

Corporations Act 2001 (Cth)

**Constitution of:**

**Eden Towers Pty Ltd (ACN 647 460 026)**

Proprietary Company Limited by Shares

Corporations Act 2001 (Cth)

A proprietary company limited by shares

**Eden Towers Pty Ltd (ACN 647 460 026)** (the “Company”)

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

(a) Unless the context otherwise requires and other than in the case of an expression defined in clause 1.1(b) an expression in a clause that is used in the Act has the same meaning as in the Act.

(b) In this Constitution:

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

**ASX** means the Australian Stock Exchange Limited (A.C.N 008 624 691).

**Act** means the *Corporations Act 2001* (Cth) and any regulations and instruments made under the Act together with any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is a reference to that section, part or division as so modified, amended or re-enacted.

**Alternate Director** means a person appointed as an alternate director of the Company under clause 4.5(a), who has not vacated their office.

**Auditor** means a person appointed as an auditor of the Company who has not vacated their office.

**Board** means the Directors acting as a board of Directors.

**Business** means the business carried on by the Company at the relevant time and from time to time.

**Business Day** means a day on which trading banks are open for business in Perth, Australia, other than a Saturday or a Sunday.

**Business Plan** means, in respect of a Financial Year, a plan for the business of the Company approved by the Board including:

- (a) the strategic, business development and marketing objectives of the Company for the Financial Year; and
- (b) business and financial forecasts for the Company for the three (3) Financial Years following the Financial Year.

**Certificate** means, in relation to a share, the certificate issued by the Company recording the name of the Member registered as owner of the share.

**Chair** means the person elected under clause 6.5(a).

**Company** means Eden Towers Pty Ltd (ACN 647 460 026).

**Constitution** means this constitution as amended from time to time and a reference to a clause is a reference to a clause of this constitution.

**CSF** means crowd-sourced funding within the meaning of the Act.

**CSF Offer** means an offer of Shares pursuant to Pt 6D.3A of the Act.

**CSF Member** means a Member that holds or acquires one or more Shares in the Company where such Shares were issued pursuant to a CSF Offer.

**Director** means, in relation to the Company, a person appointed in accordance with this Constitution.

**Indemnitee** means:

- (a) any current or former Director, Secretary, executive officer of the Company or of a related body corporate of the Company; or
- (b) any person who takes part in, or is concerned with, management of the Company or a related body corporate of the Company.

**Listing Rules** means the listing rules of ASX and any other rules of ASX which are applicable if the Company is admitted to the Official List, each as amended or replaced from time to time, except to the extent of any express waiver by ASX.

**Managing Director** means a person appointed as managing director of the Company under clause 4.4(a).

**Member** means a person entered in the Register of Members as a holder of shares in the Company.

**Member Special Decision** means a resolution approved by the holders of 75% or more of the issued shares held by those Members present (by any means) or voting by proxy or representative and entitled to vote.

**Official List** means the official list of entities that ASX has admitted and not removed.

**'party'** means any of the Company, each Member of the Company and each Director of the Company (as applicable).

**Register of Members** means the register listing each person who is a holder or joint holder of a share which the Company maintains under the Act.

**Registered Office** means the registered office of the Company.

**Representative** means a person appointed to represent a corporate Member or a corporate proxy at a general meeting of the Company under clause 7.8 and the Act.

**Restraint Area** means Australia.

**Restraint Period** means whilst a person is a Member.

**Second Director** means a Director appointed to the Board and notified as such to the Company pursuant to clause 4.2(b).

**Secretary** means a person appointed under clause 9 as a secretary of the Company and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

**Share** means an ordinary share in the capital of the Company.

**Simple Majority** means, in respect of a resolution, more than 50% of the votes that are entitled to be cast by persons present (either in person or, where proxies are allowed, by proxy) in respect of the resolution.

**Special Majority** means, in respect of a resolution, at least 75% of the votes that are entitled to be cast by persons present (either in person or, where proxies are allowed, by proxy) in respect of the resolution.

## 1.2 Interpretation

- (a) In this Constitution unless the contrary intention appears:
  - (i) words importing any gender include all other genders;
  - (ii) person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
  - (iii) the singular includes the plural and vice versa;
  - (iv) a reference to an amount paid on a share includes an amount credited as paid on that share; and
  - (v) writing and written includes printing, typing and other modes of reproducing words in a visible form including, but not limited to, any representation of words in a physical document or in an electronic communication or form or otherwise.
- (b) Subject to clause 1.2(c), this Constitution is subject to the Act and where there is any inconsistency between a clause of this Constitution and the Act, the Act prevails to the extent of the inconsistency.
- (c) To the maximum extent permitted by the Act, the provisions of the Act that apply as replaceable rules do not apply to the Company.
- (d) If the Company is admitted to the Official List, while the Company remains on the Official List, the following clauses apply:
  - (i) despite 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 that provision, this Constitution must be treated as containing that provision;
  - (v) if the Listing Rules require this Constitution not to contain a provision and it contains that provision, this Constitution must be treated as not containing that provision; and
  - (vi) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution must be treated as not containing that provision to the extent of the inconsistency.

### **1.3 Transitional and concessional provisions**

This Constitution must be interpreted in a way that:

- (a) every Director, Managing Director and Secretary in office in that capacity immediately before this Constitution is adopted continues in office subject to, and is taken to have been appointed or elected under, this Constitution; and
- (b) the Directors are taken, immediately after this Constitution is adopted, to have decided under clause 4.1(a)(ii) that the maximum number of Directors is 10.

## **2. NATURE OF THE COMPANY**

The Company is a proprietary company limited by shares.

## **3. INTERNAL MANAGEMENT OF THE COMPANY**

The internal management of the Company will be governed by this Constitution.

## **4. DIRECTORS**

### **4.1 Preliminary**

#### **(a) Number of Directors**

- (i) The Company must have at least two Directors at all times (at least one of whom must ordinarily reside in Australia).
- (ii) The maximum number of Directors is to be fixed by the Directors but must not be more than 10 unless changed by a Special Resolution of the Members.

#### **(b) Eligibility for appointment as Director**

- (i) To be eligible to be elected or appointed as a Director a person must:
  - (A) be an individual;
  - (B) be at least 18 years old; and
  - (C) not be otherwise ineligible or disqualified from holding office under this Constitution or the Act.
- (ii) To be eligible to be elected or appointed as a Director a person is not required to hold any shares in the Company.

#### **(c) Other offices held by Directors**

A Director may hold any other office or position of profit in the Company (other than as Auditor) together with the directorship on the conditions, including additional remuneration, as the Directors determine by resolution.

#### **(d) Period of appointment of Directors**

Each Director will hold office until they die or vacate the office under clause 4.3(a).

### **4.2 Appointment of Directors**

- (a) **Appointment of Director**
  - (i) Each Member may appoint one Director for each total 10% aggregate interest in the total issued share capital of the Company held from time to time. For example, if a Member owns 32% of the Company, such Member shall have the right to appoint 3 Directors, falling to 2 Directors if that Member subsequently owns 29%.
  - (ii) A person independent of the Members may be appointed as a Director pursuant to a resolution by Simple Majority of the Board.
- (b) A Member who is entitled to appoint a person as a Director pursuant to clause 4.2(a) may from time to time remove any such person as a Director and may appoint another person in his or her place.
- (c) An appointment pursuant to clause 4.2(a) must be effected by notice in writing executed by or on behalf of the relevant Member and delivered to the registered office of the Company. Any such appointment must be accompanied by a consent to act as a Director, signed by the person appointed (in such form as required by law).

#### **4.3 Resignation, cessation and termination of a Director**

- (a) **Vacation of office**
  - (i) A Director vacates office if the Director:
    - (A) is removed by a resolution by Simple Majority of the Directors;
    - (B) resigns their office by written notice to the Company under clause 4.3(b);
    - (C) is removed from the office of Director by a resolution of the Members under clause 4.3(c);
    - (D) fails to attend Board meetings for a continuous period of three months without leave of absence from the Board;
    - (E) is an executive Director under an employment or services agreement with the Company and that agreement terminates, unless the Board determines otherwise; or
    - (F) ceases to be a Director or becomes prohibited from being a Director under the Act.
  - (ii) A Director whose office is vacated under clause 4.3(a)(i)(F) is not eligible for re-election until the relevant prohibition in accordance with the Act no longer applies.
- (b) **Director may resign**
  - (i) A Director may resign as a Director of the Company by written notice to the Company.
  - (ii) If the resignation of a Director under clause 4.3(b)(i) will cause the number of Directors to fall below the minimum number required by this Constitution or by the Act, the Director must not resign or otherwise vacate their office voluntarily until another Director has been appointed.

(c) **Removal of a Director by Members**

- (i) The Company may, by resolution of the Members in a general meeting:
  - (A) remove a Director from office; and
  - (B) appoint another person as a Director in that Director's place.
- (ii) If a Director was appointed to represent the interests of particular Members, their removal under clause 4.3(c)(i) has no effect until a replacement Director to represent the interests of those Members has been appointed.
- (iii) If the removal of a Director under this clause will cause the number of Directors to fall below the minimum required by this Constitution or the Act, the removal under clause 4.3(c)(i) has no effect until a replacement Director has been appointed.
- (iv) Notice of intention to move the resolution referred to in clause 4.3(c)(i) must be given to the Company at least two months before the meeting is to be held except if a general meeting is called after the notice of intention is given under this clause.
- (v) The Company must give the Director a copy of the notice as soon as practicable after it is received.
- (vi) The Director is entitled to put their case to Members by:
  - (A) giving the Company a written statement for circulation to Members; and
  - (B) speaking to the motion at the general meeting (whether or not the Director is a Member of the Company).
- (vii) The written statement in clause 4.3(c)(vi) is to be circulated by the Company to Members by:
  - (A) sending a copy to everyone to whom the notice of the general meeting is sent if there is time to do so; or
  - (B) if there is not time to comply with clause 4.3(c)(vii)(A), having the statement distributed to Members attending the general meeting and read out at the meeting before the resolution is voted on.
- (viii) The Director's statement does not have to be circulated to Members if it is more than 1,000 words long or defamatory.
- (ix) If a person is appointed to replace a Director removed under this clause, the time at which the replacement Director or any other Director is to retire is to be worked out as if the replacement Director had become Director on the day on which the replaced Director was last appointed a Director.

**4.4 Executive Directors**

(a) **Appointment of Managing Director and other executive Directors**

The Directors:

- (i) may appoint one or more of themselves to the office of Managing Director or to any other executive office for a period and on the terms (including as to remuneration) as the Directors see fit;
  - (ii) may confer on a Managing Director or other executive Director any of the powers that the Directors may exercise; and
  - (iii) subject to the terms of appointment, may revoke or vary:
    - (A) the appointment of the Managing Director or other executive Director; or
    - (B) any of the powers conferred on the Managing Director or other executive Director.
- (b) **Consequence of cessation as Director or executive Director**
- (i) A person ceases to be Managing Director or other executive Director if they cease to be a Director.
  - (ii) A person ceases to be a Director if they cease to be the Managing Director or other executive Director unless the Board determines otherwise.

#### **4.5 Alternate Director**

(a) **Power to appoint Alternate Director**

Each Director may at any time appoint any individual approved for that purpose by the Directors to act as an Alternate Director in the appointor's place.

(b) **Suspension of appointment of Alternate Director**

The appointor may vary, suspend or terminate the appointment of his or her Alternate Director.

(c) **Notice of appointment of Alternate Director**

Notice of each appointment, suspension or termination must be made in writing to the Alternate Director, signed by the appointor, and a copy served on the Company.

(d) **Role of Alternate Director**

An Alternate Director:

- (i) is not entitled to receive notice of Board meetings unless the appointor has, by written notice to the Company, required the Company to do so either generally or in particular circumstances;
- (ii) may attend and vote at a Board meeting only if the appointor is not present at that meeting;
- (iii) unless the appointor has, by written notice to the Company, suspended the right either generally or in particular circumstances, may sign a circulating resolution under clause 6.1 if:
  - (A) the Alternate Director reasonably believes that the appointor is unavailable to sign the document; or



- (B) the appointor is ineligible to sign by reason of the appointor's fiduciary and statutory duties to the Company;
- (iv) is entitled to sign a document under clause 5.10 or section 127 of the Act;
- (v) when acting in the appointor's place at any time, is an officer of the Company and not an agent of the appointor and, in those circumstances, is subject to the duties and has all the powers and rights of a Director (subject to clauses 4.5(a) to 4.5(g));
- (vi) does not have a conflict of interest, or a material personal interest in a matter that relates to the affairs of the Company, solely by reason of the fact that the appointor has a conflict of interest or a material personal interest; and
- (vii) is not taken into account in determining the number of Directors in clause 4.1(a).

(e) **Remuneration of Alternate Director**

An Alternate Director's only rights (if any) as to remuneration for ordinary service as a Director are against the appointor and not the Company.

(f) **Multiple votes**

A Director or any other individual may act as Alternate Director to represent more than one Director, and have as many votes accordingly, but for the purpose of forming a quorum counts as only one Director.

(g) **Termination of appointment**

The appointment of an Alternate Director will be terminated by any of the following events:

- (i) if the Alternate Director gives written notice to the Company that he or she resigns the appointment;
- (ii) if the appointment of the Alternate Director is terminated by the appointor under clause 4.5(c);
- (iii) if a majority of the remaining Directors withdraw the approval of the individual to act as an Alternate Director;
- (iv) if the appointment is to act as Alternate Director for one or more Directors and those Directors have vacated office as Directors; or
- (v) on the happening of any event which, if the Alternate Director were a Director, would cause the Alternate Director to vacate the office of Director.

#### **4.6 Remuneration of Directors**

(a) **Remuneration**

A Director may only receive remuneration in his or her capacity as a Director if approved by the Board.

(b) **Director fees**

- (i) The Company may pay a Director fees for carrying out the duties and responsibilities of the office of Director required by the Act.
- (ii) The Directors may determine how the total fees are divided among them, and, if no determination is made, the total fees must be divided among them equally.
- (iii) The fees determined to be paid under clause 4.6(b)(i) is a debt due to the Directors, which accrues from day to day.
- (iv) Remuneration under clause 4.6(a) may be provided in any manner that the Board decides, including by a fixed fee, by percentage of profits, and by way of non-cash benefits including contributions to a superannuation fund.

(c) **Remuneration of Directors for extra services**

Subject to the Act, in addition to or substitution for the fees paid under clause 4.6(a), if the Directors or Members request a Director to perform services or undertake special exertions in addition to those required by the Act, the Board or Members may require that the Company remunerate the Director for those services.

(d) **Remuneration for other offices held by a Director or Managing Director**

Subject to the Act, a Director may hold any other office or position of profit in the Company (other than Auditor) together with the directorship on the conditions including additional remuneration (in addition to or substitution for the fees paid under clause 4.6(a)) as the Board determines by resolution.

(e) **Reimbursement of expenses incurred by Director**

Subject to the Act, in addition to the fees set out in clause 4.6(a), a Director is entitled to reimbursement of the travelling and other expenses that the Director properly incurs:

- (i) in attending Board meetings or any meetings of a committee of Directors;
- (ii) in attending any general meeting of the Company;
- (iii) in connection with the Company's business; and
- (iv) in the case of a Managing Director, in connection with carrying out or managing the Company's business.

(f) **Payment of retirement benefit to Director**

- (i) Subject to the Act, the Board may resolve that in addition to the remuneration paid or payable under clause 4.6(a), the Company pay a former Director, or the personal representative, spouse, relative or dependant of a Director, a retirement benefit in recognition of past services of an amount determined by the Board or may make contributions to a superannuation, retirement or pension fund for that purpose (including any amount paid or payable for the avoidance or minimisation of any penalty, charge, tax or other impost on the Company under any applicable legislation which imposes a penalty, charge, tax or other impost on employers if a minimum level of superannuation contributions are not paid for an employee (within the meaning of the legislation)).
- (ii) The Board may also resolve that the Company enter into a contract with a Director providing for payment of a retirement benefit or pension.

(g) **Financial benefit**

- (i) A Director must ensure that the requirements of the Act are complied with in relation to any financial benefit given by the Company to the Director or to any other related party of the Director.
- (ii) The Company must not make loans to Directors or provide guarantees or security for obligations undertaken by Directors except as may be permitted by the Act.

**4.7 Conflicts of interest**

(a) **Prohibition on being present or voting**

Except where permitted by the Act, a Director who has a material personal interest in a matter that is being considered at a Board meeting:

- (i) must not be counted in a quorum;
- (ii) must not vote on the matter; and
- (iii) must not be present while the matter is being considered at the meeting.

(b) **Directors' interests**

Subject to this Constitution and the Act and the approval of the Board:

- (i) a Director or a body or entity in which a Director has a direct or indirect interest may:
  - (A) enter into any agreement or arrangement with the Company;
  - (B) hold any office or place of profit (other than Auditor) in the Company; and
  - (C) act in a professional capacity (other than as Auditor) for the Company,and the Director or the body or entity may receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company;
- (ii) the fact that a Director holds office as a director and has fiduciary obligations arising out of that office:
  - (A) does not void or render voidable a contract made by the Director with the Company;
  - (B) does not void or render voidable a contract or arrangement entered into by or on behalf of the Company and in which the Director may have an interest; and
  - (C) does not require the Director to account to the Company for any profit realised by or under any contract or arrangement entered into by or on behalf of the Company and in which the Director may have an interest;

(iii) a Director may be or become a director or other officer of, or otherwise be interested in:

(A) any related body corporate of the Company; or

(B) any other body corporate promoted by the Company or in which the Company may be interested as a shareholder or otherwise, and

that Director is not accountable to the Company for any remuneration or other benefits received by the Director from having an interest in that body corporate; and

(iv) any Director:

(A) may exercise the voting power conferred by the shares or other interest held by the Company in another company in favour of a resolution appointing themselves or any Director as a director or other officer of the other company;

(B) may vote at a Board meeting in favour of a resolution that the Company exercises its voting power conferred by the shares or other interest held by the Company in the other company to appoint that Director as a director or other officer of the other company;

(C) may be appointed as representative of the Company and may vote at a general meeting of the other company in favour of a resolution appointing that Director as a director or other officer of the other company; and

(D) if also a director of the other company, may vote as a director of the other company in whatever manner he or she sees fit, including voting in favour of a resolution appointing the Director to any other office in the other company and a resolution appointing any other Directors as directors or other officers of the other company.

(c) **Material personal interest - Director's duty to disclose**

(i) If a Director has a material personal interest in a matter that relates to the affairs of the Company, the Director must give the other Directors notice of the interest unless an exception in the Act applies.

(ii) A notice required by clause (i) must include details of:

(A) the nature and extent of the interest; and

(B) the relation of the interest to the affairs of the Company.

(iii) The notice specified at clause 4.7(c)(ii) above must be given at a Board meeting as soon as practicable after the Director becomes aware of their interest in the matter.

(d) **Director may give standing notice about a material personal interest**

(i) A Director required to give notice under clause 4.7(c) may give standing notice of the nature and extent of the interest in the matter.

- (ii) The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.
  - (iii) A notice under clause 4.7(d)(i) may be given:
    - (A) at a Board meeting either orally or in writing; or
    - (B) to the other Directors individually in writing.
  - (iv) If the standing notice is given to the other Directors individually in writing:
    - (A) the notice is effective when it has been given to every Director; and
    - (B) the notice must be tabled at the next Board meeting after it is given.
  - (v) The Director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.
- (e) **Wholly owned subsidiary**
- If the Company is a wholly owned subsidiary, a Director may act in the best interests of the holding company if:
- (i) the Director acts in good faith;
  - (ii) the Company is not insolvent at the time; and
  - (iii) the Company does not become insolvent as a result of the Director's act.

## **5. MANAGEMENT OF BUSINESS BY DIRECTORS**

### **5.1 Powers of Directors**

- (a) The business of the Company is to be managed by or under the direction of the Directors.
- (b) The Directors may exercise all of the powers of the Company except any powers that any provision of the Act or this Constitution require the Company to exercise in general meeting.
- (c) Without limiting the generality of clause 5.1(b), the Directors may exercise all the powers of the Company to:
  - (i) borrow money;
  - (ii) charge any property or business of the Company or all or any of its uncalled capital; and
  - (iii) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

### **5.2 Responsibilities of the Board of Directors**

- (a) Subject to this Constitution, the Board is responsible for managing the business and affairs of the Company, including but not limited to:
  - (i) establishing its general policies;

- (ii) establishing its strategic priorities and objectives;
  - (iii) establishing its financial objectives and criteria;
  - (iv) determining matters of a major or unusual nature which are not in its ordinary course of business; and
  - (v) developing and adopting a Business Plan and Budget for the ensuing Financial Year.
- (b) Where a Director has been appointed by a Member in accordance with 4.2(a), the Director may disclose to the Member which appointed the Director, all information made available to the Director in respect of the affairs of the Company provided that the Director uses reasonable endeavours to procure that the person to whom the Director discloses such information maintains the confidentiality of the information.
- (c) Each Director may disclose to person to whom that party has a duty to disclose information, all information made available to the Director in respect of the affairs of the Company provided that the Director uses reasonable endeavours to procure that the person to whom the Director discloses such information maintains the confidentiality of the information.

### **5.3 Approval of Business Plan and budgets**

- (a) The Board must consider and adopt a Business Plan and Budget for each Financial Year at least 30 days before its commencement.
- (b) The CEO will submit to the Board a draft Business Plan and draft Budget for that Financial Year.
- (c) The Board must consider the drafts and use all reasonable endeavours to amend and approve them within 14 days after submission.

### **5.4 Amendment of Business Plan and budgets**

The Board may either before or during the Financial Year to which a Business Plan or Budget relates amend the Business Plan or Budget. The Board must ensure that following such an amendment the Business Plan and Budget for that Financial Year remain consistent.

### **5.5 Compliance with Business Plan and budget**

During a Financial Year the Company must so far as is practicable conduct its business in accordance with the Business Plan and Budget adopted by the Board for that Financial Year.

### **5.6 Reporting obligations**

The Company must:

- (a) ensure that the Directors receive management and financial information and reports sufficient to allow them to understand the financial affairs of the Company and to control the efficient operation of the Company including, but not limited to, the following:
  - (i) within 15 Business Days after the end of each quarter, a profit and loss statement and balance sheet and cash flow statement of the Company as at the end of that quarter and for the Financial Year to date prepared in accordance with applicable accounting standards; and

- (ii) as soon as practicable following the end of each Financial Year a profit and loss statement for that Financial Year and balance sheet as at the end of that Financial Year.

### **5.7 Directors must keep transactions confidential**

Every Director and other agent or officer of the Company must:

- (a) keep confidential all aspects of all transactions of the Company, except:
  - (i) to the extent necessary to enable the person to perform his or her duties to the Company;
  - (ii) as required by law; or
  - (iii) when requested by the Directors to disclose information to the Auditor or a general meeting; and
- (b) if requested by the Directors, sign and make a declaration that he or she will not disclose or publish any aspect of any transaction of the Company.

### **5.8 Appointment of attorney for Company**

The Directors may, by power of attorney, appoint any company, firm, person or body of persons to be the attorney or representative of the Company for:

- (a) any period; and
- (b) for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors under this Constitution.

### **5.9 Delegation by the Directors**

- (a) Subject to the Act, the Directors may delegate any of their powers to:
  - (i) a committee of Directors;
  - (ii) a Director;
  - (iii) an employee of the Company; or
  - (iv) any other person.
- (b) The delegate must exercise the powers delegated to it under any directions of the Directors.
- (c) The effect of the delegate exercising a power is the same as if the Directors exercised it.
- (d) The Directors may at any time revoke or vary any delegation to a person or committee.

### **5.10 Negotiable instruments**

- (a) Any two Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument so long as one Director is the Managing Director.

- (b) The Directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

## **6. BOARD MEETINGS**

### **6.1 Directors' resolutions without a meeting**

- (a) The Directors may pass a resolution without a Board meeting being held if all of the Directors entitled to vote on the resolution (excluding those Directors described in paragraph (d)) consent to the resolution in accordance with this clause 6.1. The resolution is not invalidated if consent is provided by a Director who is not entitled to vote.
- (b) A Director may consent to a resolution:
  - (i) by 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 written notice under clause 17.1(i).
- (c) The resolution is passed when the last participating Director consents to the resolution in accordance with this clause 6.1.
- (d) Any Director:
  - (i) on a leave of absence approved by the Directors; or
  - (ii) who disqualifies himself or herself from considering the resolution in question; or
  - (iii) who is not able to be contacted using reasonable means,is not required to vote for the purpose of this clause 6.1.
- (e) Any document referred to in this clause 6.1 may be in the form of an email. Separate copies of a document (including in electronic form) may be signed by the Directors if the wording of the resolution and statement is identical in each copy.

### **6.2 Calling Board meetings**

A Director may at any time, and the Secretary on the request of a Director must, call a meeting of the Board.

### **6.3 Notice of meeting**

Reasonable notice of every Board meeting must be given to each Director, but failure to give or receive that notice will not invalidate anything done or any resolution passed at the meeting provided the failure occurred by accident or inadvertent error, or the Director who failed to receive notice attended the meeting or waived notice of the meeting either before or after the meeting.

### **6.4 Conduct of Board meetings**

- (a) A Board meeting may be called and held:
  - (i) in person in or around the Perth area of Western Australia, unless all the Directors otherwise agree in writing;



- (ii) by telephone;
  - (iii) by audio-visual linkup; or
  - (iv) using any technology consented to by a majority of the Directors before or during the relevant meeting.
- (b) Any consent under clause 6.4(a)(iv) may be a standing consent.
  - (c) If a Director gives their consent under clause 6.4(a)(iv) they may only withdraw their consent within a reasonable period before the meeting commences.
  - (d) A Director is regarded as present at a meeting where the meeting is conducted by telephone, audio-visual linkup or other technology if the Director is able to hear, and to be heard by, all others attending the meeting.
  - (e) A meeting conducted by telephone, audio-visual linkup or other technology will be deemed to be held at the place agreed on by the Directors attending that meeting provided at least one of the Directors present at the meeting was at that place for the duration of the meeting.
  - (f) Subject to the Act, and provided a majority of the Directors agree, a Board meeting may be held outside Australia.
  - (g) An original document, or a photocopy, facsimile or electronic copy of that document, which is in the possession of, or has been seen by, all Directors attending the Directors' meeting before, or at the time of, that meeting, is deemed to be a document tabled at that meeting.
  - (h) Subject to this clause 6, the Directors may adjourn and otherwise regulate Board meetings as they think fit.

## **6.5 Chairing Board meetings**

- (a) The Directors may elect a Director to the office of Chair of the Board.
- (b) The Chair may be a person independent of the Members.
- (c) The Directors may determine the period for which the Chair is to hold office.
- (d) The Directors present at a Board meeting may elect one of the Directors present to chair that meeting, or part of it, if:
  - (i) no Chair has been elected; or
  - (ii) the Chair is not available or declines to act as Chair for the meeting or part of it.

## **6.6 Voting by Chair at Board meetings**

At any Board meeting, the Chair of the Board (if a person independent from the Members) will not have a deliberative vote but will have a casting vote. In any other case the Chair of the Board will have a deliberative vote but not a casting vote.

## **6.7 Quorum at Board meetings**

- (a) The quorum for a Board meeting is:

- (i) one Director appointed by each Member; or
  - (ii) if no Directors have been appointed by Members, two Directors,
- and the quorum must be present at all times during the meeting.

- (b) If a quorum is not present within 30 minutes after the time appointed for the Board meeting, the Board meeting is adjourned to the same time and place on the next Business Day provided that if a quorum is not present at the adjourned meeting because the same Director or Directors are not present, quorum shall be formed in such Director(s)' absence.

#### **6.8 Meeting competent to exercise all powers**

A Directors' meeting at which a quorum is present will be competent to exercise all or any of the powers and discretions vested in or exercisable by the Directors generally.

#### **6.9 Passing of Directors' resolutions**

- (a) A resolution to be considered at a meeting of the Board and dealing with a matter listed in schedule 1 must be passed by a Special Majority.
- (b) Subject to clause 6.9(a), a resolution considered at a meeting of the Board may be passed by a Simple Majority.

#### **6.10 Resolution passed deemed to be a determination of the Board**

Any resolution properly passed at a duly called Directors' meeting at which a quorum is present will be deemed to be a determination by all the Directors or the Board for the purposes of this Constitution.

#### **6.11 Committee powers and meetings**

- (a) Any committee of Directors may exercise the powers delegated to it under any directions that may from time to time be imposed on it by the Board.
- (b) The meetings and proceedings of any committee consisting of two or more Directors will be governed by this Constitution regulating the meetings and proceedings of the Directors so far as they are applicable except to the extent they are superseded by any direction made by the Board under this clause.

#### **6.12 Validity of acts of Directors**

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or member of the Board or committee of Directors; or
- (b) a person appointed to one of those positions or acting as a Director was disqualified or had vacated office or was otherwise not entitled to vote or act,

all acts of the Director, the Board or the committee of Directors (as the case may be) before the discovery was made are as valid as if the person had been duly appointed and was not disqualified and was entitled to vote or act.

#### **6.13 Default Board Decisions**

Unless otherwise specified in this Constitution, all decisions vest with the Board and decisions are to be reached by majority vote where each director has one vote.

## **7. GENERAL MEETINGS**

### **7.1 Right to call and attend general meetings**

#### **(a) Calling a general meeting**

- (i) A Director or the Directors may, by written notice, call a general meeting at a time and place as the Director or the Directors resolve.
- (ii) Members may requisition the holding of a general meeting only under the Act and the Directors must call a general meeting as soon as practicable after receiving that requisition.
- (iii) Members may call and arrange to hold a general meeting only under the Act.

#### **(b) Right to attend general meetings**

- (i) Each Member is entitled to attend a general meeting.
- (ii) Each Director is entitled to attend and speak at a general meeting.
- (iii) A Member's proxy or a Representative may attend a general meeting only as provided by this Constitution and the Act.

### **7.2 Notice of general meetings**

#### **(a) Amount of notice of general meetings**

Subject to the Act, at least 21 days' notice must be given of a general meeting.

#### **(b) Calculation of period of notice**

In computing the period of notice under clause 7.2(a), both the day on which the notice is given or taken to be given and the day of the general meeting called by it are to be disregarded.

#### **(c) Right to notice of general meeting**

Written notice of the general meeting must be given under clause 17 and must be given to any person entitled to receive notice under the Act including:

- (i) each Member entitled to vote at the meeting; and
- (ii) each Director.

#### **(d) Content of notice**

A notice calling a general meeting must comply with the Act and must:

- (i) set out the place, date and time for the general meeting (and if the general meeting is to be held in two or more places, the technology that will be used to facilitate the general meeting);

- (ii) state the general nature of the business to be considered at the general meeting;
  - (iii) if a Member Special Decision is to be proposed at the general meeting, set out an intention to propose a Member Special Decision and state the decision;
  - (iv) if a Member is entitled to appoint a proxy, contain a statement setting out the following information:
    - (A) that the Member has a right to appoint a proxy and that the proxy does not need to be a Member of the Company; and
    - (B) that a Member who is entitled to cast two or more votes may appoint two proxies and may specify the proportional number of votes each proxy is appointed to exercise;
  - (v) be accompanied by an instrument of proxy in any form as the Directors may from time to time prescribe or accept; and
  - (vi) contain information that is worded and presented in a clear, concise and effective manner.
- (e) **Content of general meetings**

At all general meetings, unless a representative of each Member is present and all the representatives of Members present have otherwise agreed, only the items specified in the notice convening the meeting may be considered

### **7.3 Cancellation or postponement of a general meeting**

- (a) **Directors may cancel or postpone a general meeting**
- (i) The Directors may cancel or postpone a general meeting by giving notice not less than three Business Days before the time at which the meeting was to be held to each person entitled to be given notice of a general meeting.
  - (ii) Clause 7.3(a)(i) does not apply to general meetings called by court order or under the Act:
    - (A) by the Directors on the request of Members, unless the Members who requested the meeting consent to the postponement or cancellation; or
    - (B) by Members, unless the Members who called the meeting consent to the postponement or cancellation.
- (b) **Contents of notice postponing or cancelling a general meeting**

A notice of postponement or cancellation of a general meeting must specify:

- (i) the reasons for the postponement or cancellation; and
- (ii) if the general meeting is postponed:
  - (A) the postponed date and time for the holding of the general meeting;

- (B) a place for the holding of the general meeting which may be either the same as or different from the place specified in the notice calling the general meeting; and
- (C) if the general meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the general meeting in that manner.

(c) **Number of clear days for postponement of general meeting**

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed general meeting must not be less than the number of clear days' notice of the general meeting required to be given by this Constitution or the Act.

(d) **Business at postponed general meeting**

The only business that may be transacted at a general meeting the holding of which is postponed is the business specified in the original notice calling the general meeting.

(e) **Proxy or Representative at postponed general meeting**

Where:

- (i) an instrument of proxy or power of appointment authorises a proxy or Representative to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and
- (ii) the date for holding the general meeting is postponed to a date later than the date specified in the instrument of proxy or appointment of Representative,

then that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy or appointment of Representative unless the Member appointing the proxy or Representative gives notice to the Company to the contrary not less than 48 hours before the time to which the holding of the general meeting has been postponed.

**7.4 Members' circulating resolution without a general meeting**

- (a) The Members may pass a resolution without a general meeting being held if a Special Majority of the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of the of documents may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- (c) The resolution made under clause 7.4(a) is passed when the resolution is signed by the last Member comprising the Special Majority.

**7.5 Validity of resolutions**

The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

## 7.6 Conducting general meetings

### (a) Time and place for general meetings

A general meeting must be held at a reasonable time and place.

### (b) Technology

A general meeting may be held at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

### (c) Quorum for a general meeting

The quorum for a general meeting or an adjourned general meeting consists of those Members who hold 50% of the Shares of the Company and the quorum must be present at all times during the meeting.

### (d) Determination of quorum at general meeting

In determining whether a quorum is present at a general meeting:

- (i) Representatives and persons attending as proxies (in the case of an individual attending as proxy, that individual and in the case of a body corporate attending as proxy, that body corporate's Representative) are to be counted;
- (ii) if a Member has appointed more than one proxy or Representative, only one of them is to be counted;
- (iii) if an individual is attending both as a Member and as a proxy or Representative, they are to be counted only once; and
- (iv) if an individual is attending as a proxy or Representative for more than one Member, they are to be counted only once.

### (e) Absence of quorum at a general meeting

- (i) If within 30 minutes after the time for the general meeting set out in the notice of general meeting a quorum is not present, the general meeting:
  - (A) if called under the Act by a Director at the request of Members or by Members, is dissolved; and
  - (B) in any other case, is to be adjourned to a date, time and place as specified by the Directors.
- (ii) If the Directors do not specify one or more of the requirements in clause 7.6(e)(i)(B), the general meeting is adjourned to:
  - (A) if the date is not specified, the same day of the following week;
  - (B) if the time is not specified, the same time; and
  - (C) if the place is not specified, the same place.

### (f) Adjourned meeting (quorum)

If no quorum is present at the general meeting adjourned under clause 7.6(e) within 30 minutes after the time for the general meeting, the Directors may, in their absolute discretion, declare the meeting dissolved or deem that those Members present in person form a quorum and may transact the business for which the meeting was called.

(g) **Appointment and powers of Chair of general meeting**

The Chair will be entitled to take the chair at general meetings.

(h) **Powers of the Chair and conduct of general meetings**

(i) The Chair is granted the power and is responsible for the general conduct of general meetings and for the procedures to be adopted at general meetings.

(ii) Any decision of the Chair is final.

(iii) The Chair may delegate any power conferred by this clause to any person.

**7.7 Resolutions, voting and polls at general meetings**

(a) **Members' resolutions**

The Members may propose a resolution to be moved at a general meeting only in accordance with Division 4 of Part 2G.2 of the Act.

(b) **Resolution determined by majority**

(i) At a general meeting, all resolutions submitted to the meeting will be decided by a Simple Majority of votes except where a greater majority is required by this Constitution or the Act.

(ii) A resolution, dealing with a matter listed in Schedule 1, to be considered at a meeting of Members must be resolved by a Special Majority.

(c) **Voting by Chair at general meetings**

In case of an equality of votes on a resolution at a general meeting the Chair of that meeting does not have a second or casting vote on that resolution in addition to any vote the Chair has in his or her other capacity.

(d) **Matters on which a poll may be demanded at a general meeting**

A poll may be demanded on any resolution other than resolutions concerning:

(i) the election of the Chair; or

(ii) the adjournment of the general meeting.

(e) **Demand for poll**

Subject to clause 7.7(d), a poll may be demanded on any resolution by:

(i) the Chair;

(ii) any one or more Members holding shares conferring not less than five percent of the total voting rights of all Members having the right to vote on the resolution,

provided that any demand for a poll may be withdrawn.

(f) **Conduct of poll**

The Chair may decide in each case the manner in which a poll is taken.

(g) **Right to vote at general meetings**

Subject to this Constitution, the Act, and any rights or restrictions attached to any class of shares, at a general meeting:

- (i) each Member present in person or by proxy or Representative has one vote for each fully paid share they hold and a fraction of a vote (equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited) for that share, ignoring any amounts paid in advance of a call) for each partly paid share.

(h) **Right to vote if call unpaid on shares**

A Member is not entitled to vote on a show of hands or on a poll at any general meeting in respect of shares held by the Member for which calls or other monies are due and payable to the Company at the time of the meeting.

(i) **Right to vote on death, bankruptcy or mental incapacity of Member**

A person entitled to exercise the rights attached to a share as a consequence of clauses 10.9(a), 10.9(b), 10.9(d) or 10.9(e) who, at least 48 hours before the time notified for a general meeting (or an adjourned meeting), satisfied the Board of that entitlement, may vote at that general meeting in respect of that share as if the person was registered as the holder of the share.

(j) **Objections to right to vote**

A challenge to a right to vote at a general meeting:

- (i) may only be made at the meeting or adjourned meeting; and
- (ii) must be determined by the Chair whose decision if made in good faith is final.

## **7.8 Proxies and Representatives**

(a) **Appointment of proxies and Representatives**

- (i) A Member who is entitled to attend and cast a vote at a general meeting may appoint a proxy or, if the Member is a body corporate, a Representative, to attend and cast a vote at that meeting.
- (ii) If a proxy appointed to attend and cast a vote at a general meeting under clause 7.8(a)(i) is a body corporate, the proxy may appoint a Representative to attend and cast a vote at that meeting.
- (iii) An appointment under clause 7.8(a)(i) may specify the proportion or number of votes that the proxy may exercise. If a Member is entitled to cast two or more votes at a general meeting, that Member may appoint two proxies. If the Member appoints two proxies and the appointment does not specify the proportion or number of the Member's votes that each proxy may exercise,



each proxy may exercise half of the votes. Any fractions of votes will be disregarded.

- (iv) Neither the proxy nor the Representative need be a Member.
- (v) Any proxy or Representative appointed under this clause must be appointed under Division 6 of Part 2G.2 of the Act and will have the rights set out in that Division.

(b) **Appointment received at electronic address**

For the purposes of clause 7.8(a), an appointment received at an electronic address will be taken to be signed by the Member or proxy as applicable if the appointment has been authenticated under the Act.

**7.9 Meetings of holders of a class of shares**

(a) **General meeting provisions apply**

The provisions of this Constitution relating to general meetings apply so far as they are capable of application and with any necessary changes to every separate meeting of the holders of a class of shares except that:

- (i) a quorum is constituted by persons who, between them, hold or represent two-thirds of the issued shares of the class (unless only one person holds all the shares of the class, in which case that person constitutes a quorum); and
- (ii) any holder of shares of the class, present in person or by proxy or by Representative, may demand a poll.

(b) **Director entitled to notice of class meetings**

A Director is entitled to receive notice of and to attend all separate meetings of the holders of any class of shares in the capital of the Company and is entitled to attend and speak at those meetings.

**7.10 No Annual general meeting**

Unless required by the Act or any other applicable law, while the Company is a proprietary company the Company is not required to hold an annual General Meeting.

**8. DIRECTORS' AND MEMBERS' MINUTES**

**8.1 Minutes**

The Directors must cause to be entered in the minute books of the Company within one month of the relevant meeting, minutes containing details of:

- (a) the names of the Directors present at each meeting of the Directors and of any committee of Directors;
- (b) all declarations made or notices given by any Director (either generally or specifically) of its interest in any contract or proposed contract or of its holding of any office or property where any conflict of duty or interest may arise; and
- (c) all resolutions and proceedings of general meetings of the Company, meetings of the Directors and meetings of any committee of the Directors.

## **8.2 Minutes to be signed by chair**

Any minutes of any general meetings of the Company, meetings of the Directors or meetings of any committee of the Directors must be signed by the chair of the meeting or by the chair of the next succeeding meeting and once signed will constitute prima facie evidence of the matters stated in the minutes.

## **8.3 Members' access to minutes**

- (a) The Directors must ensure that the minute books for general meetings are open for inspection by Members free of charge.
- (b) If requested by a Member in writing, the Directors must ensure the Company sends a copy of any minutes or extract of minutes requested within 14 days after the request or, if the Directors determine that payment should be made for the copies, within 14 days after the Company receives the payment.

## **9. SECRETARY**

### **9.1 Appointment of Secretary**

The Directors must appoint one or more persons to the office of secretary to the Company.

### **9.2 Notification to ASIC**

If a Secretary is appointed, the Secretary must notify ASIC of the appointment.

### **9.3 Terms and conditions of appointment**

- (a) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authority as the Directors determine.
- (b) The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.
- (c) The Directors may suspend, remove or dismiss a Secretary from that office, subject to any agreement between the Company and the Secretary.

## **10. SHARES**

### **10.1 Share capital**

#### **(a) Directors to issue shares**

Subject to this Constitution, the Act and any special rights conferred on the holders of any shares or class of shares, the Directors:

- (i) may issue or dispose of shares to any person at any time and on any terms and conditions and having attached to them any preferred, deferred or other special rights or restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the Directors think fit;
- (ii) may grant to any person an option over shares or pre-emptive rights at any time and for any consideration as they think fit; and
- (iii) have the right to settle the manner in which fractions of a share, however arising, are to be dealt with.

(b) **Redeemable preference shares**

The Company can issue preference shares which are, or at the option of the Company are to be, liable to be redeemed provided that the terms on which and the manner in which any redemption is to be effected is, if permitted by law, specified in the conditions of issue of the preference shares.

(c) **Brokerage or commission**

(i) Subject to the Act, the Company may pay brokerage or commission to any person in consideration of that person subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares in the Company or for procuring or agreeing to procure subscriptions (whether absolutely or conditionally) for any shares in the Company.

(ii) Any brokerage or commission may be paid or satisfied in cash, shares, debentures or other securities of the Company or otherwise as the Directors determine.

(d) **Registered holder to be treated as absolute owner**

Unless otherwise required by this Constitution or by law, the Company:

(i) must treat the registered holder of a share as the absolute owner; and

(ii) is not obliged to recognise (but may do so):

(A) any trust, equitable, contingent, future or partial interest in any share;

(B) any interest in any fractional part of a share; or

(C) any other right (other than an absolute right) in respect of any share.

(e) **Joint holders of shares**

(i) Where two or more persons are registered as the joint holders of a share:

(A) they are taken to hold the share as joint tenants with rights of survivorship;

(B) each Member is jointly and severally liable for any payment in respect of the share;

(C) the Member whose name first appears in the Register of Members in respect of the share is deemed to be the registered holder of the share for the purposes of this Constitution and any action permitted or required by the Constitution; and

(D) any one of the joint holders of the share may give an effective receipt for any dividend, bonus or return of share capital payable to the joint holders.

(ii) Without limiting the above, the Company is not bound:

(A) to register more than three persons as joint holders of a share; or

- (B) to issue more than one Certificate or holding statement in respect of shares jointly held.

## 10.2 Changes to shares and share capital

### (a) Changes to shares

- (i) Subject to the Act, the Board by majority resolution may:
  - (A) reclassify any shares into classes of shares;
  - (B) cancel any shares; and
  - (C) buy back its own shares.
- (ii) Subject to the Act, the Company may convert all or any of its shares into a larger or smaller number of shares by ordinary resolution passed at general meeting.

### (b) Varying and cancelling class rights

- (i) The Company may vary or cancel the rights attaching to any class of shares only if the variation or cancellation is permitted by the Act and is approved by Member Special Decision of each of:
  - (A) the Members; and
  - (B) the Members holding shares of the relevant class.
- (ii) The Directors must give written notice of the variation or cancellation to the Members holding the shares of the relevant class within seven days of the variation or cancellation.
- (iii) The issue or creation of new shares in a particular class ranking equally with any class of existing shares will not be considered to be a variation of the rights attached to the existing shares in that class.

## 10.3 No right to encumber

A Member (in this clause the **Mortgagor**) must not create (or permit to subsist) any Encumbrance over all or any of the Shares held by it in favour of any person (in this clause the **Mortgagee**) unless the Mortgagee executes a Constitution in which it covenants in favour of the parties to this Constitution (other than the Mortgagor) that the Mortgagee will be bound by the provisions of this Constitution relating to the transfer of Shares in the event that the Mortgagee seeks to exercise a power of sale or otherwise Deal with such Shares.

## 10.4 Partly paid shares and calls

### (a) Directors to make calls

The Directors may:

- (i) make calls on a Member in respect of any money unpaid on the shares of that Member, if the money is not by the terms of issue of those shares made payable at fixed times;
- (ii) make a call payable by instalments; and

(iii) revoke or postpone a call.

**(b) Prepayment of calls and interest**

The Directors may:

- (i) accept from a Member the whole or a part of the amount unpaid on a share even if no part of that amount has been called; and
- (ii) authorise payment by the Company of interest on the whole or any part of an amount accepted, until the amount becomes payable and at the rate as is agreed on between the Directors and the Member paying the sum.

**(c) Time of call**

A call is taken to be made at the time when the resolution of the Directors authorising the call is passed.

**(d) Notice of call**

- (i) At least 30 Business Days before the due date for payment of a call, the Directors must cause notices to be sent to all Members on whom the call is made who are on the Register of Members when the call is announced.
- (ii) Notice under clause 10.4(d)(i) must include the amount and date due for payment.
- (iii) The non-receipt of a notice of any call by, or the accidental omission to give notice of a call to, a Member does not invalidate the call.

**(e) Members' liability**

Other than in respect of money unpaid on the shares of a Member that are payable at fixed times, each Member must, on receiving notice under clause 10.4(d), pay to the Company the amount called on that Member's shares.

**(f) Joint holders' liability**

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

**(g) Interest payable if non-payment of calls**

- (i) If a call is not paid by the due date, interest is payable on the amount of the call from the due date to the date of payment at the rate set by the Directors.
- (ii) The Directors may waive any interest payable in whole or in part.

**(h) Notice on non-payment of calls**

If a Member fails to pay any call or instalment of a call when due, the Directors may serve a notice on the Member:

- (i) requiring payment by a stated date of the unpaid amount of the call or instalment together with any interest accruing under clause 10.4(g) and all costs and expenses that may have been incurred by the Company by reason of the failure to pay; and

- (ii) stating that failure to pay by the stated date will result in the shares being forfeited.

## **10.5 Forfeiture**

### **(a) Forfeiture for failure to comply with notice**

- (i) Subject to the Act, if the requirements of the notice issued under clause 10.4(h) are not complied with, any share in respect of which the notice has been given may be forfeited by a resolution of the Directors at any time before the payment required by the notice is received.
- (ii) Forfeiture under clause 10.5(a)(i) will include any dividend and other distribution declared or to be made in respect of the forfeited share that is not paid or distributed before the forfeiture.
- (iii) The non-receipt of any notice by any Member, or the accidental omission to give notice of forfeiture to any Member, will not invalidate the forfeiture.

### **(b) Notice of forfeiture**

If any share is forfeited under clause 10.5(a), notice of the forfeiture must be given to the Member holding the share immediately before the forfeiture and an entry of the forfeiture and its date must be made in the Register of Members.

### **(c) Cessation of membership and liability**

- (i) Subject to the Act, a Member whose share has been forfeited ceases to be a Member in respect of that share but remains liable to pay to the Company all amounts, including interest and costs and expenses, payable at the date of forfeiture in respect of the share plus interest at the rate set by the Directors from the date of forfeiture and reasonable expenses of sale.
- (ii) Liability under clause 10.5(c)(i) will cease only when the Company receives payment in full of all outstanding money in respect of the shares.

### **(d) Action to recover called money**

- (i) On the hearing of any action by the Company for the recovery of money due for any call it is sufficient, as conclusive evidence of the debt, for the Company to prove that:
  - (A) the Member sued was a registered holder of the share in respect of which the call was made at the time the call was made;
  - (B) the resolution making the call is recorded in a minute book; and
  - (C) notice of the call was given to the Member sued in accordance with this Constitution.
- (ii) It will not be necessary for the Company to prove the appointment of the Directors who made the call or any other matters.

### **(e) Disposal of forfeited share**

Subject to the Act, the Directors may cause a forfeited share to be sold, transferred or otherwise disposed of on the terms and in the manner the Directors think fit.

(f) **Evidence of forfeiture**

A statement in writing declaring that:

- (i) the person making the statement is a Director or a Secretary of the Company; and
- (ii) a share in the Company has been forfeited under this Constitution on the date stated in the statement,

is, on its face, evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.

(g) **Transfer of forfeited share**

- (i) The Company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share under clause 10.5(e) and may execute or effect a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (ii) If a forfeited share is sold, the purchaser of the forfeited share must be registered as the holder of the share by the Company and is not bound to see to the application of any money paid as consideration.

## 10.6 Liens

(a) **First and paramount lien**

Unless the Directors otherwise resolve, the Company has a first and paramount lien on every share and any dividend payable in respect of the share where there is any amount payable to the Company in respect of the share at any time as a result of:

- (i) a call;
- (ii) if the shares were acquired under an employee incentive scheme, an amount owed to the Company for acquiring them; or
- (iii) any payment made by the Company to any person or authority in any jurisdiction for or on behalf of the Member.

(b) **Company's rights to recover payments**

- (i) A Member must reimburse the Company on demand in writing for all payments the Company makes to a government or taxing authority in respect of the Member, the death of a Member or the Member's shares or any distributions on the Member's shares, including dividends, where the Company is either:
  - (A) obliged by law to make the relevant payment; or
  - (B) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxing authority that the Company is obliged by law to make the relevant payment.
- (ii) The Company is not obliged to advise the Member in advance of its intention to make the payment.

(c) **Reimbursement is a debt due**

- (i) The obligation of the Member to reimburse the Company is a debt due to the Company as if it were a call on all the Member's shares, duly made at the time when the written demand for reimbursement is given by the Company to the Member.
  - (ii) The provisions of this Constitution relating to non-payment of calls, including payment of interest and sale of the Member's shares under lien, apply to the debt.
- (d) **Sale of shares**
  - (i) Subject to clause 10.6(d)(ii), the Company may sell any share over which it has a lien.
  - (ii) The Company must not sell a share under clause 10.6(d)(i):
    - (A) unless a sum in respect of which the lien exists is presently payable; and
    - (B) until 14 days has passed after written notice demanding payment of the sum referred to in clause 10.6(d)(ii)(A) has been given to the Member, or to the person entitled to the share by reason of the Member's death or bankruptcy.
- (e) **Transfer on sale under lien**
  - (i) For the purpose of giving effect to a sale under clause 10.6(d), the Company may receive the consideration, if any, given for the share so sold and may execute a transfer of the share sold in favour of the purchaser of the share, or do all other things as may be necessary or appropriate for it to do to effect the transfer.
  - (ii) The purchaser is not bound to see to the application of the purchase money.
- (f) **Irregularity or invalidity**

The title of the purchaser to the share is not affected by any irregularity or invalidity in connection with the sale of the share.
- (g) **Proceeds of sale**

The proceeds of a sale under clause 10.6(d) must be applied by the Company in payment of the amount in respect of which the lien exists as is presently payable and the residue, if any, must be paid to the person entitled to the share immediately before the sale.

## **10.7 Certificates**

- (a) **Issue of Certificate**
  - (i) The Company must issue each Member with a Certificate, or a statement of holdings, for any shares held by the relevant Member.
  - (ii) The Company may issue a single Certificate for more than one share held by a Member.
- (b) **Form of Certificate**



Every Certificate:

- (i) must include all information required by the Act; and
- (ii) must be issued in the form determined by the Directors.

(c) **Certificate of joint holders**

The delivery of a Certificate or statement of holdings in relation to a share to the registered holder of the share or their agent is effective delivery to all the joint holders of that share.

(d) **Replacement of Certificates**

If required by the Act, the Company must cancel and replace a worn out, defaced, stolen, lost or destroyed Certificate in the manner prescribed by the relevant provision of the Act.

## 10.8 Transfer of shares

- (a) A Member must not transfer any share except in accordance with this Constitution.
- (b) If a Member (**Transferor**) wishes to transfer all or some of the Shares held by it (**Subject Shares**), it must deliver a notice (**Disposal Notice**) to each other Member stating:
  - (i) that it wishes to transfer the Subject Shares;
  - (ii) the total number and description of the Subject Shares; and
  - (iii) the price at which it wishes to transfer the Subject Shares (**Transfer Price**).
- (c) For the purposes of this schedule, an exercise event (**Exercise Event**) occurs upon the service by a Member of a Disposal Notice on all of the other Members (**Remaining Members**).
- (d) During the period of 20 Business Days after an Exercise Event a recipient of a Disposal Notice (**Exercising Holder**) may serve a notice (**Exercise Notice**) on the Transferor to the effect that it wishes to purchase all or a specified portion of the Subject Shares at the Transfer Price, provided that the acquisition by the Exercising Holder of those Subject Shares will not cause a contravention of the *Foreign Acquisitions and Takeovers Act 1975* (Cth).
- (e) **Exercise Notice**
  - (i) If an Exercise Notice is served on the Transferor pursuant to clause 10.8(d):
    - (A) by only one Exercising Holder who indicates that it wishes to purchase all the Subject Shares, the Transferor must sell and that Exercising Holder must purchase, the Subject Shares at the Transfer Price and free of any Encumbrance;
    - (B) by more than one Exercising Holder who indicate that, in aggregate, they wish to purchase all the Subject Shares, the Transferor must sell and those Exercising Holders must purchase the Subject Shares free of any Encumbrance (in proportions, to the extent that they wish to

purchase, equal to the proportions in which they hold Shares on the date of the Exercise Event) at the Transfer Price.

- (ii) The sale and purchase of the Subject Shares or each part of the Subject Shares pursuant to this clause will take place at the registered office of the Company at 12 noon on the date which is 35 Business Days after the date of the Exercise Event.
- (f) Subject to clause 10.8(g), if and only if an agreement or agreements for the sale of all the Subject Shares are not reached or completion of such sale or sales does not take place pursuant to paragraph 5 other than by reason of the default of the Transferor, the Transferor may agree to sell the Subject Shares to any person within 70 Business Days after the Exercise Event at a price not less than the Transfer Price.
- (g) If agreements are entered into for the sale of all the Subject Shares by the Transferor to more than one Exercising Holder and one of those Exercising Holders fails to complete its agreement in respect of certain of the Subject Shares (**Remaining Shares**) in accordance with clause 10.8(e)10.8(e)(i).
  - (i) the Transferor may offer to sell the Remaining Shares to the remaining Exercising Holders, in the proportions (if more than one) mentioned in clause 10.8(e)(i)(B);
  - (ii) that offer must be made no later than two Business Days after the relevant failure to complete and will remain open for acceptance until the fifth Business Day after it is made;
  - (iii) failing such acceptance, the Transferor may rescind each other agreement;
  - (iv) in the event of such rescission the Transferor will have no liability whatsoever to an Exercising Holder which was the proposed purchaser under a rescinded agreement and the Transferor may exercise its rights under paragraph 6; and
  - (v) if the Transferor does not rescind each other agreement, it may sell the Remaining Shares to any person within 70 Business Days after the Exercise Event at a price not less than the Transfer Price.
- (h) **Forms of instrument of transfer**

Subject to this Constitution, shares in the Company are transferable by an instrument of transfer in writing in any usual or common form or in any other form that the Directors approve.

(i) **Execution and delivery of transfer**

Subject to the Act, the Directors must refuse to register the transfer if the transfer referred to in clause 10.8(a) is not:

- (i) executed by or on behalf of both the transferor and the transferee; and
- (ii) left for registration at the Registered Office, accompanied by the Certificate (if any) of the share to be transferred and any other information the Directors properly require to establish the right of the transferor to make the transfer.

(j) **Registration of transfers**

A person transferring a share remains the holder of the shares until the transfer is registered and the name of the person to whom the share is transferred is entered in the Register of Members in respect of the share and a transfer of a share does not pass the right to any dividends declared on the share until registration.

(k) **Company to register transfer without charge**

Any transfer registered, or Certificate issued by the Company must be registered or issued without charge except where the issue of a Certificate is to replace a lost or destroyed Certificate.

(l) **Power to refuse to register**

(i) Subject to clause 10.8(l)(ii) and the Act, the Directors may refuse to register any paper based transfer of shares, for any of the following reasons:

- (A) under clause 10.8(a) or 10.8(i);
- (B) the Company has a lien on the shares the subject of the transfer;
- (C) a court order restricts a Member's capacity to transfer the shares;
- (D) registration of the transfer would be contrary to Australian law;
- (E) if the transfer does not comply with the terms of any employee incentive scheme of the Company; or
- (F) if otherwise permitted by the Act.

(ii) Neither the Directors nor the Company may refuse to register a transfer of shares made under a valid exercise of an enforcement power under a mortgage of the shares the subject of the transfer.

(iii) The Directors must notify the person who deposited the instrument of transfer of any refusal to transfer the shares under clause 10.8(l)(i) within five Business Days from the date the instrument of transfer is lodged.

(m) **Company to retain instrument of transfer**

The Directors must retain every instrument of transfer that is registered for the period as the Directors determine.

(n) **Return of instrument of transfer**

If the Directors refuse registration of a transfer, and if requested by the person who deposited the instrument of transfer, the instrument of transfer must be returned to the person who deposited it within 12 months of the giving of notice of refusal to register unless there has been an allegation of fraud concerning the transfer or the transaction to which it relates.

## 10.9 **Transmission of shares - death, bankruptcy or lack of mental capacity**

(a) **Death of sole holder of share**

(i) In respect of a share owned by a Member (and not owned by several holders jointly), if that Member dies the Company will recognise only the personal

representative of the deceased Member as being entitled to the deceased Member's interest in the share.

- (ii) If the personal representative gives the Directors the information they reasonably require to verify the personal representative's entitlement to be registered as holder of the share, the personal representative is entitled, whether or not registered as the holder of the share, to the same rights as the deceased Member and:
  - (A) may, by giving a written and signed notice to the Company, elect to be registered as the holder of the share; or
  - (B) may, by giving a completed transfer form to the Company, transfer the share to another person.
- (iii) On receiving an election under clause 10.9(a)(ii)(A), the Company must register the personal representative as the holder of the share.
- (iv) A transfer under clause 10.9(a)(ii)(B) is subject to all provisions of this Constitution relating to transfers of share generally.

(b) **Death of joint holder of share**

- (i) If one of the registered joint holders of a share dies, the surviving holder or holders of the share are entitled to be registered as the holders of the share.
- (ii) The survivor of the joint holder or holders named first in the Register of Members will for the purposes of this Constitution be treated as the first named holder of the share.

(c) **Liability of estate**

The estate of the deceased Member is not released from any liability in respect of the shares.

(d) **Transmission of shares on bankruptcy**

- (i) If a person entitled to a share because of the bankruptcy of a Member gives the Directors the information they reasonably require to verify the person's entitlement to be registered as holder of the share, the person may:
  - (A) by giving a written notice to the Company, elect to be registered as the holder of the shares; or
  - (B) by giving a completed transfer form to the Company, transfer the shares to another person.
- (ii) On receiving an election under clause 10.9(d)(i)(A), the Company must register the person as the holder of the shares.
- (iii) A transfer under clause 10.9(d)(i)(B) is subject to all provisions of this Constitution relating to transfers of shares generally.
- (iv) A person registered as a Member as a consequence of this clause 10.9(d) must indemnify the Company to the extent of any loss or damage suffered by the Company as a result of that registration.

(e) **Transmission of shares on mental incapacity**

- (i) If a person entitled to shares because of the mental incapacity of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares the person is entitled, whether or not registered as the holder of the shares, to the same rights as the Member and may:
  - (A) by giving a written and signed notice to the Company, elect to be registered as the holder of the share; or
  - (B) by giving a completed transfer form to the Company, transfer the share to another person.
- (ii) On receiving an election under clause 10.9(e)(i)(A), the Company must register the person as the holder of the shares.
- (iii) A transfer under clause 10.9(e)(i)(B) is subject to the same rules as apply to transfers of shares generally.

**10.10 Event of Default**

(a) **Event of Default**

- (i) A Member will have committed an Event of Default under this Constitution if:
  - (A) the Member breaches a provision of this Constitution and such breach is capable of being rectified and is not rectified within fourteen (14) days after receiving notice requiring rectification by a Non-Defaulting Member;
  - (B) the Member breaches a provision of this Constitution which is not capable of being rectified and notice requiring (and quantifying) the loss suffered by the Non-Defaulting Members to be paid within 7 days after receiving such notice has not been paid;
  - (C) the Member repeats a breach after having received written notice from another Party warning that repetition of that breach will, or is likely to, result in the other Party regarding the Member as being in default of its obligations under this Constitution;
  - (D) an order is made for the winding up or dissolution of the Member or similar action is taken under the *Bankruptcy Act 1966* (Cth);
  - (E) a receiver or receiver and manager, official manager, trustee, administrator, provisional liquidator, liquidator or similar officer is appointed for all or any part of the assets or undertaking of the Member or similar action is taken against that Member;
  - (F) the Member enters into, or resolves to enter into, an arrangement, composition or compromise with, or assignment, or Constitution of company arrangement for the benefit of its creditors generally, or any class of creditors or proceedings are commenced to sanction such an arrangement, composition or compromise;
  - (G) the Member stops payment of or is unable to pay its debts within the meaning of the Corporations Act;

- (H) the Board resolves that it is contrary to the Company's or the public interest for the Member to remain as a Member;
- (I) in any event, the Member becomes bankrupt or unable to pay its debts or suspends payment of its debts within the meaning of the *Bankruptcy Act 1966* (Cth).

#### 10.11 Consequences of Event of Default

- (a) If an Event of Default occurs:
  - (i) and the relevant default is not remedied within five Business Days after a Member serves notice on the Defaulting Party requiring the default to be remedied or if the relevant default is incapable of being remedied then clause 8.3 will apply; and
  - (ii) the Defaulting Party will continue to be bound by the confidentiality obligations in clause 13; and the Defaulting Party indemnifies and agrees to keep indemnified each other Member and the Company against any loss, liabilities, costs and expenses which are incurred by that other party arising directly out of the Event of Default (including the costs of implementing the procedure in clause 8.3), and such a member is hereafter a **Defaulting Member** or **Defaulting Party**.
- (b) This clause 10.11 does not prohibit a Member or the Company other than the Defaulting Party from exercising any right or remedy available to it other than as set out in this clause.

#### 10.12 Company authorised to sell Shares

- (a) If by reason of clause 10.11(a) this clause 10.12(a) applies, the Defaulting Party irrevocably appoints the Company and every Director from time to time severally as its attorney on its behalf and in its name to sell all its Shares and to take all action required to effect such sale and to execute under hand or under seal and deliver (conditionally or unconditionally) in any place selected by the attorney:
  - (i) a disposal notice in accordance with clause 10.8;
  - (ii) an instrument of transfer in respect of the Shares; and
  - (iii) any other document that in the opinion of the attorney is necessary or appropriate to enable the sale of the Shares.
- (b) Within a reasonable time after an Event of Default occurs, the Company must request the auditor of the Company to determine the fair market value of the Shares and upon such determination the Company must, as attorney of the Defaulting Party, deliver a Disposal Notice to each Member (other than the Defaulting Party) in respect of the Shares, with the Transfer Price being the value so determined and the remaining provisions of 10.8 this clause will then apply in respect of the transfer of the Shares.
- (c) If clause 10.8(g) applies, the Company must use its best endeavours to sell the Subject Shares in accordance with that clause 10.8(g).
- (d) If the procedure set out in clause 10.8 has been followed in accordance with clause 10.12(b) and the Defaulting Party remains the owner of some or all of the Shares after the expiration of 70 Business Days from the date of the last delivery of a Disposal Notice pursuant to clause 10.12(b) (the date of such expiration being the **Entitlement**

**Date**), the Company will be entitled within 15 Business Days after the Entitlement Date to buy back some or all of those Shares at a price equal to the fair market value determined pursuant to clause 10.12(b). The Company must notify all the Members no later than 15 Business Days after the Entitlement Date if it elects to buy back any such Shares and must specify the number of Shares which it wishes to buy back. The Members acknowledge and agree that if the Company serves such notification on them, the Members must use their respective best endeavours to procure the following events to take place:

- (i) approval of the terms of the agreement to buy back the relevant Shares in accordance with the Act by a resolution agreed to by all Members at a general meeting of the Company;
- (ii) compliance by the Company with all procedural requirements in relation to the convening of that meeting set out in the Act; and
- (iii) the convening by the Company of a general meeting of the Members if required in accordance with the Act.

Settlement of the buyback of such Shares is subject to the approval mentioned in subclause 10.12(d)(i) above and must take place 15 Business Days after the date on which such approval is obtained.

### **10.13 Consequential Loss**

No party (the **first party**) will be liable to another party in any circumstances whether under this Constitution or in negligence or otherwise in connection with the performance or nonperformance by the first party of its obligations under this Constitution for any Consequential Loss caused otherwise than by any fraudulent or reckless act or omission of the first party or any act of the first party which is intended to cause loss.

### **10.14 Notice of Sale**

A Member who wants to transfer any shares (**Sale Shares**) otherwise than in a permitted transfer (**Seller**) must give written notice (**Notice of Sale**) to each other Member specifying:

- (a) the number of Sale Shares and the sale price per Sale Share (**Sale Price**);
- (b) the name of any proposed buyer of the Sale Shares;
- (c) any other terms of the proposed transfer;
- (d) a statement to the effect that each Member has an option to purchase any or all of the Sale Shares on the terms set out in the Notice of Sale if the Member complies with clause 10.12(a); and
- (e) if clause 10.15 applies, a statement to the effect that the Member has an option to 'tag along' with the Seller if those Members comply with this clause 10.12(a).

### **10.15 Tag along**

- (a) Where parties holding no less than 75% of the issued share capital in the Company (**Selling Party**) intend to sell their shares to a third party (**Third Party**), then any other Member (**Exercising Party**) will have the option (**Tag Along Option**) to require the Selling Party to cause the Third Party to purchase part or all of the shares held by the Exercising Party at the same price at which the Selling Party is selling its shares to the Third Party. The price per Share and terms upon which the Selling Party must cause

the Third Party to purchase the Exercising Party's shares must be the same as those referable to the sale of the Selling Party's shares to that Third Party.

- (b) The Selling Party must immediately notify the Exercising Party in writing if and when the Exercising Party becomes entitled to exercise the Tag Along Option giving details of the proposed Third Party and the terms and conditions of the sale of Shares. The Exercising Party may only exercise the Tag Along Option by giving written notice to the Selling Party and the Company prior to the expiration of a period of ten Business Days commencing from the date on which it receives written notice under this clause (**Tag Along Option Period**). The exercise notice must specify the number of the Exercising Party's Shares which the Selling Party is required to cause to be purchased by the Third Party (**Put Shares**).
- (c) Upon the exercise of the Tag Along Option, the Selling Party is bound to take all reasonable steps (including, causing completion of the sale of its own Shares to the Third Party) to cause the Put Shares to be purchased by the Third Party on the terms specified above.
- (d) If the Third Party for any reason fails to buy all of the Put Shares at the relevant price (or at a greater price) and terms and otherwise in accordance with this schedule, and to complete that purchase simultaneously with the completion of the sale of the Selling Party's Shares, then the Selling Party must not sell or otherwise transfer any of its Shares to the Third Party.

#### **10.16 Drag along**

- (a) Where parties holding no less than 75% of the issued share capital in the Company (**Drag Selling Party**) intend to sell their shares to a third party (**Third Party**), then the Drag Selling Party may give irrevocable notice (**Drag Along Notice**) to any and all other shareholders (**Drag Other Parties**) requiring the Drag Other Parties to sell all of its shares to the Drag Third Party on the same terms. The price per Share and terms upon which the Drag Other Party's Shares are to be sold must be the same as those referable to the sale of the Drag Selling Party's shares to that Third Party.
- (b) If a Drag Other Party receives a Drag Along Notice from the Drag Selling Party, that Drag Other Party must procure that, simultaneously with the sale of the Drag Selling Party's Shares, all of the Drag Other Party's Shares are sold to the Drag Third Party on the terms specified above.

#### **10.17 Exercise of Members' option to purchase Sale Shares**

- (a) Each Member may exercise its option to purchase the Sale Shares by giving notice to the Company and the Seller of the number of Sale Shares it wishes to buy within 10 Business Days after the date of service of the Notice of Sale.
- (b) If a Member (**Buyer**) exercises its option to purchase Sale Shares then the Seller must sell to the Buyer the number of Sale Shares and the Member must purchase them on the terms set out in the Notice of Sale.

#### **10.18 Proportional takeover bids**

- (a) **Approval of proportional takeover bids**

In clauses 10.18(b) to 10.18(d):



- (i) approving resolution, in relation to a proportional takeover bid, means a resolution to approve the proportional takeover bid passed under clause 10.18(c);
- (ii) approving resolution deadline, in relation to a proportional takeover bid, means the day that is 14 days before the last day of the bid period, during which the offers under the proportional takeover bid remain open or a later day allowed by ASIC;
- (iii) proportional takeover bid means a takeover bid that is made or purports to be made under section 618(1)(b) of the Act in respect of securities included in a class of securities in the Company; and
- (iv) relevant class, in relation to a proportional takeover bid, means the class or securities in the Company in respect of which offers are made under the proportional takeover bid.

(b) **Transfers not to be registered**

A transfer giving effect to a contract resulting from the acceptance of an offer made under a proportional takeover bid must not be registered unless an approving resolution to approve the proportional takeover bid has been passed or is taken to have been passed under clause 10.18(c).

(c) **Approving resolution**

- (i) Where offers have been made under a proportional takeover bid, the Directors must, before the approving resolution deadline:
  - (A) call a meeting of the persons entitled to vote on the approving resolution for the purpose of considering and, if thought fit, passing a resolution to approve the proportional takeover bid; and
  - (B) ensure that the resolution is voted on under this clause 10.18(c).
- (ii) The provisions of this Constitution in relation to general meetings apply, with any modification as the circumstances require, to a meeting that is called under clause 10.18(c)(i), as if that meeting were a general meeting of the Company.
- (iii) The bidder under a proportional takeover bid and any associates of the bidder are not entitled to vote on the approving resolution and if they do vote, their votes must not be counted.
- (iv) Subject to clause 10.18(c)(iii), a person who, as at the end of the day on which the first offer under the proportional takeover bid was made, held securities of the relevant class, is entitled to vote on the approving resolution relating to the proportional takeover bid.
- (v) An approving resolution that has been voted on is taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than 50%, and otherwise is taken to have been rejected.
- (vi) If an approving resolution has not been voted on under this clause 10.18(c) as at the end of the day before the approving resolution deadline, an approving resolution will be taken to have been passed under this clause 10.18(c) on the approving resolution deadline.

(d) **Sunset**

Clauses 10.18(a), 10.18(b) and 10.18(c), cease to have effect at the end of three years beginning:

- (i) where those clauses have not been renewed under the Act, on the date that those clauses were adopted by the Company; or
- (ii) where those clauses have been renewed under the Act, on the date those clauses were last renewed.

**10.19 Members to act in good faith**

- (a) The Members must act in good faith with respect to the Company and each other and generally do all acts, matters and things to ensure achievement of the objects of the Company.
- (b) The Members must not unreasonably delay any action, approval, direction, determination or decision which is required of them.

**11. DISPUTE RESOLUTION**

**11.1 Dispute**

A dispute relating to or arising out of this Constitution (**Dispute**) exists when a party gives notice (**Dispute Notice**) to each other party that there is a Dispute, setting out in detail the matter which is the subject of the Dispute.

**11.2 Procedure**

When a Dispute exists:

- (a) the party that submitted the Dispute Notice (**Aggrieved Party**) will meet with any other party (or their nominees) holding at least 5% of the issued Shares that expresses to the Company in writing at least 7 days before any meeting, the desire to meet with the Aggrieved Party and discuss a resolution of the Dispute. If these persons resolve the Dispute then the resolution will be set out in a statement signed by the Members;
- (b) any meeting pursuant to clause 11.2(a) may take place via audio-visual link up; and
- (c) if there is no resolution of the Dispute within 10 Business Days or such longer period as agreed in writing by the parties after the Dispute Notice has been given to all parties (**Notice Date**) then the Dispute must be referred to mediation in accordance with, and subject to, The Institute of Arbitrators and Mediators Australia Rules for the Mediation of Commercial Disputes.

**11.3 Place of mediation**

All mediation proceedings are to be held in the Company's premises in Perth, Australia (or in any other place agreed to in writing between the parties to the Dispute).

**11.4 Application to court**

If there is no resolution of the Dispute within 30 Business Days of the Notice Date, then any party may commence legal proceedings in any court or tribunal in respect of any matter that is the subject of a Dispute.

### **11.5 Costs of dispute resolution**

- (a) The costs and disbursements of the mediator will be paid equally by the Members.
- (b) Each Member will pay its own costs and disbursements in respect of any procedure referred to in clause 11.2.

### **11.6 Continuing obligations**

Notwithstanding the foregoing provisions of this clause 11, pending the resolution of any Dispute the Members Constitution must without delay continue to perform their respective obligations under this Constitution except, provided that a Member has acted reasonably and bona fide in relation to the Dispute (including without limitation in respect to its subject matter and the circumstances giving rise to it), to the extent that the matter the subject of the Dispute and matters necessarily dependent on it cannot be proceeded with until the Dispute has been determined.

## **12. DIVIDENDS AND CAPITAL RESERVES**

### **12.1 Company may pay dividends**

The Company will pay dividends in compliance with this clause 12.

### **12.2 Determination of dividends**

- (a) Unless the Board resolves to the contrary, and subject to clauses 12.3 and 12.4, the Company must in respect of each Financial Year declare a dividend equal to 100% of the Company's net profit after tax less any reserves set aside in accordance with clause 12.2(b) and subject to the contractual obligations of the Company.
- (b) The Board may resolve that the Company shall set aside such sums as the Board thinks proper to apply in fulfilment of the Company's:
  - (i) capital adequacy;
  - (ii) provisions for taxation liabilities;
  - (iii) working capital requirements;
  - (iv) debt repayment obligations;
  - (v) recoupment of past losses;
  - (vi) obligation to maintain the solvency; or
  - (vii) for the prudent financial management of the Company.
- (c) Any dividend declared by the Company must be paid within one month after the date of its declaration.

### **12.3 Resolution of Directors**

The Directors may, by ordinary resolution:

- (a) determine that an interim dividend be paid on a stated future date;

- (b) determine that, unless revoked, a dividend be payable on a stated future date but not before; or
- (c) declare that a dividend is payable, whether immediately or on a stated future date.

#### **12.4 Timing and amount of dividends**

Without limiting the Directors' discretion, where the Directors resolve that a dividend is or will become payable under this clause 12.4, the Directors may:

- (a) determine that a dividend is or will be payable and fix:
  - (i) the amount;
  - (ii) whether or not the dividend is franked, the franking percentage and franking class;
  - (iii) the time for determining entitlements to the dividend; and
  - (iv) the method of payment; and
- (b) determine that a dividend be paid by the Company by:
  - (i) paying cash;
  - (ii) issuing Shares;
  - (iii) granting options; or
  - (iv) transferring assets.

#### **12.5 No interest on dividends**

Interest is not payable on any dividend.

#### **12.6 Capitalisation of reserves and profits**

##### **(a) Capitalisation of reserves and profits**

The Directors:

- (i) may resolve to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to Members; and
- (ii) may, but need not, resolve to apply the sum in any of the ways mentioned in clause 12.6(b) for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of that sum by way of dividend.

##### **(b) Applying a sum for the benefit of Members**

The ways in which a sum may be applied for the benefit of Members under clause 12.6(a) are:

- (i) in paying up any amounts unpaid on shares held by Members;

- (ii) in paying up in full unissued shares or debentures to be issued to Members as fully paid; or
- (iii) partly as mentioned in clause 12.6(b)(i) and partly as mentioned in clause 12.6(b)(ii).

(c) **Implementing the resolution**

The Directors may do all things necessary to give effect to the resolution and, in particular, to the extent necessary to adjust the rights of the Members among themselves, may:

- (i) make cash payments in cases where shares or debentures become issuable in fractions;
- (ii) authorise any person to make, on behalf of all or any of the Members entitled to any further shares or debentures on the capitalisation, an agreement with the Company providing for:
  - (A) the issue to them, credited as fully paid up, of any further shares or debentures; or
  - (B) the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised, and any agreement made is effective and binding on all the Members concerned;
- (iii) fix the value of specific assets; and
- (iv) vest property in trustees.

**13. RESTRAINT**

- (a) During the Restraint Period, a Member holding more than 10% of the issued Shares must not and must ensure that each of its Related Bodies Corporate, directors, former directors, key individuals and former key individuals, (each a **Restrained Party**) does not, directly or indirectly, do any of the following without the prior written consent of the Board:
  - (i) engage in a business that competes with or is similar to the Business in the Restraint Area;
  - (ii) solicit or persuade or attempt to solicit or persuade a customer of the Company or a subsidiary or a person who becomes a customer of the Company or a subsidiary to stop or reduce its business with the Company or subsidiary;
  - (iii) solicit or persuade or attempt to solicit or persuade a party to an agreement with the Company or a subsidiary to breach or terminate that agreement;
  - (iv) induce or persuade or attempt to induce or persuade an employee of the Business or a person who later becomes an employee of the Company or a subsidiary to cease his or her employment with the Company or that subsidiary; or
  - (v) accept from a customer referred to in clause (ii) above any business of the kind ordinarily forming part of the Business.

## 14. CONFIDENTIALITY

### 14.1 Confidential Information

- (a) For the purposes of this Constitution, **Confidential Information** means all information (whether written or oral) disclosed by a party (**Disclosing Party**) to the other party (**Receiving Party**) which is either:
  - (i) identified as confidential by the Disclosing Party at the time of disclosure; or
  - (ii) of a nature which should reasonably be regarded by the Receiving Party as confidential, but does not include information which:
    - (iii) was in the public domain when it was given to the Receiving Party;
    - (iv) becomes, after being given to the Receiving Party, part of the public domain, except through disclosure contrary to this Constitution;
    - (v) was in the Receiving Party's possession at the time of disclosure;
    - (vi) the Receiving Party lawfully receives from a third party who has the right to disclose it to the Receiving Party; or
    - (vii) the Receiving Party is required by law, by an order of a court or tribunal or by the requirements of a stock exchange to disclose.
- (b) The conduct of the business of the Company, negotiations between the parties and the activities of the Company will be regarded as Confidential Information (unless such information is the subject of clause 14.1(a) and is deemed to:
  - (i) have been disclosed by each party to the other; and
  - (ii) to be of a nature which should reasonably be regarded by each party as confidential.

### 14.2 Obligations of Receiving Party

The Receiving Party must:

- (a) use the Confidential Information solely as contemplated by this Constitution, unless further use of the Confidential Information is specifically authorised in writing by the Disclosing Party;
- (b) keep secret and confidential all Confidential Information;
- (c) use reasonable care to protect the Confidential Information, whether in storage or in use, against public disclosure;
- (d) not disclose the Confidential Information to or in the presence of any director, officer, employee, adviser, financier, potential financier or agent of the Receiving Party other than those for whom such knowledge is essential for the purposes of or as permitted by this Constitution and upon those persons undertaking to keep strictly confidential any Confidential Information so disclosed; and
- (e) promptly notify the Disclosing Party if it becomes aware of any breach of confidentiality by any person, firm or corporation to whom it has divulged any Confidential Information or by any person, firm or corporation who becomes aware of it in an unauthorised way

and provide the Disclosing Party and each other party all reasonable assistance in connection with any proceedings which a party may institute against such person, firm or corporation for breach of confidentiality or otherwise.

#### **14.3 Member's information**

Nothing in this clause 14 is to be treated as prohibiting or restraining any information concerning the business or affairs of the Company:

- (a) which is received by a Director, whether orally or otherwise, from being disclosed by that Director to the party which appointed that Director or to any other person to whom that party has a duty to disclose such information, provided they undertake to keep confidential the information disclosed;
- (b) which is in the possession of a party which is a related body corporate of another corporation, from being disclosed to that corporation, provided that the corporation undertakes to keep confidential the information disclosed;
- (c) from being disclosed to a potential purchaser of Shares provided that such purchaser undertakes to keep confidential the information disclosed; or
- (d) from being disclosed if the parties agree it is no longer Confidential Information, and the parties agree to take no action to prohibit or prevent any such disclosure.

#### **14.4 Return of Confidential Information**

- (a) All Confidential Information provided by a Disclosing Party to a Receiving Party together with any copies made by the Receiving Party's directors, officers or employees or any other person to whom the Receiving Party disclosed the Confidential Information in accordance with this Constitution must be returned to the Disclosing Party on receipt of a request from the Disclosing Party for its return, except to the extent that the Receiving Party is obliged by law to keep records of its business.
- (b) If the Receiving Party has generated its own internal documents containing the Confidential Information, then these may be destroyed rather than returned to the Disclosing Party and the Receiving Party must provide to the Disclosing Party written confirmation that such destruction has taken place.

#### **14.5 Enforcement**

Nothing in this Constitution prohibits the Receiving Party from disclosing the contents of this Constitution to the extent necessary to enable it to enforce its rights under this Constitution or any other agreement.

### **15. INTELLECTUAL PROPERTY RIGHTS**

All intellectual property rights owned by the Company are and must remain the property of the Company and must not be used by any of the other parties unless otherwise agreed in writing by the Company.

### **16. COMPANY BOOKS**

#### **16.1 Registers**

##### **(a) Registers**

In accordance with the Act, the Directors must cause the Company to keep:

- (i) the Register of Members;
- (ii) a register of the holders of any debentures issued by the Company; and
- (iii) any other registers required by the Act.

## **16.2 Financial records and statements**

### **(a) Financial records**

- (i) The Directors must cause financial and other records to be kept to correctly record and explain the transactions and financial position of the Company, to enable true and fair statements of financial performance and financial position to be prepared to permit preparation of any other documents required by the Act or this Constitution.
- (ii) The records must be kept:
  - (A) in a manner which will enable them to be conveniently and properly audited;
  - (B) for seven years after the completion of the transactions or operations to which they relate; and
  - (C) at the Registered Office or at any other place as the Directors think fit and at all times be open to inspection by the Directors.

### **(b) Financial and Directors' reports**

At each annual general meeting, the Directors must lay before the Company a financial report, and a Directors' report for the last financial year of the Company that ended before that annual general meeting which comply with all applicable provisions of the Act.

### **(c) Financial statements and reports**

The Company must cause copies of the Company's financial statements and other reports to be lodged with ASIC and sent to holders of its securities as required by the Act.

## **16.3 Inspection**

### **(a) Inspection of financial records**

- (i) A request by a Member to inspect the financial records of the Company must be in writing and must be delivered to the Company at its Registered Office.
- (ii) Subject to the Act, a majority of the Directors or the Members by Member Special Decision may decide whether and to what extent and at what times and places and under what conditions a Member may inspect the financial records and other books of the Company.
- (iii) This clause does not limit the rights of a Director or former Director to inspect the books of the Company under the Act.

### **(b) Copying financial records**



- (i) After inspecting the financial records, a Member may request permission to copy them.
- (ii) The request under clause 16.3(b)(i) must be in writing, must specify the records the Member wishes to copy and must be delivered to the Company at its Registered Office.
- (iii) Subject to the Act, the Directors must consider the request at their next meeting and may (but need not) consent to the request or any part of the request on any terms as they think fit.

## **16.4 Audit**

### **(a) Approval of financial statements**

- (i) The financial statements of the Company once put before an annual general meeting will be conclusive except in regards any error identified within three months after the date of that meeting.
- (ii) If any error is identified within the period referred to in clause 16.4(a)(i), the financial statements must then be corrected and are then conclusive.

## **17. SERVICE AND PAYMENTS**

### **17.1 Service**

#### **(a) Document includes notice**

In clause 17.1(b) to 17.1(h), a reference to a document includes a notice.

#### **(b) Giving a document to Members**

- (i) The Company may give a document to a Member:
  - (A) in person;
  - (B) by sending it by post to the address of the Member in the Register of Members or the alternative address (if any) nominated by that Member;
  - (C) electronic address (if any) nominated by that Member;
  - (D) by sending it to the Member by other electronic means (if any) nominated by the Member; or
  - (E) by notifying the Member under section 249J(3A) of the Act.
- (ii) If the address of a Member in the Register of Members is not within Australia, the Company must send all documents to that Member by airmail or air courier.
- (iii) The Company must give any document to Members who are joint holders of a share to the person named first in the Register of Members in respect of that share, and that document is deemed received by all holders of that share.

#### **(c) Giving a document to a person entitled to shares**

A person who by operation of law, transfer or other means becomes entitled to any share is absolutely bound by every document given under clause 17.1(b) to the person from whom that person derives title prior to registration of that person's title in the Register of Members.

(d) **Evidence of service of a document on a Member**

A certificate in writing signed by a Director or Secretary stating that a document was sent is prima facie evidence of service.

(e) **Giving a document to a Director**

The Company may give a document to a Director:

- (i) in person;
- (ii) by sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person;
- (iii) by sending it to the electronic address (if any) nominated by that person; or
- (iv) by any other means agreed between the Company and that person.

(f) **Giving a document to the Company**

A person may give a document to the Company:

- (i) by leaving it at the Registered Office;
- (ii) by sending it by post to the Registered Office;
- (iii) by sending it to the electronic address (if any) nominated by the Company for that purpose; or
- (iv) by any other means prescribed by the Act.

(g) **Time of service of a document**

- (i) A document sent by post to an address within Australia is taken to be given:
  - (A) in the case of a notice of meeting, one Business Day after it is posted;  
or
  - (B) in any other case, at the time at which the document would be delivered in the ordinary course of post.
- (ii) A document sent by post or airmail to an address outside Australia is taken to be given:
  - (A) in the case of a notice of meeting, five Business Days after it is posted;  
or
  - (B) in any other case, at the time at which the document would be delivered in the ordinary course of post.
- (iii) A document sent by air courier to a place outside Australia is taken to be given five Business Days after delivery to the air courier.

- (iv) A document sent to an electronic address, or by other electronic means, is taken to be given on the Business Day it is sent, provided that the sender's transmission report shows that the whole document was sent to the correct electronic address.
- (v) A document given to a Member under clause 17.1(b)(i)(E) is taken to be given on the day on which the Member is notified that the document is available.

(h) **Signatures**

Where, by a provision of this Constitution, a document is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by the Act relating to electronic transmissions or in any other manner approved by the Directors.

(i) **Consent to resolutions by written notice**

A Director or a Member may consent to a resolution by giving the Company a written notice (including by other electronic means) addressed to and received by the Secretary or the Chair:

- (i) that sets out the terms of the resolution or identifies those terms;
- (ii) that signifies the Director or the Member's assent to the resolution; and
- (iii) that authenticates the Director or Member's consent by specified means where the Director or Member has notified the Company in writing of a specified means by which his or her consent must be authenticated (including by providing particular personal information or an allocated code).

## 17.2 Payments

(a) **Form of payments**

The Company may pay a person entitled to an amount payable in respect of a share (including a dividend) by:

- (i) crediting an account nominated in writing by that person;
- (ii) cheque made payable to bearer, to the person entitled to the amount or any other person the person entitled to the amount directs in writing; or
- (iii) any other manner as the Directors resolve.

(b) **Payment by cheque**

The Company may post a cheque referred to in clause 17.2(a)(ii) to:

- (i) the address in the Register of Members of the Member in respect of the share;
- (ii) if that share is jointly held, the address in the Register of Members of the Member named first in respect of the share; or
- (iii) any other address which that person directs in writing.

(c) **Receipt**

Any joint holder of a share may give effective receipt for an amount (including a dividend) paid in respect of the share.

## **18. PROCEEDINGS INVOLVING INDEMNITEES**

### **18.1 Company may indemnify Indemnitees**

Subject to clause 18.2, the Board may determine that the Company indemnify any Indemnitee for:

- (a) any liability (other than for legal costs dealt with in clause 18.1(b)); and
- (b) legal costs in defending an action for a liability,

incurred by the Indemnitee in that capacity.

### **18.2 Indemnity prohibited in certain circumstances**

The indemnity in clause 18.1 does not extend to any amount in respect of which:

- (a) the Company is prohibited by the Act or any other statute from indemnifying against; or
- (b) an indemnity would otherwise be illegal, void, unenforceable or not permitted by law.

### **18.3 Company may make an advance**

Subject to clauses 18.2 and 18.4, the Act and any other applicable statute, the Board may determine that the Company may pay, by way of a loan, an advance or any other payment on any terms the Company, in its sole discretion, thinks fit, legal costs of the type referred to in clause 18.1(b) that are reasonably incurred or reasonably anticipated to be incurred by the Indemnitee.

### **18.4 Repayment of advance in certain circumstances**

An Indemnitee must repay amounts paid by the Company under clause 18.3 to, or on behalf of, him or her in relation to a liability incurred by Indemnitee in his or her capacity as an Indemnitee if:

- (a) that liability is or becomes a liability excluded by the Act or any other statute from the indemnity in clause 18.1;
- (b) a court determines that the Indemnitee is not entitled to be indemnified by the Company for that liability; or
- (c) the liability is covered by insurance and the Indemnitee receives payment from an insurer in respect of that liability or an insurer pays, discharges or satisfies that liability directly.

### **18.5 Insurance**

#### **(a) Company may pay premium**

Subject to clause 18.5(b), the Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring an Indemnitee, against liability incurred by the person in that capacity, including a liability for legal costs.

(b) **Payment of premium prohibited in certain circumstances**

Clause 18.5(a) does not apply to the extent that:

- (i) the Company is forbidden by the Act or other statute to pay or agree to pay the premium; or
- (ii) the contract would, if the Company paid the premium, be made void by the Act or other statute.

(c) **Directors and Officers Liability Insurance**

The Company will, at its expense, provide the Board with Directors and officers liability insurance, subject to the provisions governing such insurance and on such terms as the Board may from time to time decide. The Company will indemnify the Board and hold the Board harmless, to the maximum extent permitted by applicable law, against all costs, charges and expenses incurred or sustained by a Director or Officer.

**19. WINDING UP**

**19.1 Rights of Members on winding up**

Subject to this Constitution and the rights or restrictions attached to any shares or class of shares:

- (a) if the Company is wound up and the property of the Company available for distribution among the Members is more than sufficient to pay:
  - (i) all the debts and liabilities of the Company; and
  - (ii) the costs, charges and expenses of the winding up,

the excess must be divided among the Members in proportion to the number of shares held by them, irrespective of the amounts paid or credited as paid on the shares;
- (b) for the purpose of calculating the excess referred to in clause 19.1(a), any amount unpaid on a share is to be treated as property of the Company;
- (c) the amount of the excess that would otherwise be distributed to the holder of a partly paid share under clause 19.1(a) must be reduced by the amount unpaid on that share at the date of the distribution; and
- (d) if the effect of the reduction under clause 19.1(c) would be to reduce the distribution to the holder of a partly paid share to a negative amount, the holder must contribute that amount to the Company.

**19.2 Division of assets**

Subject to this Constitution and the rights or restrictions attached to any shares or class of shares:

- (a) If the Company is wound up, the liquidator, with the sanction of a Member Special Decision:
  - (i) may divide among the Members, in specie or in kind, any part of the assets of the Company available and may for that purpose set the value as the liquidator considers fair on any assets to be divided; and

- (ii) may vest the whole or any part of the assets of the Company in a trustee or trustees on trust for the benefit of any of the Members as the liquidator thinks fit but so that no Member is compelled to accept any shares or other securities in respect of which there is any liability on the part of the holder.
- (b) If any division is otherwise than under the legal rights of the Members, any Member who would be prejudiced by the division has a right to dissent under the law.
- (c) If a division involves shares that have a liability to a call, the Members may direct the liquidator to satisfy the call out of the proportion of assets due to the Member and to pay any balance to the Member.

**SCHEDULE 1 — RESOLUTIONS OF THE BOARD AND MEMBERS WHICH REQUIRE APPROVAL BY A SPECIAL MAJORITY**

1. Alteration of rights attaching to any existing Share, debenture, preference share or any other security in the Company.
2. Winding up of the Company other than for insolvency.
3. Sale or disposal of all or substantially all of the assets of the Company.
4. Material change in the nature or scale of the business of the Company.
5. Alteration of the Constitution.
6. Granting of a guarantee, security, indemnity or assurance involving a potential liability greater than \$50,000.
7. Any change to the dividend distribution policy of the Company.
8. The sale or disposal of any of the Company's shares in a subsidiary of the Company.
9. Applying for admission to the official list of Australian Stock Exchange Limited.
10. Any increase or decrease in the maximum number of Directors set out in clause 4.3(a)(iii).
11. Any issue or adoption of any employee incentive phantom or other stock option scheme.

