holder of that Share must pay that amount to the Company at that time and that amount is treated for the purposes of this Constitution as if a call for that amount had been properly made by the Board of which appropriate notice has been given.
- (d) In a proceeding to recover a call, or an amount payable due to the failure to pay or late payment of a call, proof that:
  - (i) the name of the person is entered in the Register as a registered holder of the Share on which the call was made;
  - (ii) there is a record in the minute books of the Company of the resolution making the call or the fixed amount payable by the terms of issue of the relevant Shares; and
  - (iii) notice of the call was given or taken to be given to the person in accordance with this Constitution,

is conclusive evidence of the obligation of that person to pay the call.

### **14. Prepayment of calls**

The Company may by resolution of the Board:

- (a) accept from a Shareholder the whole or part of the amount unpaid on a Share even if no part of that amount has been called;
- (b) agree to pay interest on the whole or any part of the amount so accepted, from the date of acceptance to the date on which the amount becomes payable, at any rate agreed between the Board and the Shareholder paying the amount; and

- (c) unless otherwise agreed between the Company and the Shareholder, repay the whole or any part of the amount so accepted at any time.

## **15. Interest payable**

- (a) If an amount called or otherwise payable to the Company in respect of a Share is not paid before or on the due date for payment, the person who owes the amount must pay to the Company:
  - (i) interest on the unpaid part of the amount from the due date for payment to the date of actual payment at the rate that the Board resolves; and
  - (ii) all costs and expenses that the Company incurs due to the failure to pay or the late payment.
- (b) Interest pursuant to Clause 15(a) accrues daily and may be capitalised at any interval that the Board resolves.
- (c) The Company may by resolution of the Board waive payment of some or all of the interest, costs or expenses payable pursuant to Clause 15(a).

## **Forfeiture and liens**

### **16. Forfeiture procedure**

Subject to the Applicable Law, the Company may by a resolution of the Board forfeit a Share of a Shareholder if:

- (a) that Shareholder does not pay a call or other amount payable in respect of that Share on or before the due date for payment;
- (b) the Company gives that Shareholder notice in writing:
  - (i) requiring the Shareholder to pay that call or other amount, any interest on it and all costs and expenses that the Company has incurred due to the failure to pay; and
  - (ii) stating that the Share is liable to be forfeited if that Shareholder does not pay to the Company the amount specified in the notice by the method of payment and by the due date for payment specified in the notice; and
- (c) that Shareholder does not pay that amount in accordance with that notice.

### **17. Effect of forfeiture**

- (a) A person whose Shares have been forfeited:
  - (i) ceases to be a Shareholder in respect of the forfeited Shares;
  - (ii) has no claims or demands against the Company in respect of those Shares;
  - (iii) has no other rights or entitlements in respect of those Shares, except the rights that are provided by the Corporations Act or saved by this Constitution;
  - (iv) remains liable to pay, and must immediately pay, to the Company all amounts that at the date of forfeiture were payable by the person to the Company in respect of those Shares; and

- (v) must pay to the Company interest at the rate that the Board resolves on those amounts from the date of forfeiture until and including the date of payment of those amounts.
- (b) When a Share has been forfeited, the Company must give notice in writing of the forfeiture to the Shareholder registered as its holder immediately before the forfeiture and record the forfeiture with the date of forfeiture in the Register. Failure by the Company to comply with any requirement in this Clause 17(b) does not invalidate the forfeiture.
- (c) A statement in writing from the Company that is signed by a Director or Secretary that a Share was forfeited on a specified date is sufficient evidence of the forfeiture of that Share and the right and title of the Company to sell, dispose of or reissue that Share.
- (d) Subject to the Applicable Law, the Company may by resolution of the Board waive any or all of its rights pursuant to Clause 16 or this Clause 17 on any terms as the Board resolves, and at any time before a sale, disposition, reissue or cancellation of a forfeited Share, cancel the forfeiture on any terms as the Board resolves.

## 18. Liens on Shares

- (a) Unless the terms of issue of a Share provide otherwise, the Company has a first ranking lien on a Share, the proceeds of sale of that Share, and all dividends and entitlements determined in respect of that Share, for:
  - (i) any amount due and unpaid in respect of that Share which has been called or is payable on a fixed date;
  - (ii) any amount which remains outstanding under loans made by the Company to acquire that Share under an employee incentive scheme, to the extent permitted by the Corporations Act;
  - (iii) all amounts that the Company is required by law to pay, and has paid, in respect of that Share; and
  - (iv) all interest and expenses due and payable to the Company in respect of the unpaid amounts, to the extent permitted by the Listing Rules.
- (b) The Company may by resolution of the Board waive any or all of its rights pursuant to Clause 18(a) on any terms as the Board resolves.
- (c) The Company's lien on a Share is released if a transfer of that Share is registered by the Company without the Company giving written notice of the lien to the transferee of that Share.

## 19. Company payments

- (a) A Shareholder or the Personal Representative of a deceased Shareholder must pay to the Company on written demand an amount equal to all payments that the Company makes to a government or taxation authority in respect of the Shareholder, the death of the Shareholder, the Shareholder's Shares or any distributions made in respect of the Shareholder's Shares (including dividends), where the Company is either:
  - (i) obliged by law to make the relevant payment; or
  - (ii) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxation authority that the Company is obliged by law to make the relevant payment.

- (b) The Company is not obliged to notify a Shareholder in advance of its intention to make a payment pursuant to Clause 19(a).
- (c) An amount payable by a Shareholder to the Company pursuant to Clause 19(a) is treated for the purposes of this Constitution as if it is a call properly made by the Board of which notice has been given on the date on which the written demand is given by the Company to the Shareholder or the Personal Representative of a deceased Shareholder.
- (d) Subject to the Applicable Law, the Company may refuse to register a transfer of any Share by a Shareholder or that Shareholder's Personal Representative until all amounts paid or payable by the Company in respect of that Share pursuant to any law has been paid to the Company by the Shareholder or the Shareholder's Personal Representative.
- (e) Nothing in this Clause 19 affects any right or remedy which any law confers on the Company.

## **20. Dealing with Shares**

- (a) Subject to the Applicable Law, the Company may sell, otherwise dispose of or reissue, a Share which has been forfeited to any person on any terms and in any manner as the Board resolves.
- (b) Subject to the Applicable Law, the Company may cancel a Share which has been forfeited pursuant to the terms on which the Share is on issue.
- (c) For the purposes of enforcing a lien, the Company may sell the Shares which are subject to the lien in any manner the Board resolves and, subject to the Applicable Law, with or without giving any notice to the Shareholder of those Shares.
- (d) The Company may do anything necessary or desirable pursuant to the Applicable Law to protect or enforce a lien or other interest in Shares to which the Company is entitled by law or pursuant to this Constitution.
- (e) Nothing in this Clause 20 affects any right or remedy which any law confers on the Company.

## **21. Proceeds of sale**

- (a) The Company must apply the proceeds of any sale of any Shares pursuant to Clause 20(a) or 20(c) in the following order:
  - (i) the expenses of the sale;
  - (ii) the amounts due and unpaid in respect of those Shares; and
  - (iii) subject to the terms of issue of the Shares and any lien pursuant to Clause 18 for an amount unpaid in respect of the Shares, the balance (if any) to or at the direction of the person entitled to the Shares immediately prior to the sale, on delivery by that person of any evidence of ownership of or entitlement to those Shares as the Board requires.
- (b) The Company is not required to pay interest on any amount payable pursuant to Clause 21(a)(iii).
- (c) Until the proceeds of a sale of Shares pursuant to Clause 20(a) or 20(c) are claimed or otherwise disposed of according to law, the Company may pursuant to a resolution of the Board invest or use the proceeds of sale in any way for the benefit of the Company.

## 22. Sale procedure

- (a) The Company may:
  - (i) effect a transfer of Shares sold pursuant to Clause 20; and
  - (ii) receive the consideration (if any) given for Shares sold pursuant to Clause 20.
- (b) The validity of the sale of Shares pursuant to Clause 20 may not be called into question by any person after the transfer has been registered, and the buyer of the Shares need not enquire as to the validity of the sale or the application of the sale proceeds by the Company.
- (c) The title of the buyer of Shares sold pursuant to Clause 20 is not affected by any irregularity or invalidity in connection with the sale.
- (d) The sole remedy (if any) of any person aggrieved by a sale of Shares pursuant to Clause 20 is in damages only and against the Company exclusively.
- (e) A certificate in writing from the Company signed by a Director or Secretary that a Share was sold, disposed of or reissued in accordance with Clause 20 is conclusive evidence of those matters.

## Transfer of Shares

## 23. Electronic Transfer Systems

- (a) The Company may do any act, matter or thing permitted pursuant to the Applicable Law to facilitate involvement by the Company in any clearing and settlement facility provided pursuant to the Applicable Law for the transfer of financial products.
- (b) The Company must comply with the obligations imposed on it by the Settlement Rules in relation to a transfer of Shares.

## 24. Transfers

- (a) Subject to this Constitution and any restrictions attached to a Share, a Shareholder may transfer one or more Shares that Shareholder holds by:
  - (i) while the Company is admitted to the official list of ASX, a proper ASTC transfer (as defined in the Corporations Regulations 2001 (Commonwealth));
  - (ii) a written instrument of transfer in any usual form or in any other form approved by the Board that is otherwise permitted by law; or
  - (iii) any other method that is permitted by the Applicable Law and is approved by the Board.
- (b) An instrument of transfer of a Share referred to in Clause 24(a)(ii) must be:
  - (i) executed by or on behalf of the transferor and the transferee, unless the Corporations Act provides otherwise or the Board has resolved that the execution of the transferee is not required;
  - (ii) duly stamped, if required by law;

- (iii) delivered to the Company, at the place where the Register is kept or any other place the Board determines;
  - (iv) accompanied by, unless the Board otherwise determines, the certificate (if any) of the Share to be transferred and any other evidence as the Board may require to prove the title of the transferor to that Share, the right of the transferor to transfer that Share, and the proper execution of the instrument of transfer; and
  - (v) accompanied by payment of any applicable fee which the Company is entitled to charge pursuant to Clause 24(d).
- (c) A person transferring a Share remains the registered holder of that Share until a transfer for that Share has been effected in accordance with the Settlement Rules, or a transfer for that Share has been registered and the transferee is entered in the Register as the holder of that Share.
  - (d) The Company must not charge a fee to register a transfer of a Share in accordance with this Constitution except as permitted by the Applicable Law.
  - (e) Subject to the Applicable Law, the Company may by resolution of the Board waive any of the requirements of this Clause 24 and determine alternative requirements instead, to give effect to Clause 23(a) or for another purpose.

## **25. Refusal to register transfers**

- (a) The Company must not refuse or fail to register a transfer of Shares, except where required by the Applicable Law or permitted pursuant to Clause 19(d), 24(b), 25 or 80.
- (b) The Company may refuse to register a transfer of Shares where the Applicable Law permits the Company to do so and the Board so resolves.
- (c) If permitted by the Applicable Law and the Board so resolves, the Company may refuse to register an instrument of transfer of Shares where:
  - (i) the transfer is not in registrable form;
  - (ii) the Company has a lien on any of the Shares transferred;
  - (iii) the registration of the transfer may breach an Australian law or a court order;
  - (iv) while the Company is admitted to the official list of ASX, the registration of the transfer will create a new holding of Shares which at the time the transfer is lodged is less than a marketable parcel;
  - (v) the transfer does not comply with the terms of an employee incentive scheme; or
  - (vi) the Company is otherwise permitted or required to do so pursuant to the terms of issue of the Shares.
- (d) The Company must refuse to register a transfer of Shares where the Applicable Law or a law about stamp duty requires the Company to do so or this Constitution otherwise requires.
- (e) If the Board so resolves, the Company may apply, or may ask the CSF Operator to apply, a holding lock (including to prevent a transfer, or to refuse to register a

paper-based transfer document) where the Applicable Law permits the Company to do so.

- (f) Failure by the Company to give notice of refusal to register any transfer or of any holding lock as may be required pursuant to the Applicable Law does not invalidate the refusal to register the transfer or the holding lock.

## Transmission of Shares

### **26. Transmission on death**

- (a) If the registered holder of a Share which is not Jointly Held dies, the Company must recognise only the Personal Representative of that registered holder as having any title to or interest in, or any benefits accruing in respect of, that Share.
- (b) If a registered holder of a Share which is Jointly Held dies, the Company must recognise only the surviving registered holders of that Share as having any title to or interest in, or any benefits accruing in respect of, that Share.
- (c) Subject to the Corporations Act, the Board may require a person to provide evidence of a Shareholder's death as the Board resolves.
- (d) The estate of a deceased Shareholder is not released from any liability in respect of:
  - (i) the Shares that are registered in the name of that Shareholder; or
  - (ii) Jointly Held Shares where that Shareholder is one of the registered holders.
- (e) Where 2 or more persons are jointly entitled to any Share as a consequence of the death of the registered holder of that Share, they are taken to be Joint Holders of that Share.
- (f) Notwithstanding Clauses 26(a) and 26(b), the Company may register or give effect to a transfer of Shares to a transferee who dies before the transfer is registered or given effect to by the Company.

### **27. Transmission Events**

- (a) Subject to the Bankruptcy Act 1966 (Commonwealth) and the Applicable Law, a person who establishes to the satisfaction of the Board that it is entitled to a Share because of a Transmission Event may:
  - (i) elect to be registered as a Shareholder in respect of that Share by giving a signed notice in writing to the Company; or
  - (ii) transfer that Share to another person.
- (b) Subject to the Applicable Law, a transfer pursuant to Clause 27(a) is subject to all of the provisions of this Constitution relating to transfers of Shares.

## Proceedings of Shareholders

### **28. Calling a meeting of Shareholders**

- (a) The Company may by resolution of the Board call a meeting of Shareholders to be held at the time and venue or venues (including at 2 or more venues using

technology, or using Virtual Meeting Technology only, that gives Participating Shareholders, as a whole, a reasonable opportunity to participate) and in the manner that the Board resolves.

- (b) The Board may in accordance with the Applicable Law specify a time by reference to which persons will be taken to hold Shares for the purpose of a meeting of Shareholders.
- (c) No Shareholder may call or arrange to hold a meeting of Shareholders except where permitted by the Corporations Act.
- (d) Where the Company has called a meeting of Shareholders, notice of the meeting and any proxy form for the meeting may be given in the form and in the manner in which the Board resolves, subject to any requirements of the Applicable Law.
- (e) Where the Board makes a determination under Clause 36(c) in respect of a meeting of Shareholders (or a meeting of a class of Shareholders), the notice of the meeting (or a document accompanying the notice of meeting or otherwise made available to Shareholders for the purposes of the meeting) must specify the form, method and timing of giving a Direct Vote in order for the Direct Vote to be valid.
- (f) A person may waive notice of any meeting of Shareholders by written notice to the Company.
- (g) A person who has not duly received notice of a meeting of Shareholders may, before or after the meeting, notify the Company of the person's agreement to anything done or resolution passed at the meeting.
- (h) A person's attendance at a meeting of Shareholders waives any objection which that person may have had to:
  - (i) any failure to give notice, or the giving of a defective notice, of the meeting, unless the person at the beginning of the meeting objects to the holding of the meeting; and
  - (ii) the consideration of a particular matter which is not within the business referred to in the notice of meeting, unless the person objects to the consideration of the matter when first presented.
- (i) Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting of Shareholders is not invalid because either or both a person does not receive notice of the meeting or a proxy form, or the Company accidentally does not give notice of the meeting or a proxy form to a person.

## **29. Holding a meeting of Shareholders**

- (a) The Company may hold a meeting of Shareholders:
  - (i) at one or more physical venues;
  - (ii) at one or more physical venues and using Virtual Meeting Technology;
  - (iii) using Virtual Meeting Technology only,provided that the Shareholders entitled to attend the meeting, as a whole, are given a reasonable opportunity to participate in the meeting.
- (b) A Shareholder who attends a meeting of Shareholders (whether at a physical venue or by using Virtual Meeting Technology) is taken for all purposes to be present in person at the meeting while so attending.

- (c) If a meeting of Shareholders is held using Virtual Meeting Technology, the Board may (subject to the Applicable Law) make rules or requirements in connection with participation in the meeting by that technology, including rules or requirements to verify the identity of a person or to ensure the security of the technology. The Board may communicate such rules and procedures (or instructions on how they can be accessed) to Shareholders by notification to the ASX.
- (d) If, before or during a meeting of Shareholders that is held or appointed to be held using Virtual Meeting Technology, any technical difficulty occurs where all Shareholders entitled to attend the meeting may not be able to participate, the Chair may:
  - (i) postpone or adjourn the meeting until the difficulty is remedied or to such other time or venue as the Chair determines; or
  - (ii) subject to the Corporations Act, continue the meeting provided that a quorum remains present and able to participate in the meeting.
- (e) Subject to the Corporations Act, a meeting of Shareholders held using Virtual Meeting Technology and anything done (including the passing of a resolution) at the meeting is not invalid because of the inability of one or more Shareholders to access, or to continue to access, the Virtual Meeting Technology for the meeting, provided that sufficient Shareholders are able to participate in the meeting as are required to constitute a quorum.
- (f) Except with the approval of the Board, with the permission of the Chair or pursuant to the Corporations Act, no person may move at any meeting of Shareholders:
  - (i) any resolution (except in the form set out in the notice of meeting given pursuant to Clause 28(d)); or
  - (ii) any amendment of any resolution or a document which relates to any resolution and a copy of which has been made available to Shareholders to inspect or obtain.

### **30. Quorum**

- (a) No business may be transacted at a meeting of Shareholders except, subject to Clause 31, the election of the Chair unless a quorum for a meeting of Shareholders is present at the time when the meeting commences.
- (b) A quorum for a meeting of Shareholders is 2 Shareholders entitled to vote on a resolution at that meeting. Each individual present may only be counted once towards a quorum. An individual present at the meeting as proxy, attorney or Corporate Representative for a Shareholder entitled to vote on a resolution at the meeting is counted towards a quorum provided that such Shareholder is not otherwise counted in the quorum. If a Shareholder has appointed more than one proxy or attorney or Corporate Representative, only one of them may be counted towards a quorum. If a Shareholder entitled to vote on a resolution at that meeting would not otherwise be counted in the quorum and that Shareholder casts a valid Direct Vote, then that Shareholder must also be counted in the quorum.
- (c) If a quorum is not present within 30 minutes after the time appointed for the commencement of a meeting of Shareholders, the meeting is dissolved unless the Chair or the Board adjourn the meeting to a date, time and venue or venues (including using Virtual Meeting Technology only) determined by the Chair or the Board.
- (d) If a quorum is not present within 30 minutes after the time appointed for the commencement of an adjourned meeting of Shareholders, the meeting is dissolved.

## 31. Chair of meetings of Shareholders

- (a) Subject to Clauses 31(b) and 31(c), the chairperson of the Board must chair each meeting of Shareholders.
- (b) If at a meeting of Shareholders:
  - (i) there is no chairperson of the Board; or
  - (ii) the chairperson of the Board is not able to be present at the meeting or is not present within 15 minutes after the time appointed for the commencement of a meeting of Shareholders, or despite being so present is unable or unwilling to chair all or part of the meeting,

the Directors who are or will be present at the meeting may (by majority vote) elect one of their number or, in the absence of all the Directors or if none of the Directors present is willing to act, the Participating Shareholders may elect one of their number, to chair that meeting.

- (c) A Chair of a meeting of Shareholders may, for any item of business at that meeting or for any part of that meeting, nominate any person who immediately before that meeting was a Director or who has been nominated for election as a Director at the meeting to be the acting Chair for that item of business or part of the meeting. On the conclusion of that item of business or part of the meeting, the acting Chair is to withdraw and the Chair is to resume chairing the meeting.
- (d) Where an instrument of proxy appoints the chairperson as proxy for part of proceedings for which an acting Chair has been nominated, the instrument of proxy is taken to be in favour of the acting Chair for the relevant part of the proceedings.

## 32. Conduct of meetings of Shareholders

- (a) Subject to the Corporations Act, the Chair of a meeting of Shareholders is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The Chair of a meeting of Shareholders may:
  - (i) make rulings without putting the question (or any question) to the vote if the Chair considers that action is required to ensure the orderly conduct of the meeting;
  - (ii) determine the procedures to be adopted for proper and orderly discussion or debate at the meeting, and the casting or recording of votes at the meeting;
  - (iii) determine any dispute concerning the admission, validity or rejection of a vote at the meeting;
  - (iv) subject to the Corporations Act, at any time terminate discussion or debate on any matter being considered at the meeting and require that matter be put to a vote;
  - (v) refuse to allow debate or discussion on any matter which is not business referred to in the notice of that meeting or is not business of the meeting permitted pursuant to the Corporations Act without being referred to in the notice of meeting;
  - (vi) withdraw from consideration by the meeting any resolution that is set out in the notice of that meeting, other than a resolution proposed by

- Shareholders in accordance with the Corporations Act or a resolution required by the Corporations Act to be put to the meeting; and
- (vii) require any person who wishes to attend the meeting to comply with searches, restrictions or other security arrangements the Chair considers appropriate.
- (c) The Chair of a meeting of Shareholders may refuse any person admission to, or require a person to leave and remain out of, the meeting if that person:
- (i) in the opinion of the chairperson, is not complying with the reasonable directions of the chairperson;
  - (ii) does not comply with the searches, restrictions or other security arrangements pursuant to Clause 32(b)(vii);
  - (iii) has any audio or visual recording or broadcasting device;
  - (iv) has a placard or banner;
  - (v) has an article the chairperson considers to be dangerous, offensive or liable to cause disruption;
  - (vi) behaves or threatens to behave in a dangerous, offensive or disruptive manner;
  - (vii) refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
  - (viii) refuses to comply with a request to turn off a mobile telephone, personal communication device or similar device; or
  - (ix) is not entitled pursuant to the Corporations Act or this Constitution to attend the meeting.
- (d) If the Chair of a meeting of Shareholders considers that there are too many persons present at a physical venue of the meeting to fit into that venue, the Chair may (without giving notice or putting the matter to a vote of Shareholders) nominate an additional physical venue for the meeting linked to the other venue or venues of the meeting using any technology that gives Shareholders entitled to attend the meeting, as a whole, a reasonable opportunity to participate.
- (e) The Chair of a meeting of Shareholders may delegate any power conferred by this Clause 32 to any person.
- (f) Nothing contained in this Clause 32 or Clause 36(g) limits the powers conferred by law on the Chair of a meeting of Shareholders.

### **33. Participation at a meeting of Shareholders**

- (a) Subject to this Constitution, the Applicable Law and any rights and restrictions attached to a class of Shares, a Shareholder who is entitled to attend, participate and cast a vote at a meeting of Shareholders, may:
- (i) attend, participate and vote in person or by proxy, by attorney or, if the Shareholder is a body corporate, by Corporate Representative; and
  - (ii) if a determination has been made by the Board pursuant to Clause 36(c), vote by Direct Vote.

- (b) Subject to this Constitution and the Applicable Law, a Shareholder may only vote at or in respect of a meeting of Shareholders by one of the permitted methods in Clause 33(a) in respect of a Share.
- (c) The Chair of a meeting of Shareholders may require a person acting as a proxy, attorney or Corporate Representative at that meeting to establish to the Chair's satisfaction that the person is the person who is duly appointed to act. If the person fails to satisfy this requirement, the Chair may:
  - (i) exclude the person from attending, participating or voting at the meeting; or
  - (ii) permit the person to exercise the powers of a proxy, attorney or Corporate Representative on the condition that, if required by the Company, the person produces evidence of the appointment within the time set by the Chair.
- (d) A Director is entitled to receive notice of and to attend all meetings of Shareholders and all meetings of a class of Shareholders and is entitled to speak at those meetings.
- (e) A person who is requested by the Board to attend a meeting of Shareholders or a meeting of a class of Shareholders is, regardless of whether that person is a Shareholder, entitled to attend that meeting and, at the request of the Chair of the meeting, is entitled to speak at that meeting.

### **34. Authority of Participating Shareholders**

Unless otherwise provided in the appointment of a person as proxy, attorney or Corporate Representative of a Shareholder:

- (a) the person so appointed has the same rights to speak, demand a poll, join in demanding a poll or act generally at a meeting of Shareholders to which the appointment relates, as the appointing Shareholder would have had if that Shareholder was present at the meeting;
- (b) the appointment is taken to confer authority to:
  - (i) vote on any amendment moved to a proposed resolution and on any motion that a proposed resolution not be put or any similar motion;
  - (ii) vote on any procedural motion, including any motion to elect the Chair of the meeting of Shareholders to which the appointment relates, to vacate the Chair or to adjourn the meeting; and
  - (iii) to act generally at the meeting of Shareholders to which the appointment relates,

even though the appointment may refer to specific resolutions and may direct the proxy, attorney or Corporate Representative how to vote on particular resolutions; and
- (c) the appointment is taken to confer authority to attend and vote at a meeting which is rescheduled, postponed or adjourned to another time or changed to another venue or held using another technology, even though the appointment may refer to a specific meeting to be held at a specified time or venue or using specific technology.

## 35. Multiple appointments

- (a) If more than one attorney or Corporate Representative appointed by a Shareholder is present at a meeting of Shareholders and the Company has not received notice of any revocation of any of the appointments:
  - (i) an attorney or Corporate Representative appointed to act at that particular meeting may act to the exclusion of an attorney or Corporate Representative appointed pursuant to a standing appointment; and
  - (ii) subject to Clause 35(a)(i), an attorney or Corporate Representative appointed pursuant to the most recent appointment may act to the exclusion of an attorney or Corporate Representative appointed earlier in time.
- (b) An appointment of a proxy of a Shareholder is revoked (or, in the case of a standing appointment, suspended for that particular meeting of Shareholders) if the Company receives a further appointment of a proxy from that Shareholder which would result in there being more than 2 proxies of that Shareholder entitled to act at the meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this Clause 35(b).
- (c) The appointment of a proxy for a Shareholder is not revoked by an attorney or Corporate Representative for that Shareholder attending and taking part in a meeting of Shareholders to which the appointment relates, but if that attorney or Corporate Representative votes on a resolution at that meeting, the proxy is not entitled to vote, and must not vote, as the Shareholder's proxy on that resolution.

## 36. Voting by Shareholders

- (a) Subject to Clause 36(b) and the Corporations Act, a resolution put to the vote at a meeting of Shareholders is to be decided in the first instance on a show of hands.
- (b) A resolution put to the vote at a meeting of Shareholders must be decided on a poll without first submitting that resolution to the meeting to be decided on a show of hands if:
  - (i) the resolution is set out in the notice of the meeting given pursuant to Clause 28;
  - (ii) the Chair of the meeting so determines;
  - (iii) a poll is demanded in accordance with Clause 40 and that demand is not withdrawn; or
  - (iv) otherwise required by Applicable Law or the Direct Voting Rules.
- (c) Subject to Applicable Law, the Board may determine that Shareholders (or a class of Shareholders) entitled to attend and vote at a meeting of Shareholders (or at a meeting of a class of Shareholders) may vote at or for the purpose of that meeting by a Direct Vote.
- (d) Subject to this Constitution and any rights or restrictions attached to a class of Shares, on a vote on a resolution by show of hands at a meeting of Shareholders:
  - (i) each Participating Shareholder having the right to vote on the resolution has one vote only, including where a person is entitled to vote in more than one capacity; and
  - (ii) a Direct Vote is not counted.

- (e) Subject to this Constitution and any rights or restrictions attached to a class of Shares, on a vote on a resolution by poll at a meeting of Shareholders, each Participating Shareholder having the right to vote on the resolution has:
- (i) one vote for each fully paid up Share held by that Shareholder;
  - (ii) a fraction of one vote for each partly paid up Share held by that Shareholder. The fraction is equal to the proportion which the amount paid up bears to the total issue price of that Share. Any amounts credited without payment in money or other consideration being made to the Company and any amounts paid up in advance of the applicable due date for payment are ignored when calculating the proportion, and
- each Direct Vote validly given (and not revoked pursuant to Clause 38) by a Shareholder is treated as if the Shareholder cast the vote on the poll at the meeting and must be counted accordingly.
- (f) If the total number of votes to which a person has pursuant to Clause 36(e) does not constitute a whole number, the Company must disregard the fractional part of that total.
- (g) An objection to a right to vote at a meeting of Shareholders or to a determination to allow or disregard a vote (including in either case a Direct Vote) at the meeting may only be made at that meeting (or any resumed meeting if that meeting is adjourned). Any objection pursuant to this Clause 36(g) must be decided by the Chair of the meeting of Shareholders, whose decision, made in good faith, is final and conclusive.
- (h) Except where a resolution at a meeting of Shareholders requires a special majority pursuant to the law or the Listing Rules, the resolution is passed if more votes are cast by Shareholders entitled to vote in favour on the resolution than against it.
- (i) In the case of an equality of votes on a resolution at a meeting of Shareholders, the Chair of that meeting does not have a casting vote on that resolution.
- (j) Unless a poll is demanded and the demand is not withdrawn, a determination by the Chair of a meeting of Shareholders following a vote on a show of hands that a resolution has been passed or not passed is conclusive, without proof of the number or proportion of the votes recorded in favour or against the resolution.
- (k) The Chair of a meeting of Shareholders may decide any difficulty or dispute which arises as to the number of votes which may be cast by or on behalf of any Shareholder and the decision of the Chair is final and conclusive.

### **37. Voting by representatives**

- (a) A person who is entitled to be registered as the holder of a Share because of a Transmission Event may vote in respect of that Share at a meeting of Shareholders provided that person has satisfied the Board of that entitlement not less than 48 hours before the time appointed for the commencement of that meeting. Any vote by that person so entitled must be accepted to the exclusion of the vote of the registered holder of that Share.
- (b) The parent or guardian of an infant Shareholder may vote at a meeting of Shareholders upon production of any evidence of the relationship or of the appointment of the guardian as the Board may require and any vote so made by the parent or guardian of an infant Shareholder must be accepted to the exclusion of the vote of the infant Shareholder.

- (c) The validity of any resolution passed at a meeting of Shareholders is not affected by the failure of any proxy or attorney to vote in accordance with directions (if any) of the appointing Shareholder.
- (d) If a proxy of a Shareholder purports to vote in a way or circumstances that contravene the Corporations Act, on a show of hands the vote of that proxy is invalid and the Company must not count it. If a poll is demanded, votes which the Corporations Act require a proxy of a Shareholder to cast in a given way must be treated as cast in that way.
- (e) Subject to this Constitution and the Applicable Law, a vote cast at a meeting of Shareholders by a person appointed by a Shareholder as a proxy, attorney or Corporate Representative is valid despite:
  - (i) a Transmission Event occurring in respect of that Shareholder; or
  - (ii) the revocation of the appointment (or the authority pursuant to which the appointment was made),

if no notice in writing of that matter has been received by the Company at its registered office at least 48 hours (or any shorter period as the Board may permit or specified by the Corporations Act) before the time appointed for the commencement of the meeting or the adjourned meeting at which the appointment is to be used or the power is to be exercised.

- (f) A vote cast at a meeting of Shareholders by a person appointed by a Shareholder as a proxy, attorney or Corporate Representative is valid despite the transfer of the Share in respect of which the appointment is made, if the transfer is not registered or does not take effect pursuant to the Applicable Law by the time for determining Shareholders for the purposes of that meeting in accordance with this Constitution.

## **38. Direct Votes**

- (a) Subject to this Constitution, the Board may determine rules and procedures in relation to the giving of Direct Votes for a meeting of Shareholders (or a meeting of a class of Shareholders), including:
  - (i) the form, method and timing of giving a Direct Vote at or for the purposes of the meeting in order for the vote to be valid;
  - (ii) the effect of a Shareholder casting both a Direct Vote and a vote in any other manner; and
  - (iii) the manner in which a Direct Vote may be revoked by a Shareholder.
- (b) A Direct Vote given by a Shareholder for a meeting of Shareholders must:
  - (i) if given by post or fax, be signed by the Shareholder, a properly authorised attorney of the Shareholder, or if the Shareholder is a company, a duly authorised officer; or
  - (ii) if given electronically, be signed or authorised by the Shareholder in the manner approved by the Board or specified in the notice of meeting.
- (c) A Direct Vote given by a Shareholder for a meeting of Shareholders for which a determination has been made pursuant to Clause 36(c) is valid if it contains the following information:
  - (i) the Shareholder's name and address or any applicable identification details (such as a shareholder registration number or holder identification

number) approved by the Board or specified in the notice of meeting;  
and

- (ii) the Shareholder's voting intention on any or all of the resolutions to be put before the meeting.
- (d) The Company receives a Direct Vote given by a Shareholder for a meeting of Shareholders when the Direct Vote (and any authority pursuant to which the Direct Vote was signed or authorised or a certified copy of the authority) is received:
- (i) at the Company's registered office; or
  - (ii) at a place, fax number or electronic address, or by the electronic means, specified for that purpose in the notice of meeting.
- (e) A Direct Vote given by a Shareholder for a meeting of Shareholders for which a determination has been made pursuant to Clause 36(c) is effective only if the Company receives the Direct Vote (and any authority pursuant to which the Direct Vote was signed or authorised or a certified copy of the authority) not less than 48 hours (or in the case of an adjournment or postponement of a meeting, any shorter period as the Board may permit) before the time appointed for the commencement of the meeting or the adjourned or postponed meeting (as the case maybe).
- (f) A Direct Vote given by a Shareholder for a meeting of Shareholders for which a determination has been made pursuant to Clause 36(c):
- (i) is not revoked by the Shareholder attending and taking part in the meeting, but if that Shareholder votes on a resolution at that meeting, the Direct Vote by the Shareholder is revoked;
  - (ii) is revoked if the Company receives a further valid Direct Vote for the meeting from the Shareholder;
  - (iii) is revoked if, after the Direct Vote is received by the Company, the Company receives a valid appointment of a proxy, attorney or Corporate Representative by that Shareholder for that meeting;
  - (iv) revokes (or in the case of a standing appointment, suspends for the meeting of Shareholders to which the Direct Vote relates) the authority of the appointment of a proxy, attorney or Corporate Representative made by that Shareholder under an appointment received by the Company before the Direct Vote was received.
- (g) Subject to this Constitution and the Applicable Law, a Direct Vote given by a Shareholder for a meeting of Shareholders for which a determination has been made pursuant to Clause 36(c) is valid even if prior to the vote being counted:
- (i) a Transmission Event occurs in respect of that Shareholder; or
  - (ii) where the Direct Vote is given on behalf of the Shareholder by an attorney, the appointment of the attorney or the authority pursuant to which the appointment was made is revoked,

if no notice in writing of that matter has been received by the Company at least 48 hours (or any shorter period as the Board may permit or specified by the Corporations Act) before the time appointed for the commencement of the meeting or adjourned meeting to which the Direct Vote relates.

- (h) Subject to this Constitution and the Applicable Law, a Direct Vote given by a Shareholder for a meeting of Shareholders for which a determination has been made pursuant to Clause 36(c) is valid despite the transfer of the Share in respect of which the Direct Vote relates, if the transfer is not registered or does not take effect pursuant to the Applicable Law by the time for determining Shareholders for the purposes of that meeting in accordance with this Constitution.
- (i) If the Chair of a meeting of Shareholders determines it is appropriate, a valid Direct Vote given by a Shareholder on a resolution at the meeting is taken to be a Direct Vote on that resolution as amended.

### **39. Restrictions on voting rights**

- (a) If there is more than one Shareholder of a Jointly Held Share present at a meeting of Shareholders (either in person, by proxy, attorney or Corporate Representative), only the vote by the Shareholder who is present (either in person, by proxy, attorney or Corporate Representative) whose name appears first in the Register in respect of that Share will count.
- (b) The authority of a proxy or attorney for a Shareholder to speak or vote at a meeting of Shareholders in respect of the Shares to which the authority relates is suspended while the Shareholder is present in person at that meeting.
- (c) If a Shareholder has appointed two proxies in respect of a meeting of Shareholders and each proxy attends that meeting, neither of those proxies may vote:
  - (i) on a show of hands; or
  - (ii) on a poll if the number or proportion of the Shareholder's vote for which the proxies have been appointed exceeds the total number or proportion of votes that could be cast by the Shareholder.
- (d) A Participating Shareholder is not entitled to vote on any resolution in respect of any Shares on which any calls due and payable in respect of those Shares have not been paid.
- (e) A Participating Shareholder is not entitled to vote on a resolution at a meeting of Shareholders if:
  - (i) under the Applicable Law, the Participating Shareholder must not vote or must abstain from voting on the resolution;
  - (ii) under the Applicable Law, a vote on the resolution by the Participating Shareholder must be disregarded for any purposes; or
  - (iii) a vote on the resolution by the Participating Shareholder is prohibited by an order of a court of competent jurisdiction.
- (f) A Participating Shareholder is not entitled to vote in a particular way on a resolution at a meeting of Shareholders if, under the Corporations Act, the Participating Shareholder must not cast a vote in that particular way on the resolution.
- (g) The Company must disregard any vote on a resolution at a meeting of Shareholders purported to be cast by a Participating Shareholder where that person is either not entitled to vote on that resolution or not entitled to vote in a particular way on that resolution. A failure by the Company to disregard a vote on a resolution as required by this Clause 39(g) does not invalidate that resolution or any act, matter or thing done at the meeting, unless that failure occurred by wilful default of the Company or of the Chair of that meeting.

## 40. Polls

- (a) A poll on a resolution at a meeting of Shareholders may be demanded by a Shareholder only in accordance with the Corporations Act or by the Chair of that meeting.
- (b) No poll may be demanded at a meeting of Shareholders on the election of a Chair of that meeting, or unless the chairperson of the meeting otherwise determines, the adjournment of that meeting.
- (c) A demand for a poll may be withdrawn.
- (d) A poll demanded on a resolution at a meeting of Shareholders for the adjournment of that meeting must be taken immediately. A poll demanded on any other resolution at a meeting of Shareholders must be taken in the manner and at the time and place the Chair of the meeting directs.
- (e) The result of a poll demanded on a resolution of a meeting of Shareholders is a resolution of that meeting.
- (f) A demand for a poll on a resolution of a meeting of Shareholders does not prevent the continuance of that meeting or that meeting dealing with any other business.

## 41. Proxies

- (a) A Shareholder who is entitled to attend and vote at a meeting of Shareholders may appoint a person as proxy to attend and vote for the Shareholder in accordance with the Corporations Act but not otherwise.
- (b) A proxy appointed in accordance with the Corporations Act to attend and vote may only exercise the rights of the Shareholder on the basis and subject to the restrictions provided in the Corporations Act.
- (c) An appointment of proxy is valid if it is in accordance with the Corporations Act or in any other form (including electronic) which the Board may determine or accept, or which the Chair of a meeting of Shareholders to which the proxy relates accepts.
- (d) If the name of the proxy or the name of the office of the proxy in a proxy appointment of a Shareholder is not filled in, the proxy of that Shareholder is:
  - (i) the person specified by the Company in the proxy appointment in the case that Shareholder does not choose; or
  - (ii) if no person is so specified, the Chair of that meeting.

## 42. Receipt of appointments

- (a) An appointment of proxy or attorney for a meeting of Shareholders is effective only if the Company receives the appointment (and any authority pursuant to which the appointment was signed or a certified copy of the authority) not less than 48 hours (or in the case of an adjournment or postponement of a meeting, any shorter period as the Board may permit) before the time appointed for the commencement of the meeting or the adjourned or postponed meeting (as the case maybe).
- (b) Where a notice of meeting specifies an electronic address or other electronic means by which a Shareholder may give the Company a proxy appointment, a proxy given at that electronic address or by that other electronic means is taken to have been given by the Shareholder and received by the Company if the requirements set out in the notice of meeting are complied with.

## 43. Adjournments

- (a) The Chair of a meeting of Shareholders may at any time during the meeting:
  - (i) adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered at the meeting or any discussion or debate, either to a later time at the same meeting or to an adjourned meeting to be held at the time and venue or venues (including using Virtual Meeting Technology) determined by the Chair; or
  - (ii) for the purpose of allowing any poll to be taken or determined, suspend the proceeding of the meeting for any period as the Chair determines without effecting an adjournment. No business may be transacted and no discussion may take place during any suspension of proceedings unless the Chair otherwise allows.
- (b) If the Chair of a meeting of Shareholders exercises the right to adjourn that meeting pursuant to Clause 43(a), the Chair may (but is not obliged to) obtain the approval of Participating Shareholders to the adjournment.
- (c) No person other than the Chair of a meeting of Shareholders may adjourn that meeting.
- (d) Subject to Applicable Law, the Company may give such notice of a meeting of Shareholders resumed from an adjourned meeting as the Board resolves. Failure to give notice of an adjournment of a meeting of Shareholders or the failure to receive any notice of the meeting does not invalidate the adjournment or anything done (including the passing of a resolution) at a resumed meeting.
- (e) Only business left unfinished at a meeting of Shareholders is to be transacted at a meeting of Shareholders which is resumed after an adjournment.

## 44. Changes to a meeting of Shareholders

- (a) Subject to the Corporations Act, the Company may by resolution of the Board:
  - (i) cancel or postpone a meeting of Shareholders prior to the date on which it is to be held;
  - (ii) change or remove any venue for the meeting; or
  - (iii) change or remove any technology for the meeting.
- (b) Clause 44(a)(i) does not apply to a meeting called in accordance with the Corporations Act by a Director, by Shareholders or by the Board on the request of Shareholders, unless that Director or those Shareholders consent to the cancellation or postponement of the meeting.
- (c) Subject to the Applicable Law, the Company may give notice of a cancellation or postponement of, or change or removal of a venue or technology for, a meeting of Shareholders as the Board resolves. Failure to give notice of a cancellation or postponement of, or change or removal of venue or technology for, a meeting of Shareholders or the failure to receive any notice of the meeting does not invalidate the cancellation, postponement, change or removal or anything done (including the passing of a resolution) at a postponed meeting or the meeting at the revised venue or using the revised technology.
- (d) Subject to the Corporations Act, where a meeting of Shareholders is convened by a person or persons other than the Board, this person or those persons may cancel

or, with the approval of the Board, postpone the meeting, prior to the date on which the meeting is to be held.

- (e) The only business that may be transacted at a meeting of Shareholders the holding of which is postponed is the business specified in the original notice calling the meeting.

## **45. Meetings of a class of Shareholders**

All the provisions of this Constitution relating to a meeting of Shareholders apply so far as they are capable of application and with any necessary changes to a meeting of a class of Shareholders required to be held pursuant to this Constitution or the Applicable Law except that:

- (a) a quorum is 2 Shareholders who hold Shares of the relevant class and who are entitled to vote on a resolution at that meeting, or if only one person holds all the Shares of the relevant class and is entitled to vote on a resolution at that meeting, that person. If a Shareholder who holds Shares of the relevant class and is entitled to vote on a resolution at that meeting would not otherwise be counted in the quorum and that Shareholder casts a valid Direct Vote, then that Shareholder must be counted in the quorum; and
- (b) any Participating Shareholder who holds (or whose Shareholder that they represent holds) Shares of the class may demand a poll.

## **Directors**

### **46. Appointment of Directors**

- (a) The number of Directors must be:
  - (i) not less than 3; and
  - (ii) not more than 10 or any lesser number determined by the Board from time to time in accordance with the Corporations Act, but the number so determined at a particular time must not be less than the number of Directors when the determination takes effect,provided that the lesser number in Clause 46(a)(ii) may be exceeded in respect of any Director appointed pursuant to Clause 46(b).
- (b) Subject to Clause 46(a), the Board may appoint any person as a Director, either to fill a casual vacancy or as an addition to the Board.
- (c) Subject to Clause 46(a), the Company may, at a meeting of Shareholders:
  - (i) at which a Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office while the Company is admitted to the official list of ASX; or
  - (ii) by resolution appoint a person as a Director while the Company is not admitted to the official list of ASX.
- (d) A Director need not be a Shareholder.

## 47. Retirement of Directors

- (a) Subject to Clause 47(d), a Director must retire from office no later than the longer of the third annual general meeting of the Company or 3 years, following that Director's last election or appointment.
- (b) If no Director would otherwise be required to retire pursuant to Clause 47(a) but the Listing Rules require that an election of Directors be held at an annual general meeting, the Director to retire at that meeting is (subject to Clause 47(d)) any Director who wishes to retire and offer himself or herself for re-election, otherwise it is:
  - (i) the Director who has held office as Director the longest period of time since his or her last election or appointment to that office; or
  - (ii) if two or more Directors have held office for the same period of time, the Director determined by lot, unless those Directors agree otherwise. A Director who retires pursuant to Clause 47(a) or 47(b) holds office as a Director until the conclusion of the meeting at which the Director retires and is eligible for re-election.
- (c) Subject to Clause 47(d), a Director appointed pursuant to Clause 46(b) must retire at the next annual general meeting occurring after that appointment and is eligible for re-election at that meeting, but is not to be taken into account in determining the number of Directors who are to retire pursuant to Clause 47(b).
- (d) The following persons are not subject to Clause 47(a), 47(b), 47(b)(ii) or 47(c) and are not taken into account in determining the Directors required to retire at an annual general meeting:
  - (i) the managing director of the Company, or if there is more than one managing director, the managing director of the Company nominated by the Board for the purpose of this Clause 47; and
  - (ii) an alternate director of the Company.
- (e) A person is eligible to be appointed as a Director at any meeting of Shareholders only if:
  - (i) the person is in office as a Director immediately before that meeting;
  - (ii) the person has been nominated by the Board for election at that meeting; or
  - (iii) a notice in writing nominating the person as a Director signed by that number of Shareholders specified in the Corporations Act as being required to give notice of a resolution at a general meeting of the Company, accompanied by the consent of the person to act, is given to the Company at least 45 Business Days before the meeting, but no more than 90 Business Days before the meeting.
- (f) A Director is not required to retire and is not relieved from retiring because of a change in the number or identity of the Directors after the date of the notice calling the relevant annual general meeting of the Company but before the meeting concludes.
- (g) This Clause 47 only applies while the Company is admitted to the official list of ASX.

## 48. Termination of office

A person ceases to be a Director if the person:

- (a) fails to attend Board meetings (either personally or by an alternate director) for a continuous period of 3 months without the consent of the Board;
- (b) resigns by notice in writing to the Company and that resignation has taken effect in accordance with its terms and the Corporations Act;
- (c) retires pursuant to Clause 47 and is not re-elected;
- (d) is removed from office pursuant to the Corporations Act;
- (e) is an Executive Director and ceases to be an employee of the Company or of a related body corporate of the Company, unless the Board resolves that the person should remain a Director until the next annual general meeting, in which case that Director is treated as a retiring Director at that annual general meeting;
- (f) becomes an insolvent under administration;
- (g) becomes of unsound mind or a person whose property is liable to be dealt with pursuant to a law about mental health; or
- (h) is not permitted to be a director, or to manage a corporation, pursuant to the Corporations Act.

## 49. Alternate directors

- (a) A Director may:
  - (i) without the need for approval of other Directors, appoint another Director; and
  - (ii) with the approval of a majority of the other Directors, appoint a person who is not a Director,as an alternate director of that Director for any period. An alternate director need not be a Shareholder.
- (b) The appointing Director may terminate the appointment of his or her alternate director at any time.
- (c) A notice of appointment, or termination of appointment, of an alternate director by the appointing Director is effective only if the notice is in writing and signed by that Director and is effective when given to the Company or at any later time specified in the appointment or termination.
- (d) An alternate director is entitled to receive notice of Board meetings and, subject to this Constitution and the Applicable Law, to attend, count in the quorum of, speak at, and vote at a Board meeting at which his or her appointing Director is not present.
- (e) Subject to this Constitution, the Applicable Law, and the instrument of appointment of an alternate director, an alternate director may exercise all of the powers (except the power pursuant to Clause 49(a)) of a Director, to the extent that that his or her appointing Director has not exercised them.
- (f) Unless previously terminated, the office of an alternate director is terminated if the appointing Director ceases to be a Director.

- (g) Subject to Clause 50(h), the Company is not required to pay any remuneration or benefit to an alternate director.
- (h) An alternate director is an officer of the Company and not an agent of his or her appointing Director.

## **50. Remuneration and benefits of Directors**

- (a) The Company may pay or provide to the Non-Executive Directors fees in an amount or value determined by the Board which does not in any financial year exceed in aggregate the amount last determined by the Company in general meeting (or until so determined, as the Board determines). For the purposes of this Clause 50(a), the expression "fees":
  - (i) includes fees acting as a director of the Company or any child entity (including attending and participating in any board committee meetings where the Board has not made a resolution under Clause 50(f));
  - (ii) includes amounts paid under Clause 50(k);
  - (iii) does not include amounts paid under Clauses 50(f), 50(h), 50(i), 50(j) and 54; and
  - (iv) does not include securities issued with the approval of Shareholders under the Listing Rules.
- (b) The fees pursuant to Clause 50(a) may be a fixed sum for attendance at each Board meeting or may be a share of the fixed amount or value determined by the Board pursuant to Clause 50(a). If the fees are a share of such fixed amount or value, those fees are to be allocated among the Non-Executive Directors on an equal basis having regard to the proportion of the relevant year for which each of them held office, or as the Board otherwise resolves.
- (c) The fees pursuant to Clause 50(a) may be provided in cash or any other manner agreed between the Company and the relevant Non-Executive Director. The Board must determine the manner in which the value of any non-cash benefit is to be calculated.
- (d) The fees of a Non-Executive Director are taken to accrue from day to day, except that fees in the form of a non-cash benefit are taken to accrue at the time the benefit is provided to the Director, subject to the terms on which the benefit is provided.
- (e) Subject to Clause 50(g) and any agreement with the Company, the Company may pay to each Executive Director an amount of remuneration determined by the Board.
- (f) If any Director, with the approval of the Board, performs extra or special services, the Company may, subject to the Corporations Act and Clause 50(g), pay additional remuneration or provide benefits to that Director as the Board resolves.
- (g) The Company must not pay remuneration to an Executive Director that includes a commission on, or a percentage of, operating revenue.
- (h) The Company must pay all reasonable travelling, accommodation and other expenses that a Director or alternate director properly incurs in attending meetings of the Board, committees of the Board, meetings of Shareholders, or otherwise in connection with the business of the Company.

- (i) Subject to the Applicable Law, the Company may establish and contribute to a fund, trust or scheme for the benefit of:
  - (i) past or present employees or Directors of the Company or a related body corporate of the Company; or
  - (ii) the dependants of, or persons connected with or nominated by, any person referred to in Clause 50(i)(i).
- (j) Subject to the Applicable Law, the Company may, or may agree to, pay provide or make any payment or other benefit to a Director, a director of a related body corporate of the Company or any other person in connection with that person's or someone else's retirement, resignation from or loss of office, or death while in office.
- (k) Without limiting Clause 50(j), the Company may pay superannuation contributions for each Director to the extent necessary for the avoidance or minimisation of any penalty, charge or tax on the Company under any applicable law which imposes a penalty, charge or tax on employers if a minimum level of superannuation contributions is not paid for an employee (within the meaning of those laws).

## 51. Interests of Directors

- (a) Each Director must comply with Applicable Law in relation to the disclosure of the Director's interests.
- (b) Subject to the Applicable Law, a Director who has an interest in a matter may:
  - (i) be counted in a quorum at the Board meeting that considers matters that relate to the interest provided that Director is entitled to vote on at least one of the resolutions to be proposed at that Board meeting; and
  - (ii) participate in and vote on matters that relate to the interest.
- (c) Subject to the Applicable Law, a Director may:
  - (i) enter into contracts or arrangements with, or otherwise have dealings with, the Company or a related body corporate of the Company; and
  - (ii) may hold other offices in the Company or a related body corporate of the Company.
- (d) A Director is not liable to account to the Company for any profit realised by any contract or arrangement by reason only of holding the office of Director or the fiduciary obligations arising from that office.
- (e) A Director who has an interest in a contract or arrangement may participate in the execution of any document by or on behalf of the Company evidencing or connected with the contract or arrangement.
- (f) The Board may exercise the voting rights given by financial products in any corporation or trust held or owned by the Company in any way the Board resolves, including voting for any resolution appointing a Director as a director or other officer of that corporation or the trustee of that trust, or voting for the payment of remuneration to the directors or other officers of that corporation or the trustee of that trust. If the law permits, a Director may vote for the exercise of those voting rights even though that Director is, or may be about to be appointed, a director or other officer of that corporation or the trustee of that trust and, in that capacity, may be interested in the exercise of those voting rights.

## Officers

### 52. Managing Director

- (a) The Board may appoint one or more Directors as a managing director of the Company, for any period and on any terms (including, subject to Clause 50, as to remuneration) as the Board resolves. Subject to any agreement between the Company and the managing director, the Board may vary or terminate the appointment of a managing director of the Company at any time, with or without cause.
- (b) The Board may delegate any of its powers to a managing director of the Company for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke, suspend or vary any power delegated to a managing director of the Company.
- (c) A managing director of the Company must exercise the powers delegated to him or her in accordance with any directions of the Board.
- (d) A person ceases to be a managing director if the person ceases to be a Director.

### 53. Secretary

The Board may appoint one or more Secretaries, for any period and on any terms (including as to remuneration) as the Board resolves. Subject to any agreement between the Company and the Secretary, the Board may vary or terminate the appointment of a Secretary at any time, with or without cause.

### 54. Indemnity and insurance

- (a) To the extent permitted by law, the Company must indemnify each Relevant Officer against a Liability of that person and the Legal Costs of that person.
- (b) The indemnity pursuant to Clause 54(a):
  - (i) is enforceable without the Relevant Officer having first to incur any expense or make any payment;
  - (ii) is a continuing obligation and is enforceable by the Relevant Officer even though the Relevant Officer may have ceased to be an officer of the Company; and
  - (iii) applies to Liabilities and Legal Costs incurred both before and after this Clause became effective.
- (c) To the extent permitted by law, the Company may make a payment (whether by way of advance, loan or otherwise) to a Relevant Officer in respect of Legal Costs of that person.
- (d) To the extent permitted by law, the Company may:
  - (i) enter into, or agree to enter into; or
  - (ii) pay, or agree to pay, a premium for,a contract insuring a Relevant Officer against a Liability of that person and the Legal Costs of that person.

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

## Powers of the Board

### 55. General powers

- (a) The Board has the power to manage the business of the Company and may exercise to the exclusion of the Company in general meeting all powers of the Company which are not, by the law or the Listing Rules or this Constitution, required to be exercised by the Company in general meeting.
- (b) A power of the Board can only be exercised by a resolution passed at a meeting of the Board in accordance with Clause 60, a resolution passed by signing a document in accordance with Clause 59, or in accordance with a delegation of the power pursuant to Clause 52, 57 or 58. A reference in this Constitution to the Company exercising a power by a resolution of the Board includes an exercise of that power in accordance with a delegation of the power pursuant to Clause 52, 57 or 58.

### 56. Execution of documents

- (a) If the Company has a common seal, the Company may execute a document if that seal is fixed to the document and the fixing of that seal is witnessed by one Director and either another Director, a Secretary, or another person appointed by the Board for that purpose.
- (b) The Company may execute a document without a common seal if the document is signed by one Director and either another Director, a Secretary, or another person appointed by the Board for that purpose.
- (c) The Board may determine the manner in which and the persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable or transferable instruments in the name of or on behalf of the Company, and receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed.

### 57. Committees and delegates

- (a) The Board may delegate any of its powers to a committee of the Board, a Director, an employee of the Company or any other person. A delegation of those powers may be made for any period and on any terms (including the power to further

delegate) as the Board resolves. The Board may revoke or vary any power so delegated.

- (b) A committee or delegate must exercise the powers delegated in accordance with any directions of the Board.
- (c) Subject to the terms of appointment or reference of a committee:
  - (i) Clause 60 applies with the necessary changes to meetings and resolutions of a committee of the Board; and
  - (ii) Clause 59 applies to resolutions of a committee of the Board as if the references to Directors were references to the committee members.

## **58. Attorney or agent**

- (a) The Board may appoint any person to be attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) as the Board resolves. Subject to the terms of appointment of an attorney or agent of the Company, the Board may revoke or vary that appointment at any time, with or without cause.
- (b) The Board may delegate any of their powers (including the power to delegate) to an attorney or agent. The Board may revoke or vary any power delegated to an attorney or agent.

## **Proceedings of Directors**

### **59. Written resolutions of Directors**

- (a) The Board may pass a resolution without a Board meeting being held if notice in writing of the resolution is given to all Directors and a majority of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a Board meeting) have consented to the resolution in accordance with this Clause 59. The resolution is passed when the last participating Director consents to the resolution in accordance with this Clause 59. The resolution is not invalidated if it is consented to by a Director who is not entitled to vote on the resolution.
- (b) A Director may consent to a resolution for the purposes of this Clause 59 by:
  - (i) signing a document that sets out the terms of the resolution and contains a statement to the effect that the Director is in favour of the resolution; or
  - (ii) giving the Company a written notice (including by fax, email or other electronic means) addressed to and received by the Secretary or the chairperson of the Board that:
    - A. sets out the terms of the resolution or identifies those terms;
    - B. indicates that the Director is in favour of the resolution; and
    - C. authenticates the notice in accordance with any arrangement between the Company and the Director for that purpose.
- (c) A document referred to in this Clause 59 may be in the form of a fax or electronic notification. Separate copies of a document (including in electronic form) may be signed by one or more Directors if the wording of the resolution and the statement is identical in each copy. A facsimile transmission or other document produced by

electronic means under the name of a Director with the Director's authority is taken to be a document signed by the Director for the purposes of this Clause 59 and is taken to be signed when received by the Company in legible form.

- (d) For the purposes of this Clause 59, the reference to Directors includes any alternate director who is appointed by a Director who is at the relevant time on leave of absence approved by the Board but does not include any other alternate directors.

## **60. Board Meetings**

- (a) Subject to this Constitution, the Board may meet, adjourn and otherwise regulate its meetings as it thinks fit.
- (b) A Director may call a Board meeting at any time. On request of any Director, a Secretary of the Company must call a meeting of the Directors.
- (c) Notice of a Board meeting must be given to each Director (except a Director on leave of absence approved by the Board) and an alternate director appointed by a Director on leave of absence approved by the Board.
- (d) Notice of a Board meeting:
  - (i) must specify the time and venue or venues of the meeting, and if the meeting will be held using Virtual Meeting Technology, sufficient information to allow the Directors to participate in the meeting by means of the technology;
  - (ii) need not state the nature of the business to be transacted at the meeting;
  - (iii) may, if necessary, be given immediately before the meeting;
  - (iv) may be given in person, or by post or by telephone, fax or other electronic means; and
  - (v) is taken to have been given to an alternate director if it is given to the Director who appointed that alternate director.
- (e) A Director or alternate director may waive notice of a Board meeting by giving notice to that effect to the Company in person or by post or by telephone, fax or other electronic means.
- (f) A Board meeting may be held:
  - (i) at one or more physical venues;
  - (ii) at one or more physical venues and using Virtual Meeting Technology; or
  - (iii) using Virtual Meeting Technology only,provided that any technology used to call the meeting, or to hold the meeting, is reasonable.

- (g) A Director who attends a Board Meeting (whether at a physical venue or by using Virtual Meeting Technology) is taken for all purposes to be present in person at the meeting whilst so attending.
- (h) A person who attends a Board meeting waives any objection that person and:
  - (i) if the person is a Director, any alternate director appointed by that person; or
  - (ii) if the person is an alternate director, the Director who appointed that person as alternate director,
 may have to a failure to give notice of the meeting.
- (i) Anything done (including the passing of a resolution) at a Board meeting is not invalid because either or both a person does not receive notice of the meeting or the Company accidentally does not give notice of the meeting to a person.
- (j) If a Board meeting is held at more than one physical venue or using Virtual Meeting Technology, the meeting is taken to be held at the place where the chairperson of that meeting attended the meeting or any other place the chairperson of the meeting determines, provided that at least one of the Directors participated in the meeting at that place for the duration of the meeting.
- (k) Until otherwise determined by the Board, a quorum for a Board meeting is 2 Directors entitled to vote on a resolution that may be proposed at that meeting. A quorum for a Board meeting must be present at all times during the meeting. Each individual present is counted towards a quorum in respect of each appointment as an alternate director of another Director in addition (if applicable) to being counted as a Director.
- (l) If, before or during a Board meeting, any technical difficulty occurs where one or more Directors may not be able to participate, the chairperson of the meeting may:
  - (i) adjourn the meeting until the difficulty is remedied; or
  - (ii) where a quorum for a Board meeting remains present, continue the meeting.

## 61. Chairperson of the Board

- (a) The Board may elect a Director as chairperson of the Board or deputy chairperson of the Board for any period that it resolves, or if no period is specified, until that person ceases to be a Director. The Board may remove the chairperson of the Board or deputy chairperson of the Board at any time.
- (b) Subject to Clause 61(c), the chairperson of the Board must chair each Board meeting.
- (c) If at a Board meeting:
  - (i) a chairperson has not been elected pursuant to Clause 61(a); or
  - (ii) the chairperson of the Board is not able to be present at the meeting or is not present within 15 minutes after the time appointed for the holding of a Board meeting, or despite being so present is unable or unwilling to chair all or part of that meeting,

the deputy chairperson of the Board (if any) may, or if the circumstances in Clause 61(c)(i) or 61(c)(ii) apply to the deputy chairperson, the Directors present may elect one of their number to, chair that meeting or part of the meeting.

- (d) A person does not cease to be a chairperson of the Board or deputy chairperson of the Board if that person retires as a Director at a meeting of Shareholders and is re-elected as a Director at that meeting (or any adjournment of that meeting).

## **62. Board resolutions**

- (a) A resolution of the Board is passed if more votes are cast by Directors entitled to vote in favour of the resolution than against it.
- (b) Subject to Clauses 49 and 51 and this Clause 62, each Director present in person or by his or her alternate director has one vote on a matter arising at a Board meeting.
- (c) Subject to the Applicable Law, in case of an equality of votes on a resolution at a Board meeting, the chairperson of that meeting has a casting vote on that resolution in addition to any vote the chairperson has in his or her capacity as a Director in respect of that resolution, provided that the chairperson is entitled to vote on the resolution and more than two Directors are present and entitled to vote on the resolution.

## **63. Valid proceedings**

- (a) An act at any Board meeting or a committee of the Board or an act of any person acting as a Director is not invalidated by:
  - (i) a defect in the appointment or continuance in office of a person as a Director, a member of the committee or of the person so acting; or
  - (ii) a person so appointed being disqualified or not being entitled to vote,if that circumstance was not known by the Board, committee or person (as the case may be) when the act was done.
- (b) If the number of Directors is below the minimum required by this Constitution, the Board must not act except in emergencies, to appoint Directors up to that minimum number or to call and arrange to hold a meeting of Shareholders.

## **Dividends and Profits**

### **64. Determination of dividends**

- (a) Subject to the Applicable Law, this Constitution and the rights or restrictions attached to a class of Shares, the Board may declare or determine that a dividend is payable on Shares. The Board may fix the amount of the dividend, the time for determining entitlements to the dividend, the time for the payment of the dividend and the method of payment of the dividend.
- (b) Subject to the Listing Rules and the rights or restrictions attached to a class of Shares, the Board may declare or determine that dividends be paid on Shares of one class but not another class, and at different rates for different classes of Shares.
- (c) The Board may rescind or alter any determination to pay a dividend on Shares at any time before the dividend is paid.

- (d) The Company is not required to pay any interest on a dividend.

## **65. Entitlements to dividends**

- (a) Subject to the Applicable Law, a dividend in respect of a Share must be paid to the person whose name is entered in the Register as the holder of that Share as at the time the Board has fixed for that purpose, or if no such time is fixed, on the date on which the Dividend is paid.
- (b) Subject to any rights or restrictions attached to a class of Shares and Clause 65(c), the person entitled to a dividend on a Share is entitled to:
  - (i) if the Share is fully paid (whether the issue price of the Share was paid or credited or both), the entire dividend; or
  - (ii) if the Share is partly paid, a proportion of that dividend equal to the proportion which the amount paid on that Share bears to the total issue price of that Share. Any amounts credited without payment in money or other consideration being made to the Company and any amounts paid up in advance of the applicable due date for payment are ignored when calculating the proportion.
- (c) If an amount is paid on a Share during the period to which a dividend relates, the Board may resolve that only the proportion of that amount equal to the proportion which the period from the date of payment to the end of the period to which the dividend relates bears to the total period to which the dividend relates, counts as part of the amount for the time being paid on the Share, unless the terms of issue of the Shares provide otherwise.
- (d) If a transfer of a Share is registered after the time determined for entitlements to a dividend on that Share but before the dividend is paid, the person transferring that Share is entitled to that dividend, unless the Settlement Rules provide otherwise.
- (e) The Company may retain the whole or part of any dividend on which the Company has a lien and apply that amount in total or part satisfaction of any amount secured by that lien.
- (f) Subject to the Applicable Law, where a person is entitled to a Share because of a Transmission Event, the Company may, but need not, retain any dividend payable on that Share until that person becomes registered as the holder of that Share or transfers that Share.

## **66. Dividend plans**

- (a) The Company may establish a bonus share plan on any terms as the Board resolves, pursuant to which participants may elect in respect of all or part of their Shares to be issued financial products of the Company or another body corporate or trust credited as fully paid instead of receiving a cash dividend from the Company in respect of those Shares.
- (b) The Company may establish a dividend reinvestment plan on any terms as the Board resolves, pursuant to which participants may elect in respect of all or part of their Shares to apply the whole or any part of a dividend from the Company, or any other amount paid or payable to Shareholders, in subscribing for or purchasing financial products of the Company or another body corporate or trust.
- (c) The Board is under no obligation to admit any Shareholder as a participant in any plan nor to comply with any request made by a Shareholder who is not admitted as a participant in a plan.

- (d) Subject to the Applicable Law, the Board may implement, amend, suspend or terminate a plan established pursuant to this Clause 66.

## **67. Capitalisation of profits**

- (a) Subject to the Applicable Law and the rights or restrictions attached to a class of Shares, the Company may by resolution of the Board:
  - (i) capitalise any amount, being the whole or part of profits of the Company, a reserve account or otherwise available for distribution to Shareholders; and
  - (ii) apply that amount for the benefit of Shareholders in full satisfaction of their interest in the capitalised amount, in the same proportions as the Shareholders would be entitled to receive it if it were distributed by way of dividend or in accordance with either the terms of issue of any Shares or the terms of any plan for the issue of Shares or other securities for the benefit of officers or employees of the Company.
- (b) The Board may fix the time for determining entitlements to an application of a capitalised amount pursuant to Clause 67(a). The Board may decide to apply a capitalised amount pursuant to Clause 67(a) in any or all of the following ways:
  - (i) in paying up an amount unpaid on Shares already issued;
  - (ii) in paying up in full any unissued Shares or other securities in the Company;
  - (iii) any other method permitted by law or the Listing Rules.
- (c) The Board may do all things necessary to give effect to a resolution pursuant to Clause 67(a) and 67(b), including:
  - (i) making cash payments in cases where Shares or other securities become issuable in fractions or ignore amounts or fractions less than a particular value or that fractional entitlements are to be increased to the next whole number;
  - (ii) vesting any cash or assets in a trustee on trust for the Shareholders entitled to an application of a capitalised amount pursuant to Clause 67(a); and
  - (iii) authorising any person to make, on behalf of all Shareholders entitled to an application of a capitalised amount pursuant to Clause 67(a), an agreement with the Company providing for either or both the issue of securities or the payment by the Company on the Shareholders' behalf of an amount pursuant to Clause 67(b), and in executing any such document the person acts as agent and attorney for those Shareholders.

## **68. Distributions of assets**

- (a) The method of payment by the Company of a dividend or a return of capital by a reduction of capital, a share buy-back or otherwise, may include any or all of the payment of cash, the issue of shares or other financial products and the transfer of assets (including shares or other financial products in another body corporate or trust).
- (b) If the Board has determined that the Company pay a dividend or return capital by a reduction of capital, a share buy-back or otherwise, wholly or partly by the distribution (either generally or to specific Shareholders) of specific assets

(including by the issue or transfer of shares or other financial products), the Board may:

- (i) settle any issue concerning the distribution in any way the Board resolves;
  - (ii) round amounts up or down to the nearest whole number, or ignore amounts or fractions less than a particular value;
  - (iii) value assets for distribution and determine that the Company pay cash to any Shareholder on the basis of that valuation;
  - (iv) vest assets in a trustee on trust for the Shareholders entitled to any financial products as a result of that distribution; and
  - (v) authorise any person to make, on behalf of all Shareholders entitled to any specific assets, cash, shares or other financial products as a result of that distribution, an agreement with the Company or another person which provides, as appropriate, for the issue or transfer to them of shares or other financial products (including an agreement to become a member of a body corporate) or for payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing Shares or other financial products by applying their respective proportions of the amount determined to be distributed.
- (c) In executing any agreement under an authority referred to in Clause 68(b)(v), the person acts as agent and attorney for those Shareholders.
- (d) If a distribution, transfer or issue of specific assets, shares or other financial products to a particular Shareholder or Shareholders is, in the Board's discretion, considered impracticable or would give rise to parcels of securities which do not constitute a marketable parcel, the Board may make a cash payment to those Shareholders or allocate the assets, shares or financial products to a trustee to be sold on behalf of, and for the benefit of, those Shareholders, instead of making the distribution, transfer or issue to those Shareholders.

## 69. Payments

- (a) The Company may pay a person entitled to an amount payable in respect of a Share (including a dividend) by any of the following means, in the Board's discretion, at the sole risk of the person so entitled:
- (i) electronic funds transfer to an account nominated in writing by that person and acceptable to the Board;
  - (ii) cheque made payable to bearer, to the person entitled to the amount or any other person the entitled person directs in writing and who is acceptable to the Board; or
  - (iii) any other manner as the Board resolves, which may include different manners of payment applying to different Shareholders or groups of Shareholders (including Shareholders whose address for Notices is not within Australia).
- (b) If the Company decides to make a payment by electronic funds transfer and an account is not nominated by the person entitled to the payment in accordance with Clause 69(a)(i), the Company may hold the amount payable in a separate account of the Company until the person nominates an account in accordance with Clause 69(a)(i).

- (c) The Company may post a cheque referred to in Clause 69(a)(ii) to:
  - (i) the address in the Register of the Shareholder of the Share, or in the case of a Jointly Held Share, the address of the Shareholder whose name appears first in the Register in respect of the Share; or
  - (ii) any other address which the person entitled to the payment directs in writing.
- (d) If the Company decides to make a payment by a cheque and the cheque is not presented for payment within 3 months, the Company may cancel the cheque.
- (e) The Company may make a payment of an amount payable in respect of a Share (including a dividend) in Australian dollars or any other currency determined by the Board. The Company may make payments in different currencies to different Shareholders. The Board may determine the appropriate exchange rate and time of calculation of the amount of a payment made in a currency other than Australian dollars. A determination of the Board pursuant to this Clause 69(d) is final in the absence of manifest error.
- (f) If more than one Shareholder of a Jointly Held Share gives a permitted nomination or direction pursuant to Clause 69(a), only the nomination or direction by the Shareholder whose name appears first in the Register in respect of that Share is valid.
- (g) Any one of the Shareholders of a Jointly Held Share may give receipt of any payment to those Shareholders in respect of that Share.
- (h) Subject to law, all amounts payable in respect of a Share (including a dividend) that are unclaimed may be invested or otherwise used by the Board for the benefit of the Company until claimed or otherwise dealt with according to law. If the Company decides to make a payment by electronic funds transfer and a transfer is unsuccessful as a result of incorrect payment details being provided by or on behalf of the person entitled to the payment, the payment will be treated as unclaimed.

## Notices

### 70. Notices to Shareholders

- (a) The Company may give Notice to a Shareholder or a person entitled to a Share because of a Transmission Event by any of the following means in the Board's discretion:
  - (i) delivering it to that Shareholder or person;
  - (ii) delivering it or sending it by post to the address of the Shareholder in the Register or the alternative address (if any) nominated by that Shareholder or person for that purpose;
  - (iii) sending it to the fax number or electronic address (if any) nominated by that Shareholder or person for that purpose;
  - (iv) to the extent permitted by the Corporations Act, notifying that Shareholder or person, by one of the means in Clauses 70(a)(i) to 70(a)(iii) of sufficient information to allow the Shareholder or person to access the Notice electronically; or
  - (v) any other means permitted by the Corporations Act or any other applicable law from time to time.

- (b) The Company must send all documents to a Shareholder whose address for Notices is not within Australia by air-mail, air courier, fax or otherwise be sent or made available electronically (including as contemplated by Clause 70(a)(iv)).
- (c) Any Notice given or delivered by the Company to the Shareholder whose name appears first in the Register in respect of a Jointly Held Share is taken to be notice or delivery to all holders of that Share.
- (d) Notice to a person entitled to a Share because of a Transmission Event is taken to be notice to the registered holder of that Share.
- (e) Subject to the Corporations Act, a Notice to a Shareholder is sufficient, even if:
  - (i) a Transmission Event occurs in respect of that Shareholder (regardless of whether that person is a registered holder of a Jointly Held Share); or
  - (ii) that Shareholder is an externally administered body corporate,
 and regardless of whether the Company has notice of that event.
- (f) A person entitled to a Share because of a transfer, Transmission Event or otherwise, is bound by every Notice given in respect of that Share.
- (g) Any Notice required or allowed to be given by the Company to one or more Shareholders by advertisement is, unless otherwise stipulated, sufficiently advertised if advertised once in a daily newspaper circulating in the states and territories of Australia.
- (h) If a Shareholder does not have an address in the Register or the Company has reason to believe in good faith that the address in the Register for that Shareholder is not a current address, a Notice is taken to be given to the Shareholder if the Notice is made available for inspection at the registered office of the Company for a period of 24 hours unless and until the Shareholder provides written notice of a new address for the purposes of the Register. The Notice need not be addressed to the Shareholder and will be taken to be given to the Shareholder at the start of that 24 hour period.

## 71. Notice to Directors

The Company may give Notice to a Director or alternate director by:

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

## 72. Notice to the Company

A person may give Notice to the Company by:

- (a) delivering it or sending it by post to the registered office of the Company;
- (b) delivering it or sending it by post to a place nominated by the Company for that purpose;

- (c) sending it to the fax number at the registered office of the Company nominated by the Company for that purpose;
- (d) sending it to the electronic address (if any) nominated by the Company for that purpose; or
- (e) any other means permitted by the Corporations Act.

### **73. Time of service**

- (a) A Notice sent by post or air-mail is taken to be given at 10.00am on the day after the date it is posted.
- (b) A Notice given by means of an electronic communication is taken to be given on the day it is sent provided that in the case of notice to the Company or a Director or an alternate director, the sender meets any action required by the recipient to verify the receipt of the document by the recipient.
- (c) A Notice given in accordance with Clause 70(a)(iv) is taken to be given at 10.00am on the day after the date on which the Shareholder is notified of the information to allow that Shareholder to access the Notice electronically.
- (d) A certificate by a Director or Secretary to the effect that a Notice by the Company has been given in accordance with this Constitution is conclusive evidence of that fact.

### **74. Notice requirements**

The Board may specify, generally or in a particular case, requirements in relation to Notices given by any electronic means, including requirements as to:

- (a) the classes of, and circumstances in which, Notices may be sent;
- (b) verification (whether by encryption code or otherwise); and
- (c) the circumstances in which, and the time when, the Notice is taken to be given.

## **Winding up**

### **75. Winding up**

- (a) Subject to any rights or restrictions attached to a class of Shares, on a winding up of the Company, any surplus assets of the Company remaining after the payment of its debts must be divided among the Shareholders in the proportions which the amount paid (including amounts credited) on the Shares of a Shareholder is of the total issue price of the Shares of all Shareholders.
- (b) Subject to any rights or restrictions attached to a class of Shares, on a winding up of the Company, the liquidator may, with the sanction of a special resolution:
  - (i) distribute among the Shareholders the whole or any part of the property of the Company; and
  - (ii) decide how to distribute the property as between the Shareholders or different classes of Shareholders.
- (c) The liquidator of the Company may settle any issue concerning a distribution pursuant to this Clause 75 in any way. This may include:

- (i) rounding amounts up or down to the nearest whole number or ignoring fractions;
  - (ii) valuing assets for distribution and paying cash to any Shareholder on the basis of that valuation; and
  - (iii) vesting assets in a trustee on trust for the Shareholders entitled to the distribution.
- (d) A Shareholder need not accept any property, including shares or other securities, in respect of which there is any liability on the part of the Shareholder.

## 76. Application

Notwithstanding any other clauses of this Constitution, Clauses 77, 78, 79, 80 and 81 only apply while the Company is admitted to the official list of ASX.

### Small holdings

## 77. Existing small holdings

- (a) Subject to the Applicable Law, the Company may sell the Shares of a Shareholder if:
- (i) the total number of Shares of a particular class held by that Shareholder is less than a marketable parcel at the time and date specified in a notice in writing given by the Company to that Shareholder (being the lesser of 42 days after the date of the Company giving that notice and any lesser period permitted pursuant to the Applicable Law);
  - (ii) the notice of the Company states that the Shares are liable to be sold by the Company; and
  - (iii) that Shareholder does not give notice in writing to the Company, by the time and date specified in the notice of the Company (being the lesser of 42 days after the date of the Company giving that notice and any lesser period permitted pursuant to the Applicable Law), stating that all or some of those Shares are not to be sold.
- (b) The Company may only give one notice pursuant to Clause 77(a) to a particular Shareholder in any 12 month period.
- (c) If a takeover bid for the Company is announced after a notice pursuant to Clause 77(a) is given but before an agreement for sale of the relevant Shares is entered into, the power of the Company pursuant to Clause 77(a) lapses. After the offer period of the takeover bid closes, the Company may (notwithstanding Clause 77(b)) give a new notice pursuant to Clause 77(a).

## 78. New small holdings

- (a) Subject to the Applicable Law, the Company may sell the Shares of a Shareholder if:
- (i) the Shares of a particular class held by that Shareholder are in a new holding created by a transfer on or after the date on which this Clause 78 was adopted in this Constitution; and
  - (ii) that transfer is of a number of Shares of that class that was less than a marketable parcel at the time the transfer document was initiated, or in

the case of a paper based transfer document, was lodged with the Company.

- (b) The Company may give a Shareholder referred to in Clause 78(a) notice in writing stating that the Company intends to sell or dispose of the Shares.
- (c) If the Company is entitled to exercise the powers pursuant to Clause 78(a), the Company may by resolution of the Board remove or change either or both the right to vote and the right to receive dividends of the relevant Shareholder in respect of some or all of the Shares liable to be sold. After the sale of those Shares, the Company must pay to the person entitled any dividends that have been withheld pursuant to this Clause 78(c).

## **79. Exercise of power of sale**

- (a) Subject to the Applicable Law, the Company may sell any Shares pursuant to Clause 77 or 78 to any person on any terms and in any manner as the Board resolves.
- (b) The Company may:
  - (i) exercise any powers permitted pursuant to the Applicable Law to enable the sale of Shares pursuant to Clause 77 or 78;
  - (ii) receive the consideration (if any) given for Shares sold pursuant to Clause 77 or 78;
  - (iii) effect a transfer of Shares sold pursuant to Clause 77 or 78; and
  - (iv) receive any disclosure document, including a financial services guide, as agent for the applicable Shareholders.
- (c) The validity of the sale of Shares pursuant to Clause 77 or 78 may not be called into question by any person after the transfer has been registered, and the buyer of the Shares need not enquire as to the validity of the sale or application of the sale proceeds by the Company.
- (d) The title of the buyer of Shares sold pursuant to Clause 77 or 78 is not affected by any irregularity or invalidity in connection with the sale.
- (e) The sole remedy (if any) of any person aggrieved by a sale of Shares pursuant to Clause 77 or 78 is in damages only and against the Company exclusively.
- (f) A certificate in writing from the Company signed by a Director or Secretary that a Share was sold in accordance with Clause 77 or 78 is sufficient evidence of those matters.
- (g) If the Company exercises the powers pursuant to Clause 77, the person to whom a Share is sold, or if permitted by the Applicable Law the Company, must pay the expenses of the sale.
- (h) The Company must apply the proceeds of any sale of any Shares sold pursuant to Clause 77 or 78 in the following order:
  - (i) in the case of an exercise of the powers pursuant to Clause 78, the expenses of the sale;
  - (ii) the amounts due and unpaid in respect of those Shares; and

- (iii) the balance (if any) to, or at the direction of, the person entitled to the Shares immediately prior to the sale, on delivery by that person of any evidence of ownership of or entitlement to those Shares prior to the sale as the Board may require.
- (i) Subject to law, all amounts payable to former Shareholders pursuant to this Clause 79 that are unclaimed may be invested or otherwise used by the Board for the benefit of the Company until claimed or otherwise dealt with according to law. The Company is not required to pay any interest on any amount payable to former Shareholders pursuant to this Clause 79.
- (j) Subject to the Listing Rules, the Company may by resolution of the Board revoke a notice given pursuant to Clause 77 or 78 at any time prior to the sale of the Shares pursuant to those Clauses.

## Takeover approval provisions

### 80. Refusal to register transfers

- (a) The Company must refuse to register a transfer of Shares giving effect to a takeover contract resulting from acceptance of an offer made under a proportional takeover bid in respect of a class of Shares unless and until a resolution to approve the takeover bid is passed in accordance with Clause 81.
- (b) This Clause 80 and Clause 81 cease to have effect on the day which is 3 years after the later of their adoption or last renewal in accordance with the Corporations Act.

### 81. Approval procedure

- (a) Where offers are made under a proportional takeover bid, the Board must, subject to the Corporations Act, call and arrange to hold a meeting of persons entitled to vote on a resolution to approve the proportional takeover bid.
- (b) Subject to this Constitution, each person (other than the bidder under a proportional takeover bid or an associate of that bidder) who, as at the end of the day on which the first offer under that bid was made, held bid class securities for that bid:
  - (i) is entitled to vote on the resolution referred to in Clause 81(a); and
  - (ii) has one vote for each Share in the bid class securities that the person holds.
- (c) The provisions of this Constitution concerning meetings of Shareholders apply to a meeting held pursuant to Clause 81(a) with any modifications that Board resolves are required in the circumstances.
- (d) A resolution referred to in Clause 81(a) that has been voted on is passed if more than 50% of votes cast on the resolution are in favour of the resolution, and otherwise is taken to have been rejected.
- (e) If a resolution referred to in Clause 81(a) has not been voted on as at the end of the day before the fourteenth day before the last day of the bid period under the proportional takeover bid, or a later day allowed by the Australian Securities and Investments Commission, then that resolution is taken to have been passed.

## Transitional

### **82. Transitional provisions**

- (a) Every Director, alternate director and Secretary in office in that capacity immediately before adoption of this Constitution continues in office subject to, and is taken to have been appointed or elected under, this Constitution.
- (b) Unless a contrary intention appears in this Constitution, all persons, things, agreements and circumstances appointed, approved, done or created by or under the constitution of the Company in force immediately before the adoption of this Constitution continues to have the same status, operation and effect after this Constitution is adopted.