

CONSTITUTION

BOULDER STEEL LIMITED

ABN 78 009 074 588

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1. PRELIMINARY**1.1 Definitions and Interpretation**

In this Constitution:

ACH Clearing Rules means the operating rules of Australian Clearing House Pty Limited;

ASTC Settlement Rules means the operating rules of the ASX Settlement and Transfer Corporation Pty Limited;

ASX means ASX Limited;

Business Day has the meaning given to that term in the Listing Rules;

Certificated Holding means a share or shares for which a certificate has been issued, and not subsequently cancelled, by the Company;

Company means Boulder Steel Limited ABN 78 009 074 588;

Dispose has the meaning given to that term in the Listing Rules;

Listed Company means a company which is admitted to the official list of the ASX;

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

Proper ASTC Transfer has the meaning given to that term in Regulation 1.0.02 of the Corporations Regulations;

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001*;

Representative, in relation to a body corporate, means a representative of the body corporate appointed under section 250D(1) of the *Corporations Act 2001* or a corresponding previous law;

Restricted Securities has the meaning given to that term in the Listing Rules;

Seal means any common seal or duplicate common seal of the Company complying with section 123 of the *Corporations Act 2001*;

Transmission Event means:

- (a) in respect of a member of the Company who is an individual:
 - (i) the death of the member;
 - (ii) the bankruptcy of the member;
 - (iii) the member becoming mentally incapacitated; or

- (b) in respect of a member of the Company who is a body corporate, the dissolution of the member or the succession by another body corporate to the assets and liabilities of the member;

Uncertificated Holding means a share or shares for which a certificate has not been issued by the Company, or in respect of which any certificate which was issued by the Company has been cancelled without the issue of a replacement certificate, in accordance with **rule 2.9**;

URL means Uniform Resource Locator, the address that specifies the location of a file on the internet; and

- (a) A reference in a rule to a partly paid share is a reference to a share on which there is an amount unpaid.
- (b) A reference in a rule to a call or an amount called in respect of a partly paid share includes a reference to a sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date.
- (c) A member is to be taken to be present at a general meeting if the member is present in person or by proxy, attorney or Representative.
- (d) A director is to be taken to be present at a meeting of directors if the director is present in person or by alternate director.
- (e) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (f) In this Constitution, headings are for convenience only and do not affect the interpretation of this Constitution and:
- (i) words importing the singular include the plural and vice versa;
 - (ii) words importing a gender include every other gender;
 - (iii) a reference to a person includes a natural person, company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
 - (iv) a reference to a person includes that person's successors and legal personal representatives;
 - (v) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
 - (vi) a reference to the Listing Rules or the ASTC Settlement Rules and/ or ACH Clearing Rules includes any variation, consolidation or replacement of those rules and is to be taken to be subject to any waiver or exemption granted to the Company from compliance with those rules; and
 - (vii) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

1.2 Application of the Corporations Act 2001, Listing Rules, ASTC Settlement Rules and ACH Clearing Rules

- (a) This Constitution is to be interpreted subject to the *Corporations Act 2001* and (while the Company is a Listed Company) the Listing Rules and the ASTC Settlement Rules and/ or ACH Clearing Rules.
- (b) While the Company is a Listed Company, the Company and the directors must comply with the obligations respectively imposed on them under the Listing Rules and the ASTC Settlement Rules and/ or ACH Clearing Rules.
- (c) Unless the contrary intention appears, an expression in a rule that deals with a matter dealt with by a provision of the *Corporations Act 2001*, the Listing Rules or the ASTC Settlement Rules and/ or ACH Clearing Rules has the same meaning as in that provision.

1.3 Effect of the Listing Rules

While the Company is a Listed Company, the following provisions apply:

- (a) despite anything contained in this Constitution, if the Listing Rules prohibit an act being done that act must not be done;
- (b) nothing contained in this Constitution prevents an act being done that the Listing Rules requires to be done;
- (c) if the Listing Rules require any 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);
- (d) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
- (e) if the Listing Rules require this Constitution not to contain a provision and they contain such a provision, this Constitution is deemed not to contain that provision;
- (f) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

1.4 Exercise of powers

- (a) The Company may exercise in any manner permitted by the *Corporations Act 2001* any power which a company limited by shares may exercise under the *Corporations Act 2001* if authorised by its Constitution.
- (b) Where this Constitution provides that a person or body may do a particular act or thing and the word "may" is used, the act or thing may be done at the discretion of the person or body.
- (c) Where this Constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken to include a power to repeal, rescind, revoke, amend or vary that act or thing.
- (d) Where this Constitution confers a power to do a particular act or thing with respect to particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that act or thing with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different provision with respect to different matters or different classes of matters.

- (e) Where this Constitution confers a power to make appointments to any office or position, the power is, unless the contrary intention appears, to be taken to include a power:
 - (i) to appoint a person to act in the office or position until a person is appointed to the office or position;
 - (ii) subject to any contract between the Company and the relevant person, to remove or suspend any person appointed, with or without cause; and
 - (iii) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or position.
- (f) Where this Constitution confers a power or imposes a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.
- (g) Where this Constitution confers a power or imposes a duty on the holder of an office, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office.
- (h) Where this Constitution confers power on a person or body to delegate a function or power:
 - (i) the delegation may be concurrent with, or to the exclusion of, the performance or exercise of that function or power by the person or body;
 - (ii) the delegation may be either general or limited in any manner set out in the terms of delegation;
 - (iii) the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of a specified office or position;
 - (iv) the delegation may include the power to delegate;
 - (v) where the performance or exercise of that function or power is dependent upon the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter; and
 - (vi) the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body.

1.5 Replaceable Rules not to apply

The replaceable rules contained in the *Corporations Act 2001* do not apply to the Company.

2. SHARE CAPITAL

2.1 Shares

- (a) Without prejudice to any special rights conferred on the holders of any shares or class of shares but subject to this Constitution and (while the Company is a Listed Company) to the Listing Rules and the ASTC Settlement Rules and/ or ACH Clearing Rules, the directors may issue, allot or grant options in respect of, or otherwise Dispose of, shares to such persons, for such price, on such conditions, at such times and with such preferred, deferred or other special rights or special restrictions, whether with regard to dividend,

voting, return of capital, participation in the property of the Company on a winding up or otherwise, as the directors think fit.

- (b) In particular, the directors may differentiate between the holders of partly paid shares as to the amount of calls to be paid and the time for payment.

2.2 Issue and Terms of Preference Shares

- (a) Any preference shares may, subject to the *Corporations Act 2001*, may be liable to be redeemed.
- (b) The total number of issued preference shares will not exceed the total number of issued ordinary shares.
- (c) Subject to any provision in this Constitution or the *Corporations Act 2001*, preference shares will be under the control of the Directors who may allot or otherwise dispose of the preference shares to such persons (**holders**) and otherwise on such terms and conditions and at such times as the Directors think fit.

Preference shares will confer on holders such rights and be issued on such terms and conditions as are set out in this Constitution or in the case of:

- (i) the rate of dividend; and
- (ii) the date of redemption,

will be determined by resolution of the Directors and specified in the certificate issued pursuant to **rule 2.2(e)** provided that no preference share will either as respects dividends or as respects capital carry any right to participate in a distribution beyond the amount specified in such certificate.

- (d) Preference shares will confer on holders:
- (i) the right on redemption and in a winding up to payment in cash in priority to any other class of shares of:
- (A) the amount paid on the preference share; and
- (B) the amount (if any) equal to the aggregate of any dividend accrued at the date hereof (whether declared or not) but unpaid and of any arrears of dividends; and
- (ii) the right in priority to any payment of dividend to any other class of shares of a cumulative preferential dividend at the rate of dividend determined by the Directors and specified in the certificate issued pursuant to **rule 2.2(f)** payable in respect of each preference share on applicable dividend dates.
- (e) The Company will, subject to the provisions of all relevant legislation, redeem the preference shares on issue on the date specified in the certificate issued pursuant to **rule 2.2(f)**.
- (f) A certificate issued by the Company in respect of preference shares will specify the following:
- (i) the amount payable on redemption;
- (ii) the redemption date;

- (iii) the time method and place of such redemption;
 - (iv) the rate of dividend; and
 - (v) such other terms and conditions of the preference shares as the Directors may require.
- (g) On the date and time specified and at the time and place for redemption as determined by resolution of the Directors and specified in the certificate the holder must deliver to the Company the certificate in respect of the preference shares being redeemed and the Company will pay to the holder or at the holder's direction the amount payable on redemption.
- (h) The holder of a preference share is entitled to a right to vote in each of the following circumstances and in no others:
- (i) during a period during which a dividend (or part of a dividend) in respect of the preference shares is in arrears;
 - (ii) on a proposal to reduce the Company's share capital;
 - (iii) on a resolution to approve the terms of a buy-back agreement;
 - (iv) on a proposal that affects rights attached to the preference share;
 - (v) on a proposal to wind up the Company;
 - (vi) on a proposal for the disposal of the whole of the Company's property, business and undertaking; and
 - (vii) during the winding up of the Company.

In the event that the holder will be entitled to vote on a show of hand the holder present in person or by proxy, attorney or representative will have one vote. In the case of a poll every holder present in person or by proxy, attorney or representative will have one vote for every preference share held. Where a corporation being a holder is present by proxy, attorney or representative will be entitled to vote on a show of hands.

- (i) A holder has the same rights as holders of ordinary shares to receive notices, reports and audited accounts of the Company and attend general meetings.
- (j) Notwithstanding that each certificate will specify a redemption date relevant to the preference shares, the Company may redeem all preference shares on issue if any of the following events occur:
 - (i) the Company by any act or omission is a party to a material breach of any of the provisions of any relevant legislation or of this Constitution which might or would adversely affect or materially endanger the rights or entitlements of the holders of preference shares; or
 - (ii) the appointment of a liquidator, receiver or official manager of the Company.

2.3 Variation of class rights

Unless otherwise provided by the terms of issue of a class of shares:

- (a) all or any of the rights or privileges attached to the class may be varied, whether or not the Company is being wound up, only with the consent in writing of the holders of

three-quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the issued shares of that class;

- (b) the provisions of this Constitution relating to general meetings apply, so far as they can and with such changes as are necessary, to each separate meeting of the holders of the issued shares of that class; and
- (c) the rights conferred upon the holders of the shares of that class are to be taken as not having been varied by the creation or issue of further shares ranking equally with them.

2.4 Joint holders of shares

Where 2 or more persons are registered as the holders of a share they hold it as joint tenants with rights of survivorship subject to the following provisions:

- (a) they and their respective legal personal representatives are liable severally as well as jointly for all payments, including calls, which ought to be made in respect of the share;
- (b) subject to **rule 2.4(a)**, on the death of any one of them the survivor or survivors are the only person or persons the Company will recognise as having any title to the share;
- (c) any one of them may give effectual receipts for any dividend, interest or other distribution or payment in respect of the share;
- (d) except where otherwise required under the ASTC Settlement Rules and/ or ACH Clearing Rules, the Company is not bound to register more than 3 persons as joint holders of the share;
- (e) the Company is not bound to issue more than one certificate in respect of the share; and
- (f) delivery of a certificate for the share to any one of them is sufficient delivery to all of them.

2.5 Equitable and other claims

- (a) Except as otherwise required by law or provided by this Constitution, the Company is entitled to treat the registered holder of a share as the absolute owner of that share and is not:
 - (i) compelled in any way to recognise a person as holding a share upon any trust, even if the Company has notice of that trust; or
 - (ii) compelled in any way to recognise, or be bound by, any equitable, contingent, future or partial claim to or interest in a share on the part of any other person except an absolute right of ownership in the registered holder, even if the Company has notice of that claim or interest.
- (b) With the consent of the directors, shares held by a trustee may be marked in the register in such a way as to identify them as being held subject to the relevant trust.
- (c) Nothing in **rule 2.5(b)** limits the operation of **rule 2.5(a)**.

2.6 Currency

An amount payable to the holder of a share, whether by way of or on account of dividend, return of capital, participation in the property of the Company on a winding up or otherwise, may be paid, with the agreement of the holder or pursuant to the terms of issue of the share, in the currency of a

country other than Australia and the directors may fix a date up to 30 days before the payment date as the date on which any applicable exchange rate will be determined for that purpose.

2.7 Employee share schemes

The directors may:

- (a) implement an employee share scheme in the manner permitted by the Listing Rules and otherwise on such terms as they think fit under which securities of the Company or of a Related Body Corporate may be issued or otherwise provided to or for the benefit of any officer (including any director) of the Company or of a Related Body Corporate or to a relative of that officer or to an entity in which that officer or a relative of that officer has an interest;
- (b) amend, suspend or terminate any employee share scheme implemented by them; and
- (c) give financial assistance in connection with the acquisition of securities of the Company or of a Related Body Corporate under any employee share scheme in any manner permitted by the *Corporations Act 2001*.

2.8 Restricted Securities

Notwithstanding any other provisions of this Constitution:

- (a) the holder of Restricted Securities cannot Dispose of those Restricted Securities during the escrow period relating to those Restricted Securities except as permitted by the Listing Rules or the ASX;
- (b) the Company must refuse to acknowledge, deal with or accept a Disposal (including registering a transfer of Restricted Securities) which is or might be in breach of the Listing Rules or any restriction agreement entered into by the Company under the Listing Rules relating to the escrow of Restricted Securities; and
- (c) during a breach of the Listing Rules relating to Restricted Securities, or a breach of a restriction agreement entered into by the Company under the Listing Rules relating to the escrow of Restricted Securities, the member holding the Restricted Securities in question ceases to be entitled to any dividend or distribution, or any voting rights in respect of those Restricted Securities.

2.9 Certificates

If it is not contrary to the *Corporations Act 2001*, the Listing Rules or the ASTC Settlement Rules and/ or ACH Clearing Rules, the directors may resolve:

- (a) not to issue a certificate for a share; and
- (b) to cancel a certificate for a share and not to issue a replacement certificate.

3. CALLS, FORFEITURE, INDEMNITIES, LIEN AND SURRENDER

3.1 Calls

- (a) Subject to this Constitution and to the terms upon which any shares may be issued, the directors may make calls upon the members in respect of any money unpaid on their shares which is not by the terms of issue of those shares made payable at fixed times.
- (b) A call may be required by the directors to be paid by instalments.

- (c) Upon receiving at least 11 Business Days' notice specifying the time and place of payment, each member must pay to the Company by the time and at the place so specified the amount called on the member's shares.
- (d) A call is to be taken as having been made when the resolution of the directors authorising the call was passed.
- (e) The directors may revoke a call.
- (f) The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any member does not invalidate the call.
- (g) If a sum called in respect of a share is not paid in full by the day appointed for payment of the sum, the person from whom the sum is due must pay:
 - (i) interest on so much of the sum as is unpaid from time to time, from the date appointed for payment of the sum to the date of actual payment, at a rate determined under **rule 3.9**; and
 - (ii) any costs, expenses or damages incurred by the Company in relation to the non-payment or late payment of the sum.
- (h) Any sum unpaid on a share that, by the terms of issue of the share, becomes payable on allotment or at a fixed date:
 - (i) is to be treated for the purposes of this Constitution as if that sum was payable pursuant to a call duly made and notified; and
 - (ii) must be paid on the date on which it is payable under the terms of issue of the share.
- (i) The directors may, to the extent permitted by law, waive or compromise all or any part of any payment due to the Company under the terms of issue of a share or under this **rule 3.1**.

3.2 Proceedings for recovery of calls

- (a) In an action or other proceedings for the recovery of a call, or interest or costs or expenses incurred in relation to the non-payment or late payment of a call, proof that:
 - (i) the name of the defendant is entered in the register as the holder or one of the holders of the share in respect of which the call is claimed;
 - (ii) the resolution making the call is recorded in the minute book; and
 - (iii) notice of the call was given to the defendant in accordance with this Constitution,

is conclusive evidence of the debt and it is not necessary to prove the appointment of the directors who made the call or any other matter.
- (b) In **rule 3.2(a)**, "defendant" includes a person against whom a set-off or counter-claim is alleged by the Company and "action or other proceedings for the recovery of a call" is to be construed accordingly.

3.3 Payments in advance of calls

- (a) The directors may accept from a member the whole or a part of the amount unpaid on a share although no part of that amount has been called.
- (b) The directors may authorise payment by the Company of interest upon the whole or any part of an amount accepted under **rule 3.3(a)**, until the amount becomes payable, at a rate agreed between the directors and the member paying the amount.
- (c) The directors may repay to a member all or any of the amount accepted under **rule 3.3(a)**.

3.4 Forfeiture of partly paid shares

- (a) If a member fails to pay the whole of a call or instalment of a call by the time appointed for payment of the call or instalment, the directors may serve a notice on that member:
 - (i) requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all costs, expenses or damages that may have been incurred by the Company by reason of the non-payment or late payment of the call or instalment;
 - (ii) naming a further day (at least 14 days after the date of service of the notice) by which, and a place at which, the amount payable under **rule 3.4(a)(i)** is to be paid; and
 - (iii) stating that, in the event of non-payment of the whole of the amount payable under **rule 3.4(a)(i)** by the time and at the place named, the shares in respect of which the call was made will be liable to be forfeited.
- (b) If the requirements of a notice served under **rule 3.4(a)** are not complied with, the directors may by resolution forfeit any share in respect of which the notice was given at any time after the day named in the notice and before the payment required by the notice is made.
- (c) A forfeiture under **rule 3.4(b)** will include all dividends, interest and other money payable by the Company in respect of the forfeited share and not actually paid before the forfeiture.
- (d) Where a share has been forfeited:
 - (i) notice of the resolution must be given to the member in whose name the share stood immediately before the forfeiture; and
 - (ii) an entry of the forfeiture, with the date, must be made in the register of members.
- (e) Failure to give the notice or to make the entry required under **rule 3.4(d)** does not invalidate the forfeiture.
- (f) A forfeited share becomes the property of the Company and the directors may sell, reissue or otherwise Dispose of the share in such manner as they think fit and, in the case of reissue or other disposal, with or without any money paid on the share by any former holder being credited as paid up.
- (g) A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares, but remains liable to pay, and must immediately pay, to the Company:

- (i) all calls, instalments, interest, costs, expenses and damages owing in respect of the shares at the time of the forfeiture; and
 - (ii) interest on so much of the amount payable under **rule 3.4(g)(i)** as is unpaid from time to time, from the date of the forfeiture to the date of actual payment, at a rate determined under **rule 3.9**.
- (h) Except as otherwise provided by this Constitution or (while the Company is a Listed Company) the Listing Rules, the forfeiture of a share extinguishes all interest in, and all claims and demands against the Company in respect of, the forfeited share and all other rights incident to the share.
- (i) The directors may:
- (i) exempt a share from all or any part of this **rule 3.4**;
 - (ii) waive or compromise all or any part of any payment due to the Company under this **rule 3.4**; and
 - (iii) before a forfeited share has been sold, reissued or otherwise Disposed of, annul the forfeiture upon such conditions as they think fit.

3.5 Indemnity for payments by the Company

If the Company becomes liable under any law to make any payment:

- (a) in respect of shares held solely or jointly by a member;
- (b) in respect of a transfer or transmission of shares by a member;
- (c) in respect of dividends, bonuses or other money due or payable or which may become due and payable to a member; or
- (d) otherwise for or on account of or in respect of a member,

whether as a consequence of:

- (e) the death of that member;
- (f) the non-payment of any income tax, capital gains tax, wealth tax or other tax by that member or the legal personal representative of that member;
- (g) the non-payment of any estate, probate, succession, death, stamp or other duty by that member or the legal personal representative of that member; or
- (h) any other act or thing,

then, in addition to any right or remedy that law may confer on the Company:

- (i) the member or, if the member is dead, the member's legal personal representative must:
 - (i) fully indemnify the Company against that liability;
 - (ii) reimburse the Company for any payment made under or as a consequence of that law immediately on demand by the Company; and
 - (iii) pay interest on so much of the amount payable to the Company under **rule 3.5(i)(ii)** as is unpaid from time to time, from the date the Company makes a

payment under that law until the date the Company is reimbursed in full for that payment under **rule 3.5(i)(ii)**, at a rate determined under **rule 3.9**; and

- (j) the directors may:
 - (i) exempt a share from all or any part of this **rule 3.5**; and
 - (ii) waive or compromise all or any part of any payment due to the Company under this **rule 3.5**.

3.6 Lien on shares

- (a) The Company has a first and paramount lien on:
 - (i) each partly paid share for all unpaid calls and instalments due in respect of that share; and
 - (ii) each share for such amounts (if any) as the Company may be called upon by law to pay (and has paid) in respect of that share.
- (b) The Company's lien on a share extends to all dividends payable in respect of the share and to the proceeds of sale of the share.
- (c) The directors may sell any share on which the Company has a lien in such manner as they think fit where:
 - (i) an amount in respect of which a lien exists under this **rule 3.6** is presently payable; and
 - (ii) the Company has, not less than 14 days before the date of the sale, given to the registered holder of the share a notice in writing setting out, and demanding payment of, such amount in respect of which the lien exists as is presently payable.
- (d) The directors may do all things necessary or desirable under the ASTC Settlement Rules and/ or ACH Clearing Rules to protect any lien, charge or other right to which the Company may be entitled under any law or under this Constitution.
- (e) Registration by the Company of a transfer of shares on which the Company has a lien without giving to the transferee notice of its claim releases the Company's lien in so far as it relates to sums owing by the transferor or any predecessor in title.
- (f) The directors may:
 - (i) exempt a share from all or any part of this **rule 3.6**; and
 - (ii) waive or compromise all or any part of any payment due to the Company under this **rule 3.6**.

3.7 Surrender of shares

- (a) The directors may accept a surrender of a share by way of compromise of any claim as to whether or not that share has been validly issued or in any other case where the surrender is within the powers of the Company.
- (b) Any share so surrendered may be sold, reissued or otherwise Disposed in the same manner as a forfeited share.

3.8 General provisions applicable to a disposal of shares under this Constitution

- (a) A reference in this **rule 3.8** to a "disposal of shares under this Constitution" is a reference to:
- (i) any sale, reissue or other disposal of a forfeited share under **rule 3.4(f)** or a surrendered share under **rule 3.7**; and
 - (ii) any sale of a share on which the Company has a lien under **rule 3.6(c)**.
- (b) Where any shares are "disposed of under this Constitution", the directors may:
- (i) receive the purchase money or consideration given for the shares on the disposal;
 - (ii) effect a transfer of the shares and execute, or appoint a person to execute, on behalf of the former holder an instrument of transfer of the shares or any other instrument for the purpose of giving effect to the disposal; and
 - (iii) register as the holder of the shares the person to whom the shares have been "disposed of under this Constitution".
- (c) A person to whom shares are "disposed of under this Constitution" is not bound to see to the regularity or validity of, or to the application of the purchase money or consideration on, the disposal and the title of that person to the shares is not affected by any irregularity or invalidity in the forfeiture or surrender of the shares or the exercise of the Company's lien on the shares (as the case may be).
- (d) The remedy of any person aggrieved by a "disposal of shares under this Constitution" is limited to damages only and is against the Company exclusively.
- (e) The proceeds of a "disposal of shares under this Constitution" must be applied in the payment of:
- (i) the expenses of the disposal; and then
 - (ii) all money presently payable by the former holder whose shares have been "disposed of under this Constitution"; and then
 - (iii) the balance (if any) must be paid (subject to any lien that exists under **rule 3.6** in respect of money not presently payable) to the former holder:
 - (A) in the case of an Uncertificated Holding, as soon as practicable after the disposal; and
 - (B) in the case of a Certificated Holding, on the former holder delivering to the Company the certificate for the shares that have been "disposed of under this Constitution" or such other proof of title as the directors may accept.
- (f) A statement in writing signed by a director or secretary of the Company to the effect that a share in the Company has been:
- (i) duly forfeited under **rule 3.4(b)**;
 - (ii) duly sold, reissued or otherwise "disposed of under **rule 3.4(f)** or **rule 3.7** of this Constitution"; or
 - (iii) duly sold under **rule 3.6(c)**,

on a date stated in the statement is conclusive evidence of the facts stated in the statement as against all persons claiming to be entitled to the share and of the right of the Company to forfeit, sell, reissue or otherwise "dispose of the share under this Constitution".

3.9 Interest payable by member

- (a) For the purposes of **rules 3.1(g)(i), 3.4(g)(ii) and 3.5(i)(iii)**, the rate of interest payable to the Company is:
 - (i) if the directors have fixed a rate, the rate so fixed; or
 - (ii) in any other case, 15% per annum.
- (b) Interest payable under **rules 3.1(g)(i), 3.4(g)(ii) and 3.5(i)(iii)** accrues daily and may be capitalised monthly or at such other intervals as the directors think fit.

4. TRANSFER AND TRANSMISSION OF SHARES

4.1 Transfer of shares

- (a) Subject to this Constitution and to the rights or restrictions attached to any shares or class of shares, a member may transfer all or any of the member's shares by:
 - (i) a Proper ASTC Transfer; or
 - (ii) an instrument in writing in any usual form or in any other form that the directors approve.
- (b) A transferor of shares remains the holder of the shares transferred until the transfer is:
 - (i) effected in accordance with the ASTC Settlement Rules and/ or ACH Clearing Rules; or
 - (ii) registered and the name of the transferee is entered in the register of members in respect of the shares.
- (c) The Company must not charge a fee for the registration of a transfer of shares.
- (d) An instrument of transfer referred to in **rule 4.1(a)(ii)** must:
 - (i) be signed by or on behalf of both the transferor and the transferee unless:
 - (A) the instrument of transfer relates only to fully paid shares and signature by the transferee has been dispensed with by the directors; or
 - (B) the transfer of the shares is effected by a document which is, or documents which together are, a sufficient transfer of those shares under the *Corporations Act 2001*;
 - (ii) if required by law to be stamped, be duly stamped;
 - (iii) be left for registration at the registered office of the Company, or at such other place as the directors determine, accompanied by such evidence as the directors may require to prove the title of the transferor or the transferor's right to the shares (including, in the case of a Certificated Holding, the certificate for the shares) and to prove the right of the transferee to be registered as the owner of the shares.

- (e) Subject to the powers vested in the directors under **rules 4.2** and **4.3**, where the Company receives an instrument of transfer under **rule 4.1(d)**, the Company must register the transferee named in the instrument as the holder of the shares to which it relates.
- (f) The Company may retain any registered instrument of transfer received by the Company under **rule 4.1(d)** for such period as the directors think fit.
- (g) Except in the case of fraud, the Company must return any instrument of transfer received under **rule 4.1(d)** which the directors decline to register to the person who deposited it with the Company.
- (h) The directors may do anything that is necessary or desirable for the Company to participate in any computerised, electronic or other system for facilitating the transfer of shares that may be owned, operated or sponsored by the ASX or a Related Body Corporate of the ASX.
- (i) The directors may, to the extent permitted by law, waive all or any of the requirements of this **rule 4.1**, whether for the purpose of giving effect to **rule 4.1(h)** or otherwise.

4.2 Power to decline registration of transfers

- (a) The directors may ask ACH and/or ASTC to apply a holding lock to prevent a Proper ASTC Transfer or decline to register an instrument of transfer received under **rule 4.1(d)** where the transfer is not in registrable form or the refusal to register the transfer is permitted under the Listing Rules (whether or not the Company is then a Listed Company).
- (b) If the directors ask ACH and/or ASTC to apply a holding lock or decline to register a transfer under **rule 4.2(a)**, the Company must give:
 - (i) in the case of a Proper ASTC Transfer, the holder of the shares;
 - (ii) in the case of any other instrument of transfer, the party lodging the transfer,
 written notice of the refusal and the precise reasons for it within 5 Business Days after:
 - (iii) in the case of a Proper ASTC Transfer, the date on which the Company asked for the holding lock; and
 - (iv) in the case of any other instrument of transfer, the date on which the transfer was lodged with the Company,
 but failure to do so will not invalidate the decision of the directors to decline to register the transfer or apply for the holding lock.

4.3 Power to suspend registration of transfers

The directors may suspend the registration of instruments of transfer received under **rule 4.1(d)** at such times and for such periods, not exceeding in total 30 days in any year, as they think fit.

4.4 Transmission of shares

- (a) In the case of the death of a member, the only persons the Company will recognise as having any title to the member's shares or any benefits accruing in respect of those shares are:
 - (i) the legal personal representative of the deceased where the deceased was a sole holder; and

- (ii) the survivor or survivors where the deceased was a joint holder.
- (b) Nothing contained in **rule 4.4(a)** releases the estate of a deceased member from any liability in respect of a share, whether that share was held by the deceased member solely or jointly with other persons.
- (c) A person who becomes entitled to a share as a result of a Transmission Event may, upon producing such evidence as the directors may require to prove that person's entitlement to the share (including, in the case of a Certificated Holding, the certificate for the share), elect:
 - (i) to be registered as the holder of the share by signing and serving on the Company a notice in writing stating that election; or
 - (ii) to have some other person nominated by that person registered as the transferee of the share by executing or otherwise effecting a transfer of the share to that other person.
- (d) The provisions of this Constitution relating to the right to transfer shares, and the registration of transfers of shares, apply, so far as they can and with such changes as are necessary, to any transfer under **rule 4.4(c)(ii)** as if the relevant Transmission Event had not occurred and the transfer were executed or effected by the registered holder of the share.
- (e) For the purpose of this Constitution, where 2 or more persons are jointly entitled to any share as a result of a Transmission Event they will, upon being registered as the holders of the share, be taken to hold the share as joint tenants and **rule 2.4** will apply to them.
- (f) Notwithstanding **rule 4.4(a)**, the directors may register a transfer of shares signed by a member prior to a Transmission Event even though the Company has notice of the Transmission Event.

5. GENERAL MEETINGS

5.1 Convening of general meetings

The directors may convene and arrange to hold a general meeting of the Company whenever they think fit and must do so if required to do so under the *Corporations Act 2001*. While the Company is a Listed Company any director may convene a general meeting.

5.2 Notice of general meetings

- (a) Notice of a general meeting must be given in accordance with **rule 13.1** and the Corporations Act and may be given as set out in **rule 5.2(b)**.
- (b) If a member nominates:
 - (i) an electronic means by which the member may be notified that notices of meeting are available; and
 - (ii) an electronic means the member may use to access notices of meeting,

the Company may give the member notice of the meeting by notifying the member (using the notification means nominated by the member):

 - (iii) that the notice of meeting is available; and

- (iv) how the member may use the electronic means nominated by the member to access the notice of meeting.

A notice of meeting given to a member by these electronic means is taken to be given on the Business Day after the day on which the member is notified that the notice of meeting is available.

5.3 Calculation of period of notice

In computing the period of notice under **rule 5.2**, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

5.4 Cancellation or postponement of meeting

- (a) Where a general meeting (including an annual general meeting) is convened by the directors they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place of the meeting.
- (b) This **rule 5.4** does not apply to a meeting convened in accordance with the *Corporations Act 2001* by a single director, by members, by the directors on the request of members or to a meeting convened by a court.
- (c) Notice of cancellation or postponement or change of place of a general meeting must state the reason for cancellation or postponement and be:
 - (i) published in a daily newspaper circulating in Australia;
 - (ii) given to the ASX; or
 - (iii) subject to the *Corporations Act 2001* and the Listing Rules, given in any other manner determined by the directors.

5.5 Contents of notice of postponement of meeting

A notice of postponement of a general meeting must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

5.6 Number of clear days for postponement of 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 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 *Corporations Act 2001*.

5.7 Business at postponed meeting

The only business that may be transacted at a general meeting that has been postponed is the business specified in the original notice convening the meeting.

5.8 Proxy, attorney or Representative at postponed meeting

Where by the terms of an instrument appointing a proxy or attorney or an appointment of a Representative:

- (a) the appointed person is authorised to attend and vote at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then by force of this rule, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the member appointing the proxy, attorney or Representative gives to the Company at its registered office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

5.9 Non-receipt of notice

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.

5.10 Admission to general meetings

The chairperson of a general meeting may refuse admission to, or require to leave and remain out of, the meeting any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of an article considered by the chairperson to be dangerous, offensive or liable to cause disruption;
- (d) who refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
- (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (f) who is not:
 - (i) a member or a proxy, attorney or Representative of a member;
 - (ii) a director; or
 - (iii) an auditor of the Company.

5.11 Quorum at general meetings

- (a) No business may be transacted at any general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) Two or more members present personally or separately represented by proxy representative or attorney shall be a quorum for a general meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:

- (i) where the meeting was convened upon the requisition of members, the meeting must be dissolved; or
- (ii) in any other case:
 - (A) the meeting stands adjourned to such day, and at such time and place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and
 - (B) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

5.12 Chairperson of general meetings

- (a) The chairperson of directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each general meeting.
- (b) If at a general meeting:
 - (i) there is no chairperson of directors;
 - (ii) the chairperson of directors is not present within 15 minutes after the time appointed for the meeting; or
 - (iii) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,

then if the directors have elected a deputy chairperson of directors, the deputy chairperson of directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairperson at the meeting.

- (c) Subject to **rule 5.12(a)**, if at a general meeting:
 - (i) there is no deputy chairperson of directors;
 - (ii) the deputy chairperson of directors is not present within 15 minutes after the time appointed for the meeting; or
 - (iii) the deputy chairperson of directors is present within that time but is not willing to act as chairperson of the meeting;

the members present must elect as chairperson of the meeting:

- (iv) another director who is present and willing to act; or
- (v) if no other director willing to act is present at the meeting, a member who is present and willing to act.

5.13 Conduct of general meetings

- (a) The chairperson of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in his or her opinion necessary or desirable for:

- (i) proper and orderly debate or discussion, including limiting the time that a person present may speak on a motion or other item of business before the meeting; and
 - (ii) the proper and orderly casting or recording of votes at the general meeting, whether on a show of hands or on a poll, including the appointment of scrutineers.
- (b) The chairperson of a general meeting may at any time he or she considers it necessary or desirable for the proper and orderly conduct of the meeting:
- (i) terminate debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the members present; or
 - (ii) allow debate or discussion on any business, question, motion or resolution being considered by the meeting to continue.
- (c) The chairperson of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Company.
- (d) If the Company's Auditor or their representative is at the meeting, the chairperson of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask the Auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the Auditor's report.
- (e) A decision by a chairperson under **rule 5.13(a), (b), (c) or (d)** is final.
- (f) The chairperson of a general meeting may at any time during the course of the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting.
- (g) If the chairperson exercises his or her right under **rule 5.13(f)**, it is in the chairperson's sole discretion whether to seek the approval of the members present to the adjournment.
- (h) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (i) It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

5.14 Decisions at general meetings

- (a) Except in the case of any resolution which as a matter of law or the Listing Rules requires a special majority, questions arising at a general meeting will be decided by a majority of votes cast by the members present at the meeting and any such decision is a decision of the members for all purposes.
- (b) If there is an equality of votes upon any proposed resolution, the chairperson of the meeting, has a casting vote in addition to his or her deliberative vote.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands, unless a poll is effectively demanded and the demand is not withdrawn.

- (d) Unless a poll is effectively demanded, a declaration by the chairperson of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the chairperson nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded in favour of or against the resolution.
- (e) If a poll is effectively demanded:
 - (i) it must be taken in the manner and at the date and time directed by the chairperson, and the result of the poll will be the resolution of the meeting at which the poll was demanded;
 - (ii) on the election of the chairperson or on a question of adjournment, it must be taken immediately;
 - (iii) the demand may be withdrawn; and
 - (iv) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

5.15 Voting rights

- (a) Subject to this Constitution and to any rights or restrictions attached to any shares or class of shares, at a general meeting:
 - (i) on a show of hands, every member present has one vote; and
 - (ii) on a poll, every member present has:
 - (A) one vote for each fully paid share held by the member and in respect of which the member is entitled to vote; and
 - (B) a fraction of a vote for each partly paid share held by the member and in respect of which the member is entitled to vote, equivalent to the proportion which the amount paid up (not credited) on the share bears to the total amounts paid and payable (excluding amounts credited) on the share.
 - (iii) for the purposes of **rule 5.15(a)(ii)(B)**, an amount paid on a share in advance of a call is to be taken as not having been paid on the share.
- (b) Where a person present at a general meeting represents personally or by proxy, attorney or Representative more than one member:
 - (i) on a show of hands the person is entitled to one vote only despite the number of members the person represents;
 - (ii) that vote will be taken as having been cast for all the members the person represents;
 - (iii) the person must not exercise that vote in a way which would contravene any directions given to the person in any instrument appointing the person as a proxy or attorney; and
 - (iv) if the person has been appointed as a proxy under two or more instruments that specify different ways to vote on a resolution, the person may not vote as a

proxy on a show of hands; however, if the person is a member, the person may vote on a show of hands without regard to the proxies the person holds.

- (c) A joint holder may vote at any meeting in person or by proxy, attorney or Representative as if that person was the sole holder. If more than one joint holder tenders a vote, the vote of the holder named first in the register must be accepted to the exclusion of the other or others.
- (d) The parent or guardian of an infant member may vote at any general meeting upon such evidence being produced of the relationship or of the appointment of the guardian as the directors may require and any vote so tendered by a parent or guardian of an infant member must be accepted to the exclusion of the vote of the infant member.
- (e) A person entitled to a share as a result of a Transmission Event may vote at any general meeting in respect of that share in the same manner as if that person were the registered holder of the share if, not less than 48 hours before the meeting, the directors have:
 - (i) admitted that person's right to vote at that meeting in respect of the share; or
 - (ii) been satisfied of that person's right to be registered as the holder of, or to transfer, the share under **rule 4.4(c)**,
 and any vote so tendered by such a person must be accepted to the exclusion of the vote of the registered holder of the share.
- (f) Where a member holds any share upon which any call or other sum of money payable to the Company has not been duly paid:
 - (i) that member is only entitled to be present at a general meeting and vote if other shares are held by that member upon which no money is then due and payable; and
 - (ii) upon a poll, that member is not entitled to vote in respect of that share but may vote in respect of any other shares held upon which no money is then due and payable.
- (g) A member is not entitled to vote on any resolution for the purposes of the Listing Rules if the Listing Rules provide:
 - (i) the member must not vote or must abstain from voting on the resolution; or
 - (ii) a vote on the resolution by the member must be disregarded for the purposes of the Listing Rules,
 and if the member does vote on such a resolution, his or her vote must not be counted.
- (h) An objection to the qualification of a person to vote at a general meeting:
 - (i) must be raised before or at the meeting at which the vote objected to is given or tendered; and
 - (ii) must be referred to the chairperson of the meeting, whose decision is final.
- (i) A vote not disallowed by the chairperson of a meeting under **rule 5.15(h)** is valid for all purposes.

5.16 Representation at general meetings

- (a) Subject to this Constitution, each member entitled to vote at a meeting of members may vote:
 - (i) in person or, where a member is a body corporate, by its Representative;
 - (ii) by not more than 2 proxies; or
 - (iii) by not more than 2 attorneys.
- (b) Unless otherwise provided in the instrument, an instrument appointing a proxy, attorney or Representative will be taken to confer authority:
 - (i) to demand or join in demanding a poll on any resolution on which the proxy, attorney or Representative may vote;
 - (ii) even though the instrument may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re-scheduled or adjourned meeting or at the new venue.
- (c) The chairperson of a meeting may require any person purporting to act as a proxy, attorney or Representative to establish to the satisfaction of the chairperson that the person has been validly appointed as a proxy, attorney or Representative and is the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting.
- (d) Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if, before the person votes:
 - (i) a Transmission Event occurring in relation to the appointing member;
 - (ii) the member revokes the appointment or authority;
 - (iii) the member revokes the authority under which the appointment was made by a third party; or
 - (iv) the member transfer the share in respect of which the appointment or authority was given

6. DIRECTORS

6.1 Appointment and removal of directors

- (a) The minimum number of directors is 3. The maximum number of directors is to be fixed by the directors, but must not be more than 10 unless the Company in general meeting determines otherwise. The directors must not determine a maximum which is less than the number of directors in office at the time the determination takes effect.
- (b) The directors in office on the date that this Constitution was adopted by the Company continue in office but on the terms and conditions set out in this Constitution.
- (c) Subject to **rules 6.1(a)** and **(m)**, the Company may by resolution elect any natural person to be a director, either as an addition to the existing directors or as otherwise provided in this Constitution.
- (d) Subject to **rules 6.1(a)** and **(e)**, the directors may appoint any natural person to be a director, either as an addition to the existing directors or to fill a casual vacancy

(including any casual vacancy arising where a director is removed from office under **rule 6.1(k)** and no person is appointed in place of that director under **rule 6.1(k)(ii)**).

- (e) A director, other than the managing director (or if there is more than one managing director, the managing director appointed first in time), appointed under **rule 6.1(d)** must retire from office at the next annual general meeting following his or her appointment.
- (f) An election of directors must take place each year and at that meeting:
 - (i) excluding any director who is required to retire at that meeting under **rule 6.1(e)** and the managing director (or if there is more than one managing director, the managing director appointed first in time):
 - (A) one-third of the remaining directors (rounded down, if necessary, to the nearest whole number); and
 - (B) any other director who, if he does not retire, will at the conclusion of the meeting have been in office for 3 or more years and for 3 or more annual general meetings since he or she was last elected to office, must retire from office as directors; and
 - (ii) if no director is required to retire from office under **rule 6.1(f)(i)**, at least one director, excluding a managing director (or if there is more than one managing director, the managing director appointed first in time) but including a director appointed under **rule 6.1(d)** who is required to retire at that meeting under **rule 6.1(e)**, must retire from office as a director.
- (g) The director or directors who must retire at an annual general meeting in accordance with **rule 6.1(f)(i)(A)** or **6.1(f)(ii)** (as the case may be) is the director who has, or are the directors who have, been longest in office since their last election but, as between persons who were last elected as directors on the same day, the director or directors to retire must be determined by agreement among themselves or, in the absence of agreement, by lot.
- (h) Subject to **rule 6.1(m)**, the Company may by resolution fill the office vacated by a director under **rule 6.1(e)** or **(f)** by electing a person to that office.
- (i) A director retiring from office under **rule 6.1(e)** or **(f)** is eligible for re-election and that director may by resolution of the Company be re-elected to that office.
- (j) The retirement of a director from office under **rule 6.1(e)** or **(f)** and the re-election of the director or the election of another person to that office (as the case may be) takes effect at the conclusion of the meeting at which the retirement and re-election or election occur.
- (k) The Company may:
 - (i) by resolution in accordance with section 203D of the *Corporations Act 2001* remove a director from office; and
 - (ii) subject to **rule 6.1(m)**, by resolution fill the office vacated by a director who is removed under **rule 6.1(k)(i)** by electing another person to that office.
- (l) A person elected as a director under **rule 6.1(k)(ii)** must retire under **rule 6.1(e)** or **(f)** (as the case may be) on the same day that the director in whose place he or she was appointed would have had to retire under **rule 6.1(e)** or **(f)** if that director had not been removed from office under **rule 6.1(k)(i)**.
- (m) A person may only be elected to the office of a director at a general meeting if:

- (i) he or she is a director retiring from office under **rule 6.1(e)** or **(f)** and standing for re-election at that meeting;
 - (ii) he or she has been nominated by the directors for election at that meeting; or
 - (iii) if the person has at least 45 Business Days before the meeting, or at least 30 Business Days in the case of a meeting which members have requested the directors to call, served on the Company a notice signed by him or her signifying his or her desire to be a candidate for election at that meeting.
- (n) If there is more than one managing director at any time:
- (i) a managing director will be regarded as being appointed first in time if that managing director was appointed as managing director prior to the appointment of any other person as managing director who is also a managing director at the relevant time; and
 - (ii) if it is not possible to determine which managing director was appointed first in time because more than one was appointed as managing director at the same time, the managing director whose name first appears in the minutes noting the appointment of those persons as managing directors will be deemed to have been appointed first in time.

6.2 Vacation of office

In addition to the circumstances prescribed by the *Corporations Act 2001*, the office of a director becomes vacant if the director:

- (a) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (b) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors generally;
- (c) is convicted of a felony and the directors do not within one month of that conviction resolve to confirm the director's appointment or election (as the case may be) to the office of director;
- (d) fails to attend meetings of the directors for more than 3 consecutive months without leave of absence from the directors; or
- (e) resigns by notice in writing to the Company.

6.3 Remuneration of directors

The directors are to be remunerated for their services as directors as follows:

- (a) The amount of the remuneration of the directors is a yearly sum not exceeding the sum from time to time determined by the Company in general meetings. The notice convening the meeting must include the proposal to increase the directors' remuneration and specify both the amount of the increase and the new yearly sum proposed for determination;
- (b) The amount of the remuneration of the directors is to be divided among them in the proportion and manner they agree or, in default of agreement, among them equally;
- (c) The remuneration is to be provided wholly in cash unless the directors, with the agreement of the director concerned, determine that part is to be satisfied in the form of

non-cash benefits, including the issue or purchase of shares in the Company or the grant of options to subscribe to such shares. The sum determined by the Company in general meeting under **rule 6.3(a)** does not include remuneration in the form of share, option or other equity plans approved separately by the Company in general meetings;

- (d) In making a determination under **rule 6.3(c)** the directors may fix the value of any non-cash benefits;
- (e) The directors' remuneration accrues from day to day, except for any non-cash benefit which is taken to accrue at the time the benefit is provided, subject to the terms on which the benefit is provided; and
- (f) This rule does not apply to the remuneration of the managing director or any executive director appointed under **rule 7**.

6.4 Superannuation contributions

If required by law, the Company may make contributions to a fund for the purpose of making provision for or obtaining superannuation benefits for a director. The contribution made by the Company under this rule is not remuneration to which **rule 6.3** applies if the contribution is excluded from the amount to be approved by members under the Listing Rules.

6.5 Additional or special duties

If a director at the request of the directors performs additional or special duties (including consultancy services) for the Company, the Company may remunerate that director as determined by the directors and that remuneration may be either in addition to, or in substitution for that director's remuneration under **rule 6.3**.

6.6 Retirement benefit

Subject to the Listing Rules and the *Corporations Act 2001* the Company may pay a former director or the personal representatives of a director who dies in office, a retirement benefit in recognition in past services of an amount determined by the directors. The Company may also enter into a contract with a director providing for payment of a retirement benefit. A retirement benefit paid under this rule is not remuneration to which **rule 6.3** applies.

6.7 Expenses

A director is entitled to be reimbursed out of the funds of the Company such reasonable travelling, accommodation and other expenses as the director may incur when travelling to or from meetings of the directors or a committee or when otherwise engaged on the business of the Company.

6.8 Share qualification

- (a) A director is not required to hold any shares in the Company to qualify for appointment.
- (b) A director who is not a member of the Company is nevertheless entitled to attend and speak at general meetings.

6.9 Interested directors

- (a) A director may hold any other office or place of profit (other than auditor) in the Company or any Related Body Corporate in conjunction with his or her directorship and may be appointed to that office or place upon such terms as to remuneration, tenure of office and otherwise as the directors think fit.

- (b) A director of the Company may be or become a director or other officer of, or otherwise interested in, any Related Body Corporate or any other body corporate promoted by the Company or in which the Company may be interested as a shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the director as a director or officer of, or from having an interest in, that body corporate.
- (c) The directors may exercise the voting rights conferred by shares in any body corporate held or owned by the Company in such manner in all respects as the directors think fit (including voting in favour of any resolution appointing a director as a director or other officer of that body corporate or voting for the payment of remuneration to the directors or other officers of that body corporate) and a director may, if permitted by law, vote in favour of the exercise of those voting rights notwithstanding that he or she is, or may be about to be appointed, a director or other officer of that other body corporate and, as such, interested in the exercise of those voting rights.
- (d) A director is not disqualified merely because of being a director from contracting with the Company in any respect including, without limitation:
- (i) selling any property to, or purchasing any property from, the Company;
 - (ii) lending any money to, or borrowing any money from, the Company with or without interest and with or without security;
 - (iii) guaranteeing the repayment of any money borrowed by the Company for a commission or profit;
 - (iv) underwriting or guaranteeing the subscription for securities in the Company or in any Related Body Corporate or any other body corporate promoted by the Company or in which the Company may be interested as a shareholder or otherwise, for a commission or profit; or
 - (v) being employed by the Company or acting in any professional capacity (other than auditor) on behalf of the Company.
- (e) No contract made by a director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any director may be in any way interested is avoided or rendered voidable merely because of the director holding office as a director or because of the fiduciary obligations arising out of that office.
- (f) No director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the director holding office as a director or because of the fiduciary obligations arising out of that office.
- (g) Subject to **rule 6.9(h)**, a director who is in any way interested in any contract or arrangement or proposed contract or arrangement may, despite that interest:
- (i) be counted in determining whether or not a quorum is present at any meeting of directors considering that contract or arrangement or proposed contract or arrangement;
 - (ii) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement to which the Seal is affixed; and
 - (iii) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

- (h) The provisions of **rule 6.9** do not apply if, and to the extent that, they would be contrary to the *Corporations Act 2001* or the Listing Rules.
- (i) The directors may make regulations requiring the disclosure of interests that a director, and any person deemed by the directors to be related to or associated with the director, may have in any matter concerning the Company or a Related Body Corporate and any regulations made under this rule will bind all directors.

6.10 Powers and duties of directors

- (a) The directors are responsible for managing the business of the Company and may exercise to the exclusion of the Company in general meeting all the powers of the Company which are not required, by the *Corporations Act 2001*, this Constitution or (while the Company is a Listed Company) the Listing Rules, to be exercised by the Company in general meeting.
- (b) Without limiting the generality of **rule 6.10(a)**, the directors may exercise all the powers of the Company to borrow or otherwise raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.
- (c) The directors may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the Company.
- (d) The directors may pay out of the Company's funds all expenses of the promotion, formation and registration of the Company and the vesting in it of the assets acquired by it.
- (e) The directors may:
 - (i) appoint or employ any person to be an officer, agent or attorney of the Company for such purposes with such powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the directors), for such period and upon such conditions as they think fit;
 - (ii) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
 - (iii) subject to any contract between the Company and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney of the Company at any time, with or without cause.
- (f) A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the directors think fit.

6.11 Proceedings of directors

- (a) The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) The contemporaneous linking together by telephone or other method of audio or audio visual communication of a number of the directors sufficient to constitute a quorum, constitutes a meeting of the directors and all the provisions in this Constitution relating to meetings of the directors apply, so far as they can and with such changes as are necessary, to meetings of the directors by telephone or audio or audio visual communication.

- (c) A director participating in a meeting by telephone or audio or audio visual communication is to be taken to be present in person at the meeting.
- (d) A meeting by telephone or audio or audio visual communication is to be taken to be held at the place determined by the chairperson of the meeting provided that at least one of the directors involved was at that place for the duration of the meeting.

6.12 Convening of meetings of directors

- (a) A director may, whenever the director thinks fit, convene a meeting of the directors.
- (b) A secretary must, on the requisition of a director, convene a meeting of the directors.

6.13 Quorum at meetings of directors

- (a) No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.
- (b) A quorum consists of:
 - (i) if the directors have fixed a number for the quorum, that number of directors;
and
 - (ii) in any other case, 2 directors,

present at the meeting of directors.
- (c) If there is a vacancy in the office of a director, the remaining director or directors may act but, if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, the remaining director or directors may act only in an emergency or for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or of convening a general meeting of the Company.

6.14 Chairperson and deputy chairperson of directors

- (a) The directors may elect one of the directors to the office of chairperson of directors and may determine the period for which that director is to be chairperson of directors.
- (b) The directors may elect one of the directors to the office of deputy chairperson of directors and may determine the period for which that director is to be deputy chairperson of directors.
- (c) The office of chairperson of directors or deputy chairperson of directors may, if the directors so resolve, be treated as an extra service or special exertion performed by the director holding that office for the purposes of **rule 6.5**.
- (d) The chairperson of directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as chairperson at each meeting of directors.
- (e) If at a meeting of directors:
 - (i) there is no chairperson of directors;
 - (ii) the chairperson of directors is not present within 10 minutes after the time appointed for the holding of the meeting; or
 - (iii) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,

then if the directors have elected a deputy chairperson of directors, the deputy chairperson of directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as the chairperson of the meeting.

- (f) Subject to **rule 6.14(d)**, if at a meeting of directors:
- (i) there is no deputy chairperson of directors;
 - (ii) the deputy chairperson of directors is not present within 10 minutes after the time appointed for the holding of the meeting; or
 - (iii) the deputy chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,

the directors present must elect one of themselves to be chairperson of the meeting.

6.15 Decisions of directors

- (a) A meeting of directors at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under this Constitution.
- (b) Questions arising at a meeting of directors are to be decided by a majority of votes cast by the directors present and any such decision is for all purposes a determination of the directors.
- (c) Subject to **rule 6.15(d)**, in the case of an equality of votes upon any proposed resolution the chairperson of the meeting, in addition to his or her deliberative vote, has a casting vote.
- (d) Where only two directors are present or qualified to vote at a meeting of directors and there is an equality of votes upon any proposed resolution:
 - (i) the chairperson of the meeting will not have a second or casting vote; and
 - (ii) the proposed resolution is to be taken as having been lost.

6.16 Written resolutions

- (a) If:
 - (i) a majority of the directors, other than:
 - (A) any director on leave of absence approved by the directors;
 - (B) any director who disqualifies himself or herself from considering the act, matter, thing or resolution in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest; and
 - (C) any director who the directors reasonably believe is not entitled at law to do the act, matter or thing or to vote on the resolution in question,

assent to a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed; and
 - (ii) the directors who assent to the document would have constituted a quorum at a meeting of directors held to consider that act, matter, thing or resolution,

then that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the directors.

- (b) For the purposes of **rule 6.16(a)**:
 - (i) the meeting is to be taken as having been held:
 - (A) if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a director; or
 - (B) if the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a director;
 - (ii) 2 or more separate documents in identical terms each of which is assented to by one or more directors are to be taken as constituting one document; and
 - (iii) a director may signify assent to a document by signing the document or by notifying the Company of the director's assent by any technology including telephone and email.
- (c) Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the directors attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (d) Where a document is assented to in accordance with **rule 6.16(a)**, the document is to be taken as a minute of a meeting of directors.

6.17 Alternate directors

- (a) A director may, with the approval of the directors, appoint a person to be the director's alternate director for such period as the director thinks fit.
- (b) An alternate director may, but need not, be a member or a director of the Company.
- (c) One person may act as alternate director to more than one director.
- (d) An alternate director is entitled, if the appointer does not attend a meeting of directors, to attend and vote in place of and on behalf of the appointer.
- (e) An alternate director is entitled to a separate vote for each director the alternate director represents in addition to any vote the alternate director may have as a director in his or her own right.
- (f) In the absence of the appointer, an alternate director may exercise any powers that the appointer may exercise and the exercise of any such power by the alternate director is to be taken to be the exercise of the power by the appointer.
- (g) The office of an alternate director is vacated if and when the appointer vacates office as a director.
- (h) The appointment of an alternate director may be terminated at any time by the appointer even though the period of the appointment of the alternate director has not expired.
- (i) An appointment, or the termination of an appointment, of an alternate director must be in writing signed by the director who makes or made the appointment and does not take

effect unless and until the Company has received notice in writing of the appointment or termination.

- (j) An alternate director is not to be taken into account in determining the minimum or maximum number of directors allowed under this Constitution.
- (k) In determining whether a quorum is present at a meeting of directors, an alternate director who attends the meeting is to be counted as a director for each director on whose behalf the alternate director is attending the meeting.
- (l) An alternate director is entitled to be paid such remuneration as the directors think fit, either in addition to or in reduction of the remuneration payable to the director for whom the alternate director acts as alternate.
- (m) An alternate director is not entitled to be remunerated by the Company for his or her services as alternate director except as provided in **rule 6.17(l)**.
- (n) An alternate director, while acting as a director, is responsible to the Company for his or her own acts and defaults and is not to be taken to be the agent of the director by whom he or she was appointed.

6.18 Committees of directors

- (a) The directors may delegate any of their powers to a committee or committees consisting of such number of directors as they think fit.
- (b) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) The provisions of this Constitution applying to meetings and resolutions of directors apply, so far as they can and with such changes as are necessary, to meetings and resolutions of a committee of directors.
- (d) Membership of a committee of directors may, if the directors so resolve, be treated as an extra service or special exertion performed by the members for the purposes of **rule 6.5**.

6.19 Delegation to individual directors

- (a) The directors may delegate any of their powers to one director.
- (b) A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) Acceptance of such a delegation may, if the directors so resolve, be treated as an extra service or special exertion performed by the delegate for the purposes of **rule 6.5**.

6.20 Validity of acts

An act done by a person acting as a director or by a meeting of directors or a committee of directors attended by a person acting as a director is not invalidated by reason only of:

- (a) a defect in the appointment of the person as a director;
- (b) the person being disqualified to be a director or having vacated office; or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person or the directors or committee (as the case may be) when the act was done.

7. EXECUTIVE OFFICERS

7.1 Managing directors

- (a) The directors may appoint one or more of the directors to the office of managing director.
- (b) A managing director's appointment as managing director automatically terminates if the managing director ceases to be a director.

7.2 Deputy managing directors

- (a) The directors may appoint one or more of the directors to the office of deputy managing director.
- (b) A deputy managing director's appointment as deputy managing director automatically terminates if the deputy managing director ceases to be a director.

7.3 Executive directors

- (a) A reference in this **rule 7.3** to an executive director is a reference to a director who is also an officer of the Company or of a Related Body Corporate in a capacity other than director, managing director or deputy managing director.
- (b) The directors may confer on an executive director such title as they think fit.
- (c) An executive director may be appointed on the basis that the executive director's appointment:
 - (i) as a director automatically terminates if the executive director ceases to be an officer of the Company or of a Related Body Corporate in a capacity other than director; or
 - (ii) as an officer of the Company or of a Related Body Corporate in a capacity other than director automatically terminates if the executive director ceases to be a director.

7.4 Associate directors

- (a) The directors may appoint one or more associate directors.
- (b) The directors may confer on an associate director such title as they think fit.
- (c) Even though the word "director" may appear in an associate director's title, an associate director is not to be taken to be a director of the Company and is not entitled:
 - (i) to attend any meeting of directors except by the invitation and with the consent of the directors; or
 - (ii) to vote at any meeting of directors.

7.5 Secretaries

- (a) The directors must appoint at least one secretary and may appoint additional secretaries.
- (b) The directors may appoint one or more assistant secretaries.

7.6 Provisions applicable to all executive officers

- (a) A reference in this **rule 7.6** to an executive officer is a reference to a managing director, deputy managing director, executive director, associate director, secretary or assistant secretary appointed under this **part 7**.
- (b) The appointment of an executive officer may be for such period, at such remuneration and upon such conditions as the directors think fit.
- (c) The remuneration payable by the Company to an executive officer who is also a director must not include a commission on, or percentage of, operating revenue.
- (d) Subject to any contract between the Company and the relevant executive officer, any executive officer of the Company may be removed or dismissed by the directors at any time, with or without cause.
- (e) The directors may:
 - (i) confer on an executive officer such powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the directors) as they think fit;
 - (ii) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
 - (iii) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on the executive officer.
- (f) An executive officer is not required to hold any shares to qualify for appointment.
- (g) An act done by a person acting as an executive officer is not invalidated by reason only of:
 - (i) a defect in the person's appointment as an executive officer; or
 - (ii) the person being disqualified to be an executive officer,
 if that circumstance was not known by the person when the act was done.

8. SEALS

8.1 Safe custody of Seal

The directors must provide for the safe custody of the Seal.

8.2 Use of Seal

If the Company has a Seal:

- (a) it must be used only by the authority of the directors, or of a committee of the directors authorised by the directors to authorise the use of the Seal;
- (b) every document to which the Seal is affixed must be signed by a director and countersigned by another director, a secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.

9. DISTRIBUTION OF PROFITS

9.1 Dividends

- (a) Subject to the *Corporations Act 2001*, this Constitution and the rights of persons (if any) entitled to shares with special rights to dividends, the directors may determine that a dividend is payable, fix the amount and the time for payment and authorise the payment or crediting by the Company to, or at the direction of, each member entitled to that dividend.
- (b) The payment of a dividend does not require any confirmation by a general meeting.
- (c) Subject to any rights or restrictions attached to any shares or class of shares:
 - (i) all dividends in respect of shares must be apportioned and paid in proportion to the amounts paid (not credited) of the total amounts paid and payable (excluding amounts credited) on the shares;
 - (ii) all dividends must be apportioned and paid proportionately to the amounts so paid during any portion or portions of the period in respect of which the dividend is paid;
 - (iii) for the purposes of **rules 9.1(c)(i)** and **(ii)**, an amount paid on a share in advance of a call is to be taken as not having been paid on the share; and
 - (iv) interest is not payable by the Company in respect of any dividend.
- (d) The directors may fix a record date in respect of a dividend, with or without suspending the registration of transfers from that date under **rule 4.3**.
- (e) A dividend in respect of a share must be paid to the person who is registered, or entitled under **rule 4.1(e)** to be registered, as the holder of the share:
 - (i) where the directors have fixed a record date in respect of the dividend, on that date; or
 - (ii) where the directors have not fixed a record date in respect of that dividend, on the date the dividend is declared,

and a transfer of a share that is not registered, or left with the Company for registration in accordance with **rule 4.1(d)**, on or before that date is not effective, as against the Company, to pass any right to the dividend.
- (f) The directors when resolving to pay a dividend may:
 - (i) direct payment of the dividend wholly or partly by the distribution of specific assets, including paid-up shares or other securities of the Company or of another body corporate, either generally or to specific shareholders; and
 - (ii) direct that the dividend be paid to particular shareholders wholly or partly out of any particular fund or reserve or out of profits derived from any particular source and to the remaining shareholders wholly or partly out of any other particular fund or reserve or out of profits derived from any other particular source or generally.
- (g) The directors may deduct from any dividend payable to a member all sums of money presently payable by the member to the Company and apply the amount deducted in or towards satisfaction of the money owing.

- (h) Where a person is entitled to a share as a result of a Transmission Event, the directors may, but are not obliged to, retain any dividends payable in respect of that share until that person becomes registered as the holder of the share or transfers it.
- (i) Without prejudice to any other method of payment the directors may adopt, any dividend, interest or other money payable in cash in respect of shares may be paid by cheque and sent by post:
 - (i) to the address of the holder as shown in the register of members, or in the case of joint holders, to the address shown in the register of members as the address of the joint holder first named in that register; or
 - (ii) to such other address as the holder or joint holders in writing directs or direct.
- (j) A cheque sent under **rule 9.1(i)** may be made payable to bearer or to the order of the member to whom it is sent or such other person as the member may direct and is sent at the member's risk.

9.2 Capitalisation of profits

- (a) Subject to any rights or restrictions attached to any shares or class of shares, the directors may capitalise and distribute among such of the members as would be entitled to receive dividends and in the same proportions, any amount:
 - (i) forming part of the undivided profits of the Company;
 - (ii) representing profits arising from an ascertained accretion to capital or from a revaluation of the assets of the Company;
 - (iii) arising from the realisation of any assets of the Company; or
 - (iv) otherwise available for distribution as a dividend.
- (b) The directors may resolve that all or any part of the capitalised amount is to be applied:
 - (i) in paying up in full at a price determined by the resolution any unissued shares in or other securities of the Company;
 - (ii) in paying up any amounts unpaid on shares or other securities held by the members; or
 - (iii) partly as specified in **rule 9.2(b)(i)** and partly as specified in **rule 9.2(b)(ii)**,

and such an application must be accepted by the members entitled to share in the distribution in full satisfaction of their interests in the capitalised amount.
- (c) **Rules 9.1(d)** and **(e)** apply, so far as they can and with such changes as are necessary, to a capitalisation of an amount under this **rule 9.2** as if references in those rules to a dividend and to the date a dividend is declared were references to a capitalisation of an amount and to the date the directors resolve to capitalise the amount under this **rule 9.2** respectively.

9.3 Ancillary powers

For the purpose of giving effect to any resolution for the satisfaction of a dividend in the manner set out in **rule 9.1(f)(i)** or by the capitalisation of any amount under **rule 9.2**, the directors may:

- (a) settle as they think expedient any difficulty that may arise in making the distribution or capitalisation and, in particular, where shares or other securities in the Company are or would otherwise be issuable in fractions:
 - (i) issue fractional certificates for those shares or other securities;
 - (ii) determine that such fractions are to be disregarded or are to be rounded down to the nearest whole number; or
 - (iii) determine that such fractions are to be rounded up to the nearest whole number;
- (b) fix the value for distribution of any specific assets;
- (c) pay cash or issue shares or other securities to any members in order to adjust the rights of all parties;
- (d) vest any such specific assets, cash, shares or other securities in any trustee upon such trusts for the persons entitled to the dividend or capitalised amount as may seem expedient to the directors; and
- (e) authorise any person to make, on behalf of all the members entitled to any further shares or other securities as a result of the distribution or capitalisation, an agreement with the Company or another body corporate providing, as appropriate:
 - (i) for the issue to them of such further shares or other securities credited as fully paid up; or
 - (ii) for the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares or other securities by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement made under an authority referred to in this **rule 9.3(e)** is effective and binding on all members concerned.

9.4 Reserves

- (a) Subject to this Constitution, the directors may set aside out of the profits of the Company such reserves or provisions for such purposes as they think fit.
- (b) The directors may appropriate to the profits of the Company any amount previously set aside as a reserve or provision.
- (c) The setting aside of any amount as a reserve or provision does not require the directors to keep the amount separate from the other assets of the Company or prevent the amount being used in the business of the Company or being invested in such investments as the directors think fit.

9.5 Carry forward of profits

The directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends or capitalised without transferring those profits to a reserve or provision.

9.6 Dividend reinvestment plans

The directors may:

- (a) implement a dividend reinvestment plan on such terms as they think fit under which the whole or any part of any dividend due to members who participate in the plan on their

shares or any class of shares may be applied in subscribing for securities of the Company or of a Related Body Corporate; and

- (b) amend, suspend or terminate any dividend reinvestment plan implemented by them.

9.7 Dividend selection plans

The directors may:

- (a) implement a dividend selection plan on such terms as they think fit under which participants may elect:
 - (i) to receive a dividend from the Company paid wholly or partly out of any particular fund or reserve or out of profits derived from any particular source; or
 - (ii) to forego a dividend from the Company in place of some other form of distribution from the Company or another body corporate or a trust; and
- (b) amend, suspend or terminate any dividend selection plan implemented by them.

10. WINDING UP

10.1 Distribution of surplus

Subject to this Constitution and to 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:
 - (i) to pay all of 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 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 **rule 10.1(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 **rule 10.1(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 **rule 10.1(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.

10.2 Division of property

- (a) If the Company is wound up, the liquidator may, with the sanction of a special resolution:
 - (i) divide among the members the whole or any part of the property of the Company; and
 - (ii) determine how the division is to be carried out as between the members or different classes of members.

- (b) Any division under **rule 10.2(a)** may be otherwise than in accordance with the legal rights of the members and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part.
- (c) Where a division under **rule 10.2(a)** is otherwise than in accordance with the legal rights of the members, a member is entitled to dissent and to exercise the same rights as if the special resolution sanctioning that division were a special resolution passed under section 507 of the *Corporations Act 2001*.
- (d) If any of the property to be divided under **rule 10.2(a)** includes securities with a liability to calls, any person entitled under the division to any of the securities may within 10 days after the passing of the special resolution referred to in that rule, by notice in writing direct the liquidator to sell the person's proportion of the securities and to account for the net proceeds and the liquidator must, if practicable, act accordingly.
- (e) Nothing in this **rule 10.2(a)** derogates from or affects any right to exercise any statutory or other power which would have existed if this rule were omitted.
- (f) **Rule 9.3** applies, so far as it can and with such changes as are necessary, to a division by a liquidator under **rule 10.2(a)** as if references in **rule 9.3** to the directors and to a distribution or capitalisation were references to the liquidator and to the division under **rule 10.2(a)** respectively.

11. MINUTES AND RECORDS

11.1 Inspection by members

The directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the Company or any of them will be open to the inspection of members other than directors.

11.2 Right of a member to inspect

A member other than a director does not have the right to inspect any books, records or documents of the Company except as provided by law or authorised by the directors.

12. INDEMNITY AND INSURANCE

12.1 Persons to whom rules 12.2 and 12.3 apply

Rules 12.2 and 12.3 apply:

- (a) to each person who is or has been a director, alternate director or executive officer (within the meaning of **rule 7.6(a)**) of the Company;
- (b) to such other officers or former officers of the Company or of its Related Bodies Corporate as the directors in each case determine; and
- (c) if the directors so determine, to any auditor or former auditor of the Company or of its Related Bodies Corporate.

12.2 Indemnity

The Company must indemnify, on a full indemnity basis and to the maximum extent permitted by law, each person to whom this **rule 12.2** applies against:

- (a) any liability incurred by the person in the relevant capacity referred to in **rule 12.1** (except a liability for legal costs);

- (b) legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity; and
- (c) legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties in that capacity, if that expenditure has been approved in accordance with the Company's policy,

except to the extent that:

- (d) the Company is forbidden by law to indemnify the person against the liability or legal costs;
- (e) an indemnity by the Company of the person against the liability or legal costs, if given, would be made void by law; or
- (f) the person is otherwise entitled to be indemnified and is actually indemnified by another person (including without limitation a subsidiary or an insurer under any insurance policy).

12.3 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person to whom this **rule 12.3** applies against liability incurred by that person in the relevant capacity referred to in **rule 12.1**, including a liability for legal costs, unless:

- (a) the Company is forbidden by law to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by law.

12.4 Contract

The Company may enter into an agreement with a person to whom **rules 12.2** and **12.3** apply with respect to the matters covered by those rules. An agreement entered into under this rule may include provisions relating to rights of access to the books of the Company.

13. NOTICES

13.1 Methods of services

A notice may be given by the Company to a member:

- (a) personally;
- (b) by sending it by post to the member's address as shown in the register of members or an alternative address nominated by the member; or
- (c) by sending it to a fax number or by other electronic means (including by providing a URL link to any notice) to an electronic address nominated by the member.

13.2 Post

A notice sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and in either case is taken to have been received on the day after the date of its posting.

13.3 Fax or electronic transmission

If a notice is sent by fax or electronic transmission, delivery of the notice is taken:

- (a) to be effected by properly addressing and transmitting the fax or electronic transmission; and
- (b) to have been delivered on the day following its transmission.

13.4 Evidence of service

A certificate signed by a director or secretary of the Company to the effect that a notice has been given in accordance with this Constitution is conclusive evidence of that fact.

13.5 Joint holders

A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

13.6 Persons entitled to shares

A person who by operation of law, a Transmission Event, transfer or other means becomes entitled to any share is absolutely bound by every notice given in accordance with this **part 13** to the person from whom that person derives title prior to registration of that person's title in the register of members.

13.7 Other communications and documents

Rules 13.1 to 13.6 (inclusive) apply, so far as they can and with such changes as are necessary, to the service of any communication or document.

13.8 Notices in writing

A reference in this Constitution to a notice in writing includes a notice given by facsimile transmission or any other form of written communication or electronically.

13.9 Waiver by members

A member may from time to time, by written notice to the Company, waive the right to receive any or all annual financial reports from the Company and may at any time thereafter revoke the waiver in the same manner. While any waiver is in effect, the Company need not send to the member the documents to which the waiver relates.

14. APPROVAL OF PROPORTIONAL TAKEOVER BIDS

14.1 Definitions

In this **part 14**:

- (a) **Associate** has the meaning given to that term in the *Corporations Act 2001*;
- (b) **Prescribed Resolution**, in relation to a Proportional Takeover Bid, means a resolution to approve the Proportional Takeover Bid passed in accordance with **rule 14.3**;
- (c) **Proportional Takeover Bid** means a takeover bid that is made or purports to be made under section 618 of the *Corporations Act 2001* in respect of a proportion of the shares included in a class of shares in the Company;

- (d) **Relevant Class**, in relation to a Proportional Takeover Bid, means the class of shares in the Company in respect of which offers are made under the Proportional Takeover Bid; and
- (e) **Relevant Day**, in relation to a Proportional Takeover Bid, means the day that is 14 days before the end of the period during which the offers under the Proportional Takeover Bid remain open.

14.2 Transfers not to be registered

Notwithstanding **rules 4.1(e)** and **4.2**, 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 and until a Prescribed Resolution to approve the Proportional Takeover Bid has been passed or is taken to have been passed in accordance with **rule 14.3**.

14.3 Resolution

- (a) Where offers have been made under a Proportional Takeover Bid, the directors must:
 - (i) convene a meeting of the persons entitled to vote on the Prescribed Resolution for the purpose of considering and, if thought fit, passing a Prescribed Resolution to approve the Proportional Takeover Bid; and
 - (ii) ensure that such a resolution is voted on in accordance with this **rule 14.3**, before the Relevant Day in relation to that Proportional Takeover Bid.
- (b) The provisions of this Constitution relating to general meetings apply, so far as they can and with such changes as are necessary, to a meeting that is convened pursuant to **rule 14.3(a)**.
- (c) The offeror under a Proportional Takeover Bid and any associates of the offeror are not entitled to vote on the Prescribed Resolution relating to that Proportional Takeover Bid and if they do vote, their votes must not be counted.
- (d) Subject to **rule 14.3(c)**, a person who, as at the end of the day on which the first offer under the Proportional Takeover Bid was made, held shares of the relevant class is entitled to vote on the Prescribed Resolution relating to the Proportional Takeover Bid and, for the purposes of so voting, is entitled to one vote for each such share held at that time.
- (e) A Prescribed Resolution is to be 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 one half, and otherwise is to be taken to have been rejected.
- (f) If a Prescribed Resolution to approve a Proportional Takeover Bid has not been voted on in accordance with this **rule 14.3** before the Relevant Day, a Prescribed Resolution to approve the Proportional Takeover Bid will be taken to have been passed in accordance with this **rule 14.3** on the Relevant Day.

14.4 Sunset

Rules 14.1, 14.2 and **14.3** cease to have effect on the day three years after the later of their adoption or last renewal.

15. SMALL HOLDINGS

15.1 Divestment Notice

If the directors determine that a member is a Small Holder or a New Small Holder the Company may give the member a Divestment Notice to notify the member:

- (a) that the member is a Small Holder or a New Small Holder, the number of shares making up and the Market Value of the Small Holding or New Small Holding and the date on which the Market Value was determined;
- (b) that the Company intends to sell the Relevant Shares in accordance with this **rule 15** after the end of the Relevant Period specified in the Divestment Notice;
- (c) if the member is a Small Holder, that the member may at any time before the end of the Relevant Period notify the Company in writing that the member desires to retain the Relevant Shares and that if the member does so the Company will not be entitled to sell the Relevant Shares under the Divestment Notice; and
- (d) after the end of the Relevant Period the Company may for the purpose of selling the Relevant Shares that are in a CS Facility holding initial a holding adjustment to move those Shares from that CS Facility holding to an issuer sponsored holding or certificated holding.

If the operating rules of a CS Facility apply to the Relevant Shares, the Divestment Notice must comply with those operating rules.

15.2 Relevant Period

For a Divestment Notice given to a Small Holder, the Relevant Period must be at least six weeks from the date the Divestment Notice was given. For a Divestment Notice given to a New Small Holder, the Relevant Period must be at least seven days from the date the Divestment Notice was given.

15.3 Company can sell Relevant Shares

At the end of the Relevant Period the Company is entitled to sell on-market or in any other way determined by the directors:

- (a) the Relevant Shares of a member who is a Small Holder, unless that member has notified the Company in writing before the end of the Relevant Period that the member desires to retain the Relevant Shares, in which event the Company must not sell those Relevant Shares under the Divestment Notice; and
- (b) the Relevant Shares of a member who is a New Small Holder.

15.4 No obligation to sell

The Company is not bound to sell any Relevant Shares which it is entitled to sell under this **rule 15** but unless the Relevant Shares are sold within six weeks after the end of the Relevant Period the Company's right to sell the Relevant Shares under the Divestment Notice relating to those shares lapses and it must notify the member to whom the Divestment Notice was given accordingly.

15.5 Company as member's attorney

To effect the sale and transfer by the Company of Relevant Shares of a member, the member appoints the Company and each director and secretary jointly and severally as the member's attorney in the member's name and on the member's behalf to do all acts and things which the Company considers necessary or appropriate to effect the sale or transfer of the Relevant Shares and, in particular:

- (a) to initiate a holding adjustment to move the Relevant Shares from a CS Facility holding to an issuer sponsored holding or a certificated holding; and
- (b) to execute on behalf of the member all deeds, instruments or other documents necessary to transfer the Relevant Shares and to deliver any such deeds, instrument or other documents to the purchaser.

15.6 Conclusive evidence

A statement in writing by or on behalf of the Company under this **rule 15** is (in the absence of manifest error) binding on and conclusive against a member. In particular, a statement that the Relevant Shares specified in the statement have been sold in accordance with this **rule 15** is conclusive against all persons claiming to be entitled to the Relevant Shares and discharges the purchaser from all liability in respect of the Relevant Shares.

15.7 Registering the purchaser

The Company must register the purchaser of Relevant Shares as the holder of the Relevant Shares transferred to the purchaser under this **rule 15**. The purchaser is not bound to see to the application of any money paid as consideration. The title of the purchaser to the Relevant Shares transferred to the purchaser is not affected by an irregularity or invalidity in connection with the actions of the Company under this **rule 15**.

15.8 Payment of proceeds

Subject to **rule 15.9**, where:

- (a) Relevant Shares of a member are sold by the Company on behalf of the member under this **rule 15**; and
- (b) the certificate for the Relevant Shares (unless the Company is satisfied that the certificate has been lost or destroyed or the Relevant Shares are uncertificated securities) has been received by the Company,

the Company must within, 60 days of the completion of the sale, send the proceeds of sale to the member entitled to those proceeds by sending a cheque payable to the member through the post to the address of the member shown in the register of members, or in the case of joint holders, to the address shown in the register as the address of the member whose name first appears in the register. Payment of any money under this rule is at the risk of the member to whom it is sent.

15.9 Costs

In the case of a sale of the Relevant Shares of a New Small Holder in accordance with this **rule 15**, the Company is entitled to deduct and retain from the proceeds of sale, the costs of the sale as determined by the Company. In any other case, the Company or a purchaser must bear the costs of sale of the Relevant Shares. The costs of sale include all stamp duty, brokerage and government taxes and charges (except for tax on income or capital gain of the member) payable by the Company in connection with the sale and transfer of the Relevant Shares.

15.10 Remedy limited to damages

The remedy of a member to whom this **rule 15** applies, in respect of the sale of the Relevant Shares of that member, is expressly limited to a right of action in damages against the Company to the exclusion of any other right, remedy or relief against any other person.

15.11 Dividends and voting suspended

Unless the directors determine otherwise, where a Divestment Notice is given to a New Small Holder in accordance with this **rule 15**, then despite any other provision in this Constitution, the rights to receive payment of dividends and to vote attached to the Relevant Shares of that member are suspended until the Relevant Shares are transferred to a new holder or that member ceases to be a New Small Holder. Any dividends that would, but for this rule, have been paid to that member must be held by the Company and paid to that member within 60 days after the earlier of:

- (a) the date the Relevant Shares of that member are transferred; and
- (b) the date that the Relevant Shares of that member cease to be subject to a Divestment Notice.

15.12 Twelve month limit

If it is a requirement of the Listing Rules, the Company must not give a Small Holder more than one Divestment Notice in any 12 month period (except as contemplated by **rule 15.13**).

15.13 Effect to takeover bid

From the date of the announcement of a takeover bid for the Shares until the close of the offers made under the takeover bid, the Company's powers under this **rule 15** to sell Relevant Shares of a member cease. After the close of the offers under the takeover bid, the Company may give a Divestment Notice to a member who is a Small Holder or a New Small Holder, despite **rule 15.12** and the fact that it may be less than 12 months since the Company gave a Divestment Notice to that member.

15.14 Definitions

In this **rule 15**:

CS Facility has the same meaning as prescribed CS facility in the *Corporations Act 2001*;

Divestment Notice means a notice given under **rule 15.1** to a Small Holder or a New Small Holder;

Market Value in relation to a Share means the closing price on SEATS of the Share;

New Small Holder is a member who is the holder or a joint holder of a New Small Holding;

New Small Holding means a holding of Shares created after the date on which **rule 15** came into effect by the transfer of a parcel of Shares the aggregate Market Value of which at the time a proper transfer was initiated or a paper based transfer was lodged, was less than a marketable parcel of Shares as provided under the Listing Rules;

Relevant Period means the period specified in a Divestment Notice under **rule 15.2**;

Relevant Shares are the shares specified in a Divestment Notice;

Shares for the purposes of **rule 15** are shares in the Company all of the same class;

Small Holder is a member who is the holder or a joint holder of a Small Holding; and

Small Holding means a holding of Shares the aggregate Market Value of which at the relevant date is less than a marketable parcel of Shares as provided under the Listing Rules.

16. GENERAL**16.1 Submission to jurisdiction**

Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State or Territory in which the registered office of the Company is located, the Federal Court of Australia and the courts which may hear appeals from those courts.

16.2 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this Constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this Constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

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