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Overland Resources Limited

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# Constitution

A public company limited by shares

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# 1 Interpretation

## 1.1 Definitions

In this Constitution:

**ASX** means ASX Limited ACN 008 624 691 or Australian Securities Exchange, as the context requires.

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

**CHES Approved Securities** means shares which are approved in accordance with the Operating Rules.

**Company** means Overland Resources Limited ABN 92 114 187 978, as that name may be changed from time to time.

**Constitution** means the constitution for the time being of the Company as constituted by this document and any resolutions of the Company modifying this document, and reference to a rule is a reference to a rule of this Constitution.

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

**CS Facility** means a clearing and settlement facility as defined in the Corporations Act.

**CS Facility Operator** means the operator of a CS Facility.

**Default Rate** means the interest rate which is 2% above the Reserve Bank of Australia Indicator Rate as published or quoted from time to time, or such other rate as may from time to time be fixed by the directors, calculated daily.

**Exchange** means ASX and any other stock exchange on which the shares of the Company are listed.

**Holding Lock** has the meaning given to that term in the Listing Rules.

**Listing Rules** means the listing rules of the Exchange as they apply to the Company, and any other rules of the Exchange which are applicable to the Company.

**Market Transfer** means:

- (a) a transfer of shares pursuant to or connected with a transaction entered into on the stock market operated by the Exchange and includes a Proper ASTC Transfer; or
- (b) an issue of shares as a result of the exercise of any rights, options or convertible notes where such rights, options or notes are traded on a market operated by the Exchange.

**Operating Rules** means the operating rules for the time being of a CS Facility regulating the settlement, clearing and registration of uncertificated securities as amended, varied or waived (whether in respect of the Company or generally) from time to time.

**Proper ASTC Transfer** has the meaning of that term in the *Corporations Regulations 2001* (Cth).

**Record Time** means:

- (a) in the case of a meeting for which the caller of the meeting has decided, under the Corporations Act, that shares are to be taken to be held by the persons who held them at a specified time before the meeting, that time; and
- (b) in any other case, the time of the relevant meeting.

**Representative** means a person appointed to represent a corporate member at a general meeting of the Company in accordance with the Corporations Act.

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

**Restriction Agreement** means a restriction agreement in a form set out in the Listing Rules or otherwise approved by the Exchange.

**Seal** means the common seal for the time being of the Company.

## 1.2 Construction

In this Constitution:

- (a) a reference to a partly paid share is a reference to a share on which there is an amount unpaid;
- (b) a reference to an amount unpaid on a share includes a reference to any amount of the issue price which is unpaid;
- (c) a reference to a call or an amount called on a share includes a reference to a sum that, by the terms of issue of a share, becomes payable on issue or at a fixed date;
- (d) a reference in this Constitution to a member for the purposes of a meeting of members for which the caller of the meeting has determined a Record Time is a reference to a registered holder of shares as at the relevant Record Time;
- (e) 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;
- (f) a reference to a chair or deputy chair appointed under this constitution may be referred to as chairman or chairwoman, or deputy chairman or chairwoman, or as chairperson or deputy chairperson, if applicable.
- (g) a reference to a person holding or occupying a particular office or position is a reference to any person who occupies or performs the duties of that office or position;
- (h) a reference to a director in relation to rules applying to meetings of the directors, includes alternate directors;
- (i) unless the contrary intention appears:
  - (i) a singular word includes the plural, and vice versa;

- (ii) words importing any gender include all other genders;
- (iii) words used to refer to persons generally or to refer to a natural person include a 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) 'writing' and 'written' includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise;
- (vi) a reference to legislation is to be construed as a reference to that legislation, any subordinate legislation under it, and that legislation and subordinate legislation as amended, re-enacted or replaced for the time being;
- (vii) a reference to the Listing Rules or the Operating Rules includes any variation, consolidation or replacement of those rules and is to be taken to be subject to any applicable waiver or exemption; and
- (viii) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase are given corresponding meanings; and
- (j) a reference to a power is also a reference to authority or discretion;
- (k) a power, an authority or a discretion given to a director, the directors, the Company in general meeting or a member may be exercised at any time and from time to time;
- (l) a power or authority to do something includes a power or authority, exercisable in the like circumstances to revoke or undo it;
- (m) the word 'agreement' includes an undertaking or other binding arrangement or understanding, whether or not in writing;
- (n) the words 'including', 'include' and 'includes' are to be construed without limitation; and
- (o) headings are used for convenience only and are not intended to affect the interpretation of this Constitution.

### **1.3 Application of the Corporations Act, Listing Rules and Operating Rules**

- (a) The rules that apply as replaceable rules to companies under the Corporations Act do not apply to the Company except so far as they are repeated in this Constitution.
- (b) In this Constitution a reference to the Listing Rules of an Exchange only applies while the shares of the Company are listed on that Exchange.



- (c) Unless the contrary intention appears:
  - (i) an expression in a rule that deals with a matter dealt with by a provision of the Corporations Act, the Listing Rules or the Operating Rules has the same meaning as in that provision; and
  - (ii) subject to **rule 1.3(c)(i)**, an expression that is used in the Corporations Act has the same meaning in this Constitution as in the Corporations Act.
- (d) If the Company is admitted to the official list of an Exchange, the following clauses apply:
  - (i) notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done;
  - (ii) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
  - (iii) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
  - (iv) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
  - (v) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision; and
  - (vi) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

#### **1.4 Currency**

Any amount payable to a member, whether in relation to dividends, repayment of capital, participation in surplus property of the Company or otherwise may, with the agreement of the member or under the terms of issue of the share, be paid in the currency of a country other than Australia. The directors may fix a time on or before the payment date as the time at which the applicable exchange rate will be determined for that purpose.

#### **1.5 Transitional provisions**

This Constitution must be interpreted in such a way that:

- (a) every director, chief executive officer, managing director and secretary in office in that capacity immediately before this Constitution is adopted continues in office subject to, and is taken to have been elected under, this Constitution with effect from the date of adoption of this Constitution;
- (b) any register maintained by the Company immediately before this Constitution is adopted is taken to be a register maintained under this Constitution;

- (c) for the purposes of **rule 16.3(a)(i)**, a cheque issued under the predecessor of **rule 16.3(a)(i)** is taken to have been issued under **rule 16.3(a)(i)**, any money held at the date of adoption of this Constitution for a member under the predecessor of **rule 16.3(c)** is taken to have been held in an account under **rule 16.3(c)**;
- (d) any Seal adopted by the Company immediately before this Constitution is adopted is taken to be a Seal which the Company has under a relevant authority given by this Constitution;
- (e) unless the contrary intention appears, all persons, things, agreements and circumstances appointed, approved or created by or under the constitution of the Company in force before this Constitution is adopted continue to have the same status, operation and effect after this Constitution is adopted; and
- (f) the adoption of this Constitution does not alter the rights attaching to any class of shares which exist at the date this Constitution is adopted.

## 2 Shares

### 2.1 Allotment and issue of shares

Subject to the Corporations Act, the Listing Rules and this Constitution, the directors may allot and issue shares in the Company, or options to acquire shares in the Company, to any person on such terms and with such rights as the directors determine.

### 2.2 Preference shares

- (a) The Company may issue preference shares, including preference shares on terms determined by the Company which are, or at the option of the Company or the holder are, liable to be redeemed or converted into ordinary shares.
- (b) Each preference share issued by the Company confers on the holder a right to receive a preferential dividend at the rate and on the terms determined by the directors under the terms of issue.
- (c) A preferential dividend may be cumulative only if, and to the extent that, the directors determine for the purpose of the terms of issue.
- (d) In addition to any preferential dividend, a preference share may participate with each ordinary share in the profits and assets of the Company (including on a winding up) if, and to the extent that, the directors determine for the purposes of the terms of issue.
- (e) A preference share does not confer on its holder any right to participate in the profits or property of the Company except as set out in this **rule 2.2**.

- (f) Each preference share confers on its holder the right, in priority to the payment of any dividend on any other class of share, to the preferential dividend.
- (g) Each preference share confers on its holder the right in a winding up and on redemption (if redeemable) to payment in priority to any other class of shares of:
  - (i) the amount of any dividend accrued but unpaid on the preference share at the date of winding up or the date of redemption (if redeemable); and
  - (ii) any amount paid up on the preference share.
- (h) To the extent the directors determine for the purposes of the terms of issue, a preference share may confer a right to a bonus issue or capitalisation of profits in favour of holders of those shares only.
- (i) A preference share does not entitle its holder to vote at any general meeting except in the following circumstances:
  - (i) on any resolution to reduce the share capital of the Company;
  - (ii) on any resolution that may affect the rights attached to the preference share;
  - (iii) on any resolution to wind up the Company;
  - (iv) on any resolution for the disposal of the whole of the property, business and undertaking of the Company;
  - (v) on any resolution to approve the terms of a buy-back agreement;
  - (vi) on any resolution during a period in which a dividend or part of a dividend on the preference share is in arrears;
  - (vii) on any resolution during the winding up of the Company; or
  - (viii) in any other circumstances in which the Listing Rules require holders of preference shares to be entitled to vote.
- (j) The issue of any share which ranks in priority to preference shares in any respect will be treated as a variation or abrogation of the rights of the preference shares.

### **2.3 Commission and brokerage**

- (a) The Company may make payments by way of brokerage or commission to a person in consideration for the person subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares or procuring or agreeing to procure subscriptions, whether absolute or conditional, for shares.
- (b) The brokerage or commission may be satisfied by payment in cash or by issue of any shares.

## **2.4 Alteration of share capital**

Subject to the Corporations Act, the directors may do anything required to give effect to any resolution altering the Company's share capital, including, where a member becomes entitled to a fraction of a share on a consolidation, by:

- (a) making cash payments;
- (b) determining that fractions may be disregarded to adjust the rights of all members;
- (c) appointing a trustee to deal with any fractions on behalf of members; and
- (d) rounding (or rounding up) each fractional entitlement to the nearest whole share.

## **2.5 Certificates**

- (a) If the Company participates in a computerised or electronic share transfer system conducted in accordance with the Listing Rules, the Company is not required to issue a certificate for the shares held by a holder and may cancel a certificate without issuing another certificate where permitted to do so by the Listing Rules or the Operating Rules.
- (b) If shares are not subject to a computerised or electronic share transfer system, a certificate for the shares must be issued in accordance with the provisions of the Corporations Act, this Constitution and the Listing Rules.

## **2.6 Joint holders of shares**

Where two or more persons are registered as the joint holders of any share:

- (a) subject to the Listing Rules, Operating Rules and the Corporations Act, the Company may, but is not required to, register more than three people as joint holder of any share;
- (b) they hold that share as joint tenants with rights of survivorship (such that on the death of any one of them the survivor is the only person the Company will recognise as having any title to the share);
- (c) any certificate issued in respect of the share must set out the name of all joint holders;
- (d) if the Company is required by the Corporations Act or the Listing Rules to issue a certificate in respect of a share, the Company must issue one certificate and must give notice to the joint holder whose name appears first in the register;
- (e) each of them is jointly and severally liable to pay each call or instalment of each call and interest and any other amount payable in respect of that share;
- (f) on transfer of that share, the instrument of transfer must be signed by all joint holders; and

- (g) if the directors receive a request to convene a general meeting in accordance with this Constitution from any joint holder or any joint holders of that share, the request must detail any proposed resolution, the name or names of the joint holder or holders requesting the meeting and be signed by all of the joint holders making the request. For this purpose, signatures of joint holders may be contained in more than one document.

## **2.7 Restricted Securities**

If at any time any of the share capital of the Company is classified by the Exchange as Restricted Securities, then despite any other provision of this Constitution:

- (a) the Restricted Securities must not be disposed of during the escrow period except as permitted by the Listing Rules or the Exchange;
- (b) the Company must refuse to acknowledge a disposal (including registering a transfer) of the Restricted Securities during the escrow period (except as permitted by the Listing Rules or the Exchange); and
- (c) during a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement, the holder of the Restricted Securities is not entitled to any dividend or distribution, or voting rights, in respect of the Restricted Securities.

## **2.8 Interests recognised**

- (a) Subject to this Constitution and the rights of joint holders of shares, the Company is entitled to treat the holder of any share as the sole legal owner of that share.
- (b) Subject to the Corporations Act and this Constitution, the Company is not required to recognise:
  - (i) a person as holding a share on trust; or
  - (ii) any equitable, contingent, future or other claim to or interest in any share,even if the Company has notice of such trust, claim or interest.

## **2.9 Conversion or reclassification of shares**

Subject to **rule 2.10**, the Company may by resolution convert or reclassify shares from one class to another.

## **2.10 Variation of class rights**

- (a) The rights attached to any class of shares may, unless their terms of issue state otherwise, be varied:
  - (i) with the written consent of the holders of 75% of the shares of the class; or
  - (ii) by a special resolution passed at a separate meeting of the holders of shares of the class.

- (b) The provisions of this Constitution relating to general meetings apply, with necessary changes, to separate class meetings as if they were general meetings, except that:
  - (i) a quorum is two persons holding or representing at least one-third of the issued shares of the class or, if there is one holder of shares in a class, that person; and
  - (ii) any holder of shares of the class present may demand a poll.
- (c) The rights conferred on the holders of any class of shares are to be taken as not having been varied by the creation or issue of further shares ranking equally with them.

### **2.11 Compliance with Operating Rules**

Notwithstanding anything to the contrary in this Constitution, the Company must comply with the Operating Rules in relation to any of its shares that are CHES Approved Securities.

## **3 Calls, forfeiture and liens**

### **3.1 Power to make calls**

- (a) Subject to the Corporations Act, the Listing Rules, this Constitution and the terms on which the shares are on issue, the directors may make a call on any holder in respect of any amount unpaid on any share held by that holder, and may differentiate between members as to the amount of calls to be paid and the time for payment.
- (b) The directors may, to the extent permitted by the Corporations Act and the Listing Rules, waive or compromise all or part of any payment due under the terms of any issue of a share or under any call.
- (c) The terms on which shares are on issue may differ between holders as to:
  - (i) the amount to be paid on any call or instalment; and
  - (ii) the date (or dates) on which payment is to be made.
- (d) Subject to the terms on which the shares are on issue, a call is made on the date the directors resolve to make a call.
- (e) Subject to the terms on which the shares are on issue, a call may be payable in one payment or in instalments.

### **3.2 Deemed call**

Any amount unpaid on a share that, by the terms of issue of that share becomes payable on issue or at a fixed date:

- (a) is treated for the purposes of this Constitution as if that amount were payable under a call duly made and notified; and

- (b) must be paid on the date on which it is payable under the terms of issue of the share.

### **3.3 Notice of call**

- (a) Subject to the terms on which the shares are on issue, at least 10 Business Days' notice (or such longer period required by the Listing Rules) must be given to the holder of the date on which the amount of the call or the instalment of the call must be paid.
- (b) Subject to the terms on which the shares are on issue and the Listing Rules, the notice must state:
  - (i) the amount of the call or, as the case may be, the amount of each instalment;
  - (ii) the date (or dates) for payment;
  - (iii) the time (or times) for payment;
  - (iv) the place (or places) for payment;
  - (v) that interest may be payable if payment is not made on or before the date (or dates) for payment; and
  - (vi) that a lien will arise if the amount of the call or the instalment is not paid in accordance with the notice.
- (c) A call is not invalid by reason of any unintentional error or omission in giving notice or by non-receipt of notice.

### **3.4 Revocation, postponement or extension of calls**

Subject to the terms on which the shares are on issue and the Listing Rules, the directors may, by notice, revoke, postpone or extend the time for payment of the call.

### **3.5 Interest on unpaid calls**

- (a) A member must pay to the Company any called amount by the time and at the place specified in the notice of the call.
- (b) If an amount called is not paid on or before any date specified in the notice for payment, the holder must pay interest on the amount unpaid from the date specified in the notice of the call for payment until and including the date of actual payment. The interest rate may be determined by the directors, or, if the directors do not determine a rate, the interest rate is the Default Rate. Interest will accrue and compound daily.
- (c) The directors may waive the right to require the payment of interest.

### **3.6 Recovery of called amounts**

- (a) In any proceeding to recover a call, or an amount payable due to the failure to pay a call or late payment of a call, proof that:

- (i) the name of the person against whom proceedings are issued is entered in the register as the holder of the shares the subject of the unpaid call;
- (ii) the resolution making the call is duly recorded in the minute book of the Company; and
- (iii) notice of the call was given to the holder of the shares the subject of the unpaid call,

will be conclusive evidence of the obligation of the holder to pay the call and it is not necessary to prove the appointment of the directors who made the call or any other matter.

- (b) Any proceeding brought by the Company in accordance with this **rule 3.6** will be without prejudice to the right of the Company to forfeit the share the subject of the unpaid call.
- (c) In this **rule 3.6** a proceeding to recover a call or an amount includes a proceeding against a person whom the Company alleges a set-off or counterclaim.

### **3.7 Payment of calls in advance**

- (a) The directors may accept from a member in advance of any call, the whole or part of any amount unpaid on any share.
- (b) The directors may authorise payment by the Company of interest (in an amount determined by the directors) upon the whole or any part of any sum so accepted from the date of payment until the date on which the sum paid is payable under a call.
- (c) Any sum accepted by the Company in advance of a call is:
  - (i) to be treated as a loan to the Company, not as share capital of the Company until the date on which the sum is payable under a call or instalment; and
  - (ii) not to be taken into account in determining an entitlement to vote or the amount of any dividend in respect of any share.
- (d) The directors may repay any sum accepted in advance of a call.

### **3.8 Notice regarding forfeiture**

If any holder does not pay the amount of any call or instalment in respect of any share when it is due, the directors may give notice to the holder:

- (a) requiring payment of:
  - (i) the unpaid call or instalment;
  - (ii) any costs and expenses incurred by the Company as a result of the non-payment of the call or instalment; and
  - (iii) interest that has accrued and compounded (on a daily basis) on the amount of the unpaid call or instalment;



- (b) demanding payment of those amounts within 10 Business Days after the date of the notice;
- (c) stating the place where payment is to be made; and
- (d) stating that the share and any dividend in respect of it not yet paid are liable to be forfeited if payment of the amount demanded is not made in full within 10 Business Days after the date of the notice.

### **3.9 Forfeiture**

- (a) If payment of the amount demanded is not made in full in accordance with a notice given under **rule 3.8**, the directors may by resolution forfeit any share the subject of the notice.
- (b) A forfeiture of any share under this **rule 3.9** includes all dividends, interest and other amounts payable by the Company on the forfeited share and not actually paid before the forfeiture.
- (c) The directors may accept the surrender of any share which may be forfeited. If the directors accept the surrender, that share will be treated as having been forfeited and may be sold, re-issued or otherwise disposed of in the same manner as a forfeited share.
- (d) If any share is forfeited, notice of forfeiture will be given to the holder of that share and the date and details of the forfeiture will be recorded in the register. Failure to do so will not invalidate the forfeiture.
- (e) Any forfeited share is the property of the Company and, subject to the Listing Rules, the directors may sell, re-issue or otherwise dispose of any forfeited share on terms and in such manner as determined by the directors.
- (f) At any time before any forfeited share is sold or otherwise disposed of, the directors may cancel the forfeiture on terms determined by it.
- (g) On forfeiture of any share, the holder of that share ceases to be a holder and ceases to have any right as a holder in respect of that forfeited share (including in respect of any dividend), but remains liable to pay the Company:
  - (i) all amounts payable by the former holder to the Company at the date of forfeiture;
  - (ii) any and all costs or expenses incurred by the Company in respect of the forfeiture; and
  - (iii) interest to accrue and to compound daily at a rate determined by the directors or, if no such rate is determined, at the Default Rate on those amounts from the date of forfeiture until payment of amounts and accrued interest in full.
- (h) The liability of a holder continues until:
  - (i) the holder pays all those amounts and accrued interest in full; or

- (ii) the Company receives and applies as the net proceeds from the sale or other disposal of the forfeited share an amount which is equal to or greater than all those amounts and accrued interest.
- (i) The Company may receive the net proceeds from the sale or other disposal of any forfeited share and execute an instrument of transfer in respect of the forfeited share. The Company must apply the net proceeds of any sale or other disposal of any forfeited share in or towards satisfaction of:
  - (i) firstly, costs and expenses paid or payable in connection with the enforcement of the forfeiture and the sale or other disposal of that share; and
  - (ii) secondly, all amounts due but unpaid and accrued interest on all those amounts.
- (j) The Company must pay the balance (if any) of the net proceeds of sale or other disposal to the person whose forfeited share has been sold or otherwise disposed of.
- (k) The purchaser of any forfeited share is entitled to assume that the proceeds of the sale or other disposal have been applied in accordance with this Constitution and is not responsible for the application of the purchase money by the Company.

### **3.10 Cancellation of forfeited shares**

- (a) Subject to the Corporations Act and the Listing Rules, the Company may cancel any forfeited share.
- (b) Liability for the amount called but unpaid in respect of the cancelled share may not be released or waived without the approval of the holders of ordinary shares given in accordance with the Listing Rules.

### **3.11 Surrender of shares**

- (a) The Company may accept a surrender of a share by way of compromise of a claim.
- (b) Any share so surrendered may be sold, reissued or otherwise disposed in the same manner as a forfeited share.

### **3.12 Lien on shares**

- (a) The Company has a first and paramount lien:
  - (i) on each partly paid share in respect of any call (including any instalment) due and payable but unpaid;
  - (ii) on each share in respect of any payment which the Company is required by law to pay (and has paid) in respect of the share for which the Company is indemnified under **rule 3.14**; and
  - (iii) on each share acquired under an employee incentive scheme for any money payable to the Company in relation to the share, including any loan under an employee incentive scheme.

- (b) In each case, the lien extends to all dividends from time to time payable in respect of the shares and to reasonable interest (at such rate as the directors may determine or if the directors do not determine a rate at a rate equal to the Default Rate) and reasonable expenses incurred because the amount is not paid.
- (c) The Company may do all things necessary or appropriate for it to do to protect any lien or other right to which it may be entitled under any law or this Constitution.
- (d) By notice, the directors may discharge or waive, in whole or in part, any lien or declare any share to be wholly or partly exempt from a lien, but otherwise no act or omission is to be taken as discharging, waiving or otherwise granting an exemption from any lien.
- (e) If any share is subject to a lien and the Company registers the transfer of any share subject to a lien without giving notice of the lien to the transferee of the share, the lien is treated as waived as against the transferee.

### **3.13 Enforcement of lien**

- (a) The directors may sell or otherwise dispose of any share the subject of a lien, if:
  - (i) a sum in respect of which the lien exists is due and payable but is unpaid;
  - (ii) the Company has provided notice to the holder:
    - (A) setting out the amount due but unpaid;
    - (B) demanding payment of that amount; and
    - (C) stating that the share is liable to be sold or otherwise disposed of if payment of that amount is not made within 10 Business Days after the date of the notice; and
  - (iii) the amount specified in the notice is not paid in full in accordance with the notice.
- (b) The terms on which and manner by which any share may be sold or otherwise disposed of are to be determined by the directors.
- (c) Interest accrues and compounds daily at the rate determined by the directors or, if no such rate is determined, at the Default Rate on the amount due but unpaid, costs and expenses paid in connection with the enforcement of the lien and the sale or other disposal of the shares.
- (d) The Company may receive the net proceeds of the sale or other disposal of any share and execute an instrument of transfer in respect of the share. The Company must apply the net proceeds of the sale or disposal of any share in or towards satisfaction of:

- (i) firstly, costs and expenses paid or payable in connection with the enforcement of the lien and the sale or other disposal of that share; and
  - (ii) secondly, all amounts due but unpaid and accrued interest on all those amounts.
- (e) The Company must pay any balance of the net proceeds of sale or other disposal to the person whose share has been sold or otherwise disposed of.
- (f) The purchaser of any share the subject of a lien is entitled to assume that the proceeds of sale or other disposal have been applied in accordance with this Constitution and is not responsible for the application of the purchase money by the Company.

### **3.14 Member's indemnity for payment required by law**

If the law of any jurisdiction imposes or purports to impose any immediate, future or possible liability on the Company, or empowers or purports to empower any person to require the Company to make any payment, on account of a member or referable to a share held by that member (whether alone or jointly) or a dividend or other amount payable in respect of a share held by that member, the Company:

- (a) is fully indemnified by that member from that liability;
- (b) may recover as a debt due from the member the amount of that liability together with interest at the Default Rate from the date of payment by the Company to the date of repayment by the member; and
- (c) subject to **rule 4.4**, may refuse to register a transfer of any share by that member until the debt has been paid to the Company.

Nothing in this document in any way prejudices or affects any right or remedy which the Company has (including any right of set off) and, as between the Company and the member, any such right or remedy is enforceable by the Company.

### **3.15 Continuing liability**

If the net proceeds from the sale or other disposal under this **rule 3** are less than the sum of:

- (a) the amount due but unpaid in respect of that share;
- (b) the costs and expenses paid or payable in connection with the enforcement of the lien and the sale or other disposal; and
- (c) interest on those amounts,

(together the **Shortfall**) the person whose share has been sold or otherwise disposed of continues to be liable and must pay to the Company an amount equal to the Shortfall together with interest at the Default Rate.

## 4 Transfer and transmission of shares

### 4.1 Participation in computerised or electronic systems

The directors may do anything they consider necessary or desirable and that is permitted under the Corporations Act and the Listing Rules to facilitate the Company's participation in any computerised or electronic system established or recognised by the Corporations Act or the Listing Rules for the purposes of facilitating dealings in shares.

### 4.2 Form of transfers

- (a) Subject to this Constitution and to any restrictions attached to the share, a holder may transfer all or any of the holder's shares by:
  - (i) a Proper ASTC Transfer; or
  - (ii) an instrument of transfer in writing in any usual or common form or in any other form that the directors approve.
- (b) If an instrument of transfer under **rule 4.2(a)(ii)** is used to transfer a share and the transferor or transferee is a clearing house or its nominee(s), the instrument of transfer may be executed by hand or by machine imprinted signature or by such other manner of execution as the directors may approve from time to time.
- (c) Except as provided by any applicable Operating Rules, the transferor remains the holder of the shares until a Proper ASTC Transfer has been effected or the name of the transferee is entered in the register as the holder of those shares.
- (d) In the case of a Market Transfer, the Company must comply with the obligations imposed on it by the Listing Rules and the Operating Rules and any applicable legislation in connection with any transfer of shares.

### 4.3 Registration procedure

- (a) Subject to **rule 4.3(b)**, **4.4** and **4.5** upon receipt of a transfer of shares that complies with **rules 4.2** and **4.3**, the Company must register the nominated transferee as the holder of the relevant shares.
- (b) A transfer under **rule 4.2(a)(ii)** must:
  - (i) be executed by or on behalf of both the transferor and the transferee (the directors may resolve, either generally or in any particular case, to accept for registration an instrument of transfer that has been executed using a machine imprinted signature);
  - (ii) if required by law to be stamped, be duly stamped; and
  - (iii) be delivered to the registered address of the Company or the share registry of the Company for registration together with the certificate (if any) for the shares to be transferred and, subject to the Listing Rules, any other evidence the directors may require to prove the title of the transferor to the shares and the transferor's right to transfer the shares.

- (c) Subject to the Listing Rules, a reasonable fee may be charged before an instrument of transfer in registrable form is registered.
- (d) On registration of a transfer of shares, the Company must cancel the old certificate (if any) and any duplicate certificate.

#### **4.4 Directors' power to decline to register transfer**

- (a) The directors may decline to register, or prevent registration of, a transfer of shares or request the application of a Holding Lock to prevent a transfer of shares where:
  - (i) the transfer is not in registrable form;
  - (ii) the Company has a lien on any of the shares the subject of the transfer;
  - (iii) the transfer is paper-based and registration of the transfer will result in the creation of a non-marketable parcel;
  - (iv) the transfer is not permitted under the terms of issue of the share; or
  - (v) the Company is otherwise permitted or required to do so under the Listing Rules or terms of issue of the shares.
- (b) If the directors request the application of a Holding Lock to prevent a transfer of shares or refuse to register a transfer of a share, the directors must give written notice to the holder of the share and the broker lodging the transfer, if any, of the refusal to transfer in accordance with the Listing Rules. Failure to give such notice will not invalidate any act or decision of the directors not to register the transfer.
- (c) The directors may delegate their authority under this **rule 4.4** to any person.

#### **4.5 Closure of register**

Subject to the Corporations Act, the Listing Rules and the Operating Rules, the register may be closed during any time, and for any periods, the directors think fit.

#### **4.6 Instruments of transfer retained**

- (a) All instruments of transfer that are registered will be retained by the Company for such period as the directors may determine.
- (b) Any instrument of transfer which the directors decline to register will, except in the case of fraud, or alleged fraud, upon demand in writing be returned to the party who delivered it.

#### **4.7 Transmission of shares on death**

- (a) On the death of a holder, the Company will recognise only:
  - (i) where the holder was a sole holder, the personal representative of the deceased holder; and

- (ii) where the holder was a joint holder, the surviving joint holders, as being entitled to the deceased's interest in shares of the deceased holder.
- (b) A person who becomes entitled to a share upon the death of a holder may, having provided the directors with such evidence as they require to prove that person's entitlement to the shares of the deceased holder:
  - (i) by giving a signed notice to the Company, elect to be registered as the holder of any share owned by the deceased; or
  - (ii) subject to the provisions of this Constitution as to transfers, transfer any share owned by the deceased to another person.
- (c) A trustee, executor or administrator of the estate of a deceased holder may be registered as the holder of any share owned by the deceased as trustee, executor or administrator of that estate.
- (d) The death of a holder will not release the estate of that holder from any liability in respect of any shares.

#### **4.8 Transmission of shares on bankruptcy**

- (a) A person who becomes entitled to a share on the bankruptcy of a holder may, having provided the directors with such evidence as it requires to prove that person's entitlement to the shares of the bankrupt holder:
  - (i) by giving a signed notice to the Company, elect to be registered as the holder of any share owned by the bankrupt holder; or
  - (ii) subject to the provisions of this Constitution as to transfers, transfer any share owned by the bankrupt holder to another person.
- (b) A trustee or administrator of a person who is bankrupt may be registered as the holder of any share owned by that person as trustee or administrator of that person's affairs.
- (c) This **rule 4.8** is subject to the *Bankruptcy Act 1966* (Cth).

#### **4.9 Transmission of shares on mental incapacity**

- (a) A person who becomes entitled to a share because a holder is subject to assessment or treatment under any mental health law may, having provided the directors with such evidence as it requires to prove that person's entitlement to the shares of the that holder:
  - (i) by giving a signed notice to the Company, elect to be registered as the holder of any share owned by the holder; or
  - (ii) subject to the provisions of this Constitution as to transfers, by giving a proper instrument of transfer to the Company, transfer any shares owned by the holder to another person.
- (b) A trustee or administrator of a person who is mentally or physically incapable of managing his or her affairs, may be registered as the holder

of any share owned by that person as trustee or administrator of that person's affairs.

#### **4.10 Transmission subject to Operating Rules**

The provisions of **rules 4.7 to 4.9** are subject to any provisions of the Operating Rules which deal with transmission on death or by operation of law.

## **5 Sale of non-marketable parcels**

### **5.1 Definitions**

In this **rule 5**:

**Holder** means a holder of a non-marketable parcel.

**Notice Period** means the period specified in a notice sent to a Holder in accordance with **rule 5.3**.

**Takeover** means:

- (a) a takeover bid; or
- (b) a similar bid under a foreign regime.

### **5.2 Power to sell non-marketable parcels**

- (a) Subject to the Listing Rules, the Operating Rules and this Constitution, the directors may dispose of the non-marketable parcels of a Holder in the manner set out in this **rule 5**.
- (b) A notice under **rule 5.3** may be given to a Holder only once in a 12 month period and may not be given during the offer period of a Takeover for the Company.

### **5.3 Notice of proposed sale**

The Company directors must not sell a non-marketable parcel of a Holder unless it has given a notice in writing to the Holder:

- (a) stating that it intends to sell the non-marketable parcel; and
- (b) specifying a date at least six weeks (or any lesser period permitted under the Corporations Act or Listing Rules) after the notice is given by which the Holder may give the Company written notice that the Holder wishes to be exempt from the provisions of this **rule 5**.

### **5.4 Sale procedure**

- (a) If, before 5.00pm Perth time on the last day of the Notice Period:
  - (i) the Company has not received a notice from the Holder choosing to be exempt from the provisions of this **rule 5**; and
  - (ii) the Holder has not increased his or her holding to a marketable parcel,



the Holder is taken to have irrevocably appointed the Company as his or her agent to do anything in this **rule 5**.

- (b) In addition to initiating a sale by sending a notice under **rule 5.3**, the directors may also initiate a sale if a Holder holds less than a marketable parcel and that holding was created by a transfer of a parcel of securities effected on or after 1 September 1999 that was less than a marketable parcel at the time that the transfer document was initiated or, in the case of a paper-based transfer document, was lodged with the Company. In that case:
  - (i) the Holder is taken to have irrevocably appointed the Company as his or her agent to do anything in **rule 5.4(c)**; and
  - (ii) if the holding was created after the adoption of this rule, the directors may remove or change the Holder's rights to vote or receive dividends in respect of those securities (if any). Any dividends withheld must be sent to the former Holder after the sale when the former Holder delivers to the Company such proof of title as the directors accept.
- (c) The Company may:
  - (i) sell the securities constituting less than a marketable parcel as soon as practicable at a price which the directors consider is the best price reasonably available for the securities when they are sold;
  - (ii) deal with the net proceeds of the sale as follows:
    - (A) firstly, apply the net proceeds towards satisfaction of costs and expenses paid or payable in connection with the sale and all amounts due but unpaid and accrued interest on all those amounts, and
    - (B) secondly, pay any balance of the net proceeds of sale to the Holder whose shares were sold; and
  - (iii) receive any disclosure document, including a financial services guide, as agent for the Holder.
- (d) The costs and expenses of any sale of securities arising from a notice under **rule 5.3** (including brokerage and stamp duty) are payable by the purchaser or by the Company.

## **5.5 Effect of announcement of a Takeover**

**Rule 5** ceases to have effect for the period commencing on the announcement of a Takeover for the Company and ending on the close of the offer period under the Takeover, following which a new notice under **rule 5.3** may be given.

## **5.6 Revocation, suspension and termination**

The directors may, before a sale is effected under this **rule 5**, revoke a notice given or suspend or terminate the operation of this **rule 5** either generally or in specific cases.

## **5.7 Multiple parcels**

If a holder of securities is registered in respect of more than one parcel of securities, the directors may treat the holder as a separate holder in respect of each of those parcels so that this **rule 5** will operate as if each parcel was held by different persons.

# **6 Proportional takeovers**

## **6.1 Definitions**

In this **rule 6**:

- (a) **Approving Resolution** means a resolution of Eligible Shareholders approving a Proportional Takeover.
- (b) **Deadline** means the day which is the 14th day before the last day of the bid period for a Proportional Takeover.
- (c) **Proportional Takeover** means offers for securities made under a proportional takeover bid within the meaning of the Corporations Act.
- (d) **Eligible Shareholder** means a person (other than the bidder or an associate of the bidder) who, as at the end of the day on which the first offer under a Proportional Takeover was made, held securities in the class of securities to which the Proportional Takeover relates.

## **6.2 Transfer not to be registered**

The registration of a transfer giving effect to a contract resulting from the acceptance of an offer made under a Proportional Takeover is prohibited unless and until an Approving Resolution is passed (or is taken to have been passed) in accordance with this Constitution.

## **6.3 Approving Resolution**

- (a) Where offers have been made under a Proportional Takeover, the directors must, before the Deadline, convene a meeting of the Eligible Shareholders to vote on the Approving Resolution for the purpose of considering and, if thought fit, passing a resolution to approve the Proportional Takeover.
- (b) The provisions of this Constitution relating to general meetings apply, with such modification as is necessary, to a meeting convened under this **rule 6.3** as if that meeting were a general meeting.
- (c) Any vote cast on an Approving Resolution by the bidder or any of its associates will be disregarded.
- (d) An Approving Resolution that has been voted on is taken to have been

passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than 50%, and otherwise is taken to have been rejected.

- (e) If an Approving Resolution is voted on in accordance with this **rule 6.3** before the Deadline, a director or a secretary must, on or before the Deadline, give the bidder and the Exchange (if required) notice stating that an Approving Resolution has been voted on and whether it was passed or rejected.
- (f) If no Approving Resolution has been voted on in accordance with this rule as at the end of the day before the Deadline, an Approving Resolution is taken, for the purposes of this **rule 6**, to have been passed in accordance with those provisions.

#### **6.4 Cessation of effect**

**Rules 6.1 to 6.3** cease to have effect at the end of three years after:

- (a) where those rules have not been renewed since their adoption, the date on which those rules were adopted by the Company; or
- (b) if those rules have been renewed since their adoption, the date on which they were last renewed.

## **7 General meetings**

### **7.1 Annual general meetings**

Annual general meetings must be held in accordance with the Corporations Act.

### **7.2 Calling a general meeting**

A general meeting may only be called:

- (a) by a directors' resolution; or
- (b) as otherwise provided in the Corporations Act.

### **7.3 Notice of general meeting**

- (a) Notice of a general meeting must be given to the members, directors and the auditor in accordance with the Corporations Act and the Listing Rules.
- (b) The notice must:
  - (i) state the date, time and place (or places) of the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
  - (ii) state the general nature of the business to be conducted at the meeting;
  - (iii) state any proposed resolutions;

- (iv) contain a statement informing the members of the right to appoint a proxy;
  - (v) specify a place and a fax number (or electronic address) for the purposes of depositing instruments appointing proxies, attorneys and Representatives, and proxy appointment authorities; and
  - (vi) if there is to be an election of directors, the names of the candidates for election.
- (c) A notice of meeting must be accompanied by a form of proxy which satisfies the requirements of the Listing Rules and the Corporations Act.
  - (d) Unless the Corporations Act provides otherwise:
    - (i) no business may be transacted at a general meeting unless the general nature of the business is stated in the notice calling the meeting; and
    - (ii) except with the approval of the directors or the chair, no person may move any amendment to a proposed resolution the terms of which are set out in the notice calling the meeting or to a document which relates to such a resolution, a copy of which has been made available to members to inspect or obtain.

#### **7.4 General meetings at two or more places**

- (a) A general meeting may be held in two or more places. If a general meeting is held in two or more places, the Company must use technology that gives members a reasonable opportunity to participate at that general meeting.
- (b) If, before or during a general meeting, any technical difficulty occurs which precludes a member from having a reasonable opportunity to participate, the chair may either adjourn the meeting until the technology gives members a reasonable opportunity to participate or continue the meeting (in which case no member may object to the meeting being held or continuing).

#### **7.5 Postponement or cancellation of general meetings**

- (a) Subject to this Constitution, the Corporations Act and the Listing Rules, if the directors have convened a general meeting, the directors may change the place (or places) of, or postpone or cancel that general meeting.
- (b) If a director has convened a general meeting, only the director who convened the general meeting may change the place (or places) of the general meeting or postpone or cancel the general meeting.
- (c) If a general meeting is convened pursuant to a request by members, the directors may not postpone or cancel the general meeting without the consent of the requesting members.

## **7.6 Notice of change, postponement or cancellation**

Notice of cancellation or postponement or change of place of a general meeting must state the reason for cancellation or postponement and be:

- (a) published in a daily newspaper circulating in Australia; or
- (b) given to the Exchange; or
- (c) subject to the Corporations Act and the Listing Rules, given in any other manner determined by the directors.

## **7.7 Omission to give notice relating to general meeting**

- (a) No resolution passed at or proceedings of any general meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:
  - (i) that general meeting;
  - (ii) any change of place (or places) of that general meeting;
  - (iii) postponement of that general meeting, including the date, time and place (or places) for the resumption of the adjourned meeting; or
  - (iv) resumption of that adjourned general meeting.
- (b) A person's attendance at a general meeting waives any objection that person may have in respect of any unintentional omission or error in the giving of a notice.

# **8 Proceedings at general meetings**

## **8.1 Quorum**

- (a) No business may be transacted at a general meeting except the election of a chair and the adjournment of the meeting unless a quorum is present when the meeting proceeds to business.
- (b) A quorum at a general meeting is two or more members present in person or by proxy and entitled to vote.
- (c) If a member has appointed more than one proxy and two or more proxies attend a general meeting, only one proxy will be counted for the purposes of determining whether there is a quorum.
- (d) A member placing a direct vote under **rule 10.4(c)** is not taken into account in determining whether or not there is a quorum at a general meeting.

## **8.2 Lack of quorum**

- (a) If a quorum is not present within 30 minutes after the time appointed for a general meeting (or any longer period of time as the chair may allow) the general meeting:

- (i) if convened by a director or at the request of members, is dissolved; or
  - (ii) in any other case, is adjourned to a day, time and place (or places) as the chair determines or if the chair is not present, as the directors at the meeting determine or, if the directors do not so determine, to the same day in the next week at the same time and place (or places) as the adjourned meeting.
- (b) If a quorum is not present within 30 minutes after the time appointed for the resumption of the adjourned general meeting, the general meeting is dissolved.

### **8.3 Chairing general meetings**

- (a) The chair of the board of directors from time to time will be entitled to chair each general meeting of the Company.
- (b) If the chair is not present within 15 minutes after the time appointed for any general meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that general meeting, the deputy chair of board meetings (if any) will chair the general meeting, or if there is no deputy chair or if the deputy chair is not present or is unwilling or unable to act, the directors present may elect a director present to chair that general meeting.
- (c) If no director is elected or if all the directors present decline to take the chair for the whole or any part of that general meeting, the members present (whether in person or by proxy) may elect a member present (in person) to chair the whole or any part of that general meeting. If the members do not so elect a chair, the meeting will be adjourned to be resumed on the same day, at the same time and at the same place (or places) in the following week.
- (d) A chair of a general meeting may, for any item of business or part of a meeting, vacate the chair in favour of another director who will preside as acting chair. Where an instrument of proxy appoints the chair as proxy for any part of the proceedings for which the acting chair presides, the instrument of proxy will be taken to have been given in favour of the acting chair for the relevant part of the proceedings of the general meeting.

### **8.4 Admission to and conduct of general meetings**

- (a) Subject to the Corporations Act, the chair of each general meeting has charge of the conduct of that meeting, including the procedures to be adopted and the application of those procedures at that meeting.
- (b) The chair of each general meeting may take any action the chair considers necessary to enable that meeting to be carried on in an orderly and proper manner and to ensure the safety of all persons at that meeting and may:

- (i) require any person not to enter or to leave the place (or any place) at which the meeting is to be held, including:
  - (A) any person in possession of any thing:
    - (1) allowing pictorial or sound recording; or
    - (2) that may be used in any demonstration or disruption, including any banner or placard;
  - (B) any person who does not permit inspection of any thing in that person's possession;
  - (C) any person who the chair considers may disrupt that general meeting; or
  - (D) any person who behaves or threatens to behave in a dangerous, offensive or disruptive way; and
- (ii) refuse entry to any person not entitled to receive notice of the meeting.

The chair may delegate the powers conferred by this **rule 8.4(b)** to any person the chair thinks fit.

- (c) Without prejudice to the application of the Corporations Act, any director and any person (whether or not a member) invited to speak at a general meeting (including by the chair during the general meeting) may speak at the general meeting. No other person may speak at the general meeting.
- (d) Subject to this Constitution, the chair may require the application of any proceeding that the chair considers necessary to allow proceedings at any meeting to be carried on in an orderly and proper manner, including:
  - (i) imposing a limit on the time that a person may speak on any matter and terminating debate or discussion on any matter being considered and requiring the matter to be put to a vote of members;
  - (ii) adopting any procedures for casting or recording votes at the meeting whether on a show of hands or a poll (including the appointment of scrutineers);
  - (iii) requiring any person to leave any meeting, and if that person does not leave as required, have that person removed from the meeting; and
  - (iv) decide not to put to the meeting any resolution proposed in the notice convening the meeting (other than a resolution proposed by members in accordance with section 249N of the Corporations Act or required by the Corporations Act to be put to the meeting).
- (e) A determination by the chair for the purpose of this **rule 8.4** binds all members and is final.

## **8.5 Adjournment**

- (a) The chair of a general meeting at which a quorum is present may adjourn the meeting to another date, time and place (or places).
- (b) The chair of a general meeting may at any time during the course of the meeting:
  - (i) adjourn the meeting or any business, motion, question or resolution being or to be considered by the meeting to a later time at the same meeting or to an adjourned meeting; and
  - (ii) for the purpose of allowing any poll to be taken or determined, suspend the proceedings of the meeting for such period or periods as the chair determines.
- (c) Subject to the Corporations Act and this Constitution, the chair's rights under **rule 8.5(b)** are exclusive and, unless the chair requires otherwise, no vote may be taken or demanded by the members about any postponement, adjournment or suspension of proceedings.
- (d) No business may be transacted on the resumption of an adjourned or postponed general meeting other than the business left unfinished at the adjourned general meeting.

## **8.6 Postponement**

Subject to this Constitution, except where the general meeting has been convened by a court, the chair may postpone any general meeting, if at the place (or a place) and the time for that general meeting it appears to the chair that:

- (a) there is insufficient space for the members who wish to attend the meeting; or
- (b) the postponement of the meeting is necessary because the business of the meeting is unlikely to be capable of being carried on in an orderly and proper manner, including because of the behaviour of any person present.

# **9 Proxies, attorneys and Representatives**

## **9.1 Appointment of proxy**

- (a) Subject to this Constitution, a member who is entitled to attend and to vote at a general meeting of the Company may appoint a person as proxy to attend, speak and vote for that member. The instrument appointing a proxy may restrict the exercise of any power.
- (b) A proxy may be, but does not have to be, a member.
- (c) A proxy is not entitled to vote if the member who has appointed the proxy is present in person at the meeting.



- (d) If a member is entitled to cast two or more votes at a meeting, the member may appoint two proxies. If the member appoints two proxies and the appointment does not specify the proportion or the number of votes each proxy may exercise, each proxy may exercise half the votes.

## **9.2 Member's attorney**

Subject to this Constitution, a member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of members. If the appointor is an individual, the power of attorney must be signed in the presence of at least one witness.

## **9.3 Proxy instruments and powers of attorney**

- (a) Subject to the Corporations Act and the Listing Rules, an appointment of a proxy or an attorney must be in writing and be signed by the member appointing the proxy or attorney, or if an appointment of a proxy by the duly authorised attorney of the member, and state:
  - (i) the member's name and address;
  - (ii) the Company's name;
  - (iii) the proxy's name or the name of the office held by the proxy; and
  - (iv) the general meeting at which the proxy may be used, or if the appointment is a standing one, a clear statement to that effect.
- (b) Where an instrument appointing a proxy is signed pursuant to a power of attorney, a copy of the power of attorney (certified as a true copy of the original) must be attached to the proxy instrument sent to the Company.
- (c) An instrument appointing a proxy or attorney may direct the way in which the proxy or attorney is to vote on a particular resolution.
- (d) If an instrument does not contain a direction, the proxy is entitled to vote on the proposed resolution as the proxy considers appropriate.
- (e) If a proxy is appointed to vote on a particular resolution by more than one member, that proxy:
  - (i) may vote on a show of hands in the same way if each instrument appointing the proxy directs the proxy to vote in the same way or does not direct the proxy how to vote; and
  - (ii) may not vote on a show of hands unless each instrument appointing the proxy and directing the proxy to vote in a particular way directs the proxy to vote in the same way.

## **9.4 Proxy and attorney instruments to be received by Company**

- (a) An instrument purporting to appoint a proxy or attorney is not effective unless it is received, together with any additional documentation, including a copy of the power of attorney (certified as a true copy of the original), by the Company:

- (i) at least 48 hours before the general meeting or, as the case may be, the postponed or adjourned general meeting; or
  - (ii) where **rule 9.4(d)** applies, such shorter period before the time for holding the general meeting or, as the case may be, postponed or adjourned general meeting, as the Company determines in its discretion,
- at any of the following:
- (iii) the registered office;
  - (iv) a facsimile number at the registered office; or
  - (v) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.
- (b) For the purposes of **rule 9.4(a)**, a proxy instrument received at an electronic address specified in the notice of general meeting for the receipt of proxy instruments or otherwise received by the Company in accordance with the Corporations Act is taken to have been signed or executed if the appointment:
- (i) includes or is accompanied by a personal identification code allocated by the Company to the member making the appointment;
  - (ii) has been duly authorised by the member in another manner approved by the directors and specified in or with the notice of meeting; or
  - (iii) is otherwise authenticated in accordance with the Corporations Act.
- (c) The Company is entitled to clarify with a member any instruction on an instrument appointing a proxy or attorney which is received by the Company within the period referred to in **rule 9.4(a)(i)** or **9.4(a)(ii)** (as applicable) by written or verbal communication. The Company, at its discretion, is entitled to amend the contents of any instrument appointing a proxy or attorney to reflect any clarification in instruction and the member at that time is taken to have appointed the Company as its attorney for this purpose.
- (d) Where an instrument appointing a proxy or attorney has been received by the Company within the period specified in **rule 9.4(a)(i)** and the Company considers that the instrument has not been duly executed, the Company, in its discretion, may:
- (i) return the instrument appointing the proxy or attorney to the appointing member; and
  - (ii) request that the member duly execute the instrument and return it to the Company within the period determined by the Company under **rule 9.4(a)(ii)** and notified to the member.

An instrument appointing a proxy or attorney which is received by the Company in accordance with this **rule 9.4(d)** is taken to have been validly received by the Company.

#### **9.5 Power to demand poll**

A proxy or attorney may demand, or join in demanding, a poll.

#### **9.6 Revocation of proxy or attorneys**

A member may revoke the appointment of a proxy or attorney appointed by it by notice to the Company stating that the appointment of a proxy or attorney is revoked or by appointing a new proxy or attorney.

#### **9.7 Validity of votes of proxy or attorney**

A vote cast by a proxy or attorney will be valid unless not less than 48 hours before the start of a general meeting (or, in the case of an adjourned or postponed general meeting, any lesser time that the directors or the chair of the meeting decide) at which a proxy or attorney votes, the Company receives notice of:

- (a) the member who appointed the proxy or attorney ceasing to be a member;
- (b) the revocation of the instrument appointing the proxy or attorney;
- (c) the appointment of a new proxy or attorney; or
- (d) the revocation of any power of attorney under which the proxy or attorney was appointed.

#### **9.8 Appointment of Representative**

- (a) Subject to this Constitution, if a member is a body corporate, it may appoint a natural person as its Representative to exercise on its behalf any or all of the powers it may exercise:
  - (i) at meetings of the members;
  - (ii) at meetings of creditors or debenture holders; or
  - (iii) relating to resolutions to be passed without meetings.
- (b) The appointment of a Representative may be a standing one.

#### **9.9 Authority to act as Representative**

- (a) An appointment of a Representative must be in writing and be signed by the body corporate appointing the Representative and state:
  - (i) the member's name and address;
  - (ii) the Company's name;
  - (iii) the Representative's name or the name of the office held by the Representative; and
  - (iv) the general meeting at which the Representative may act, or if the appointment is a standing one, a clear statement to that effect.

- (b) The instrument appointing the Representative may restrict the exercise of any power.

### **9.10 Instrument to be received by the Company**

An instrument purporting to appoint a Representative is not valid unless it is received by the Company at least 48 hours before the general meeting or, as the case may be, the postponed or adjourned meeting, at any of the following:

- (a) the registered office;
- (b) a facsimile number at the registered office; or
- (c) a place, facsimile number or electronic address specified for that purpose in the notice of the general meeting.

### **9.11 Revocation of appointment of Representative**

A member may revoke the appointment of a Representative appointed by it by notice to the Company stating that the appointment of the Representative is revoked or by appointing a new Representative.

### **9.12 Validity of votes of Representative**

A vote cast by a Representative will be valid unless not less than 48 hours before the start of a general meeting (or, in the case of an adjourned or postponed general meeting, any lesser time that the directors or the chair of the meeting decide) at which a Representative votes:

- (a) the member who appointed the Representative ceases to be a member; or
- (b) the Company has received notice of the revocation of the instrument appointing the Representative.

### **9.13 No liability**

The Company is not responsible for ensuring:

- (a) any directions provided in the instrument appointing the proxy or attorney or the way in which a proxy or attorney is to vote on a particular resolution are complied with; and
- (b) that the terms of appointment of a Representative are complied with, and accordingly is not liable if those directions or terms are not complied with.

## **10 Voting at general meetings**

### **10.1 Decisions of a general meeting**

Except as required by the Corporations Act or the Listing Rules, questions arising for determination at a general meeting will be decided by a majority of votes cast by members present.

## 10.2 Casting vote

If on any ordinary resolution an equal number of votes is cast for and against a resolution, the chair has a casting vote in addition to any vote cast by the chair as a member.

## 10.3 Voting rights

- (a) Subject to this Constitution and the terms on which shares are issued, at a general meeting:
- (i) on a show of hands:
    - (A) if a member has appointed two proxies, neither of those proxies may vote;
    - (B) a member who is present and entitled to vote and is also a proxy, attorney or Representative of another member has one vote; and
    - (C) subject to **rules 10.3(a)(i)(A) and 10.3(a)(i)(B)**, every individual present who is a member, or a proxy, attorney, Representative of a member, entitled to vote has one vote; and
  - (ii) on a poll every member entitled to vote who is present in person or by proxy, attorney or Representative or who has submitted a valid direct vote under **rule 10.4(a)**:
    - (A) has one vote for every fully paid share held as at the Record Time; and
    - (B) subject to **rule 10.3(a)(iii)**, in respect of each partly paid share held has a fraction of a vote equal to the proportion which the amount paid bears to the total issue price of the share; and
  - (iii) unless:
    - (A) permitted under the Listing Rules; and
    - (B) otherwise provided in the terms on which shares are issued, in calculating the fraction of a vote which the holder of a partly paid share has, the Company must not count an amount:
    - (C) paid in advance of a call; or
    - (D) credited on a partly paid share without payment in money or money's worth being made to the Company.
- (b) A joint holder may vote at a meeting either personally or by proxy, attorney or Representative as if that person was the sole holder. If more than one joint holder tenders a vote in respect of the relevant shares, the vote of the holder named first in the register who tenders a vote, whether in person or by proxy, attorney or Representative, must be accepted to the exclusion of the votes of the other joint holders.

- (c) Subject to any applicable law, a parent or guardian of a natural person who is a minor may vote at any general meeting in respect of shares registered in the name of the minor if the parent or the guardian produces evidence required by the directors to demonstrate parenthood or appointment as guardian. Any vote cast by a parent or guardian in respect of any share registered in the name of the minor that has produced such evidence will be counted and any vote cast by the minor will not be counted.
- (d) A person entitled to the transmission of a share under **rule 4.7, 4.8 or 4.9** may vote at a general meeting in respect of that share in the same way as if that person were the registered holder of the share if, at least 48 hours before the meeting (or such shorter time as the directors determine), the directors:
  - (i) admitted that person's right to vote at that meeting in respect of the share; or
  - (ii) were satisfied of that person's right to be registered as the holder of, or to transfer, the share.

Any vote duly tendered by that person must be accepted and the vote of the registered holder of those shares must not be counted.
- (e) A member is not entitled to vote in respect of any share on which a call or instalment of a call is due and payable but is unpaid.

#### **10.4 Direct voting**

- (a) A member who is entitled to attend and vote on a resolution at a general meeting may, where the directors so determined, vote by electronic or other means at that general meeting. Any vote so admitted is referred to as a 'direct vote'. The directors may, in their absolute discretion, determine the means by which a direct vote may be cast which may include:
  - (i) post;
  - (ii) facsimile; or
  - (iii) other electronic means.
- (b) A direct vote on a resolution at a meeting in respect of a share cast in accordance with **rule 10.4(a)** is of no effect and will be disregarded:
  - (i) if, at the time of the resolution, the person who cast the direct vote:
    - (A) is not entitled to vote on the resolution in respect of the share; or
    - (B) would not be entitled to vote on the resolution in respect of the share if the person were present at the meeting at which the resolution is considered;
  - (ii) if, had the vote been cast in person at the meeting at which the resolution is considered:

- (A) the vote would not be valid; or
  - (B) the Company would be obliged to disregard the vote;
  - (iii) subject to any rules prescribed by the directors, if the person who cast the direct vote is present in person at the meeting at the time the resolution is considered; and
  - (iv) if the direct vote was cast otherwise than in accordance with any regulations, rules and procedures prescribed by the directors under **rule 10.4(a)**.
- (c) Subject to any rules prescribed by the directors, if the Company receives a valid direct vote on a resolution in accordance with **rule 10.4(a)** and **10.4(b)** and, prior to, after or at the same time as receipt of the direct vote, the Company receives an instrument appointing a proxy, attorney or Representative to vote on behalf of the same member on that resolution, the Company may regard the direct vote as effective in respect of that resolution and disregard any vote cast by the proxy, attorney or Representative on the resolution at the meeting.

#### **10.5 Proxy vote to be identified**

Before a vote is taken the chair must inform the members present whether any proxy votes have been received and, if so, how the proxy votes are to be cast.

#### **10.6 Objection to right to vote**

- (a) A challenge or dispute in relation to a right to vote at a general meeting:
  - (i) may only be made at that general meeting; and
  - (ii) must be determined by the chair.
- (b) A determination made by the chair in relation to a challenge or dispute in relation to a right to vote is binding on all members and is final.

#### **10.7 Voting on resolution**

- (a) At any general meeting, a resolution put to a vote must be determined by a show of hands unless a poll is demanded in accordance with this Constitution.
- (b) At any general meeting, unless voting is conducted by way of a poll, a declaration by the chair following a vote on a show of hands that a resolution has either been passed or lost is conclusive evidence of that fact without proof of the number or proportion of votes recorded for or against such resolution.
- (c) A member is not entitled to vote on a resolution if, under the Corporations Act or the Listing Rules:
  - (i) the member must not vote or must abstain from voting on the resolution; or
  - (ii) a vote on the resolution by the member must be disregarded for any purposes.

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

#### **10.8 Chair may determine to take a poll**

The chair of a general meeting may determine that a poll be taken on any resolution.

#### **10.9 Right to demand poll**

- (a) A poll may be demanded on any resolution at a general meeting other than the election of a chair or the question of an adjournment.
- (b) A demand for a poll may be made by:
  - (i) at least five members entitled to vote on the resolution; or
  - (ii) members with at least five percent of the votes that may be cast on the resolution on a poll.

#### **10.10 Procedure for demanding poll**

- (a) A poll may be demanded:
  - (i) before a vote on a show of hands is taken;
  - (ii) before the result of a vote on a show of hands is declared; or
  - (iii) immediately after the result of a vote on a show of hands is declared.
- (b) If a poll is demanded, it may be taken in the manner and at the time and place (or places) as the chair directs.
- (c) The demand for a poll may be withdrawn with the chair's consent.
- (d) A demand for a poll does not prevent the general meeting continuing for the transaction of any business.

#### **10.11 Minutes**

- (a) Within one month after each general meeting, the directors must record or cause to be recorded in the minute book of the Company:
  - (i) the proceedings and resolutions of each general meeting; and
  - (ii) any information in relation to proxy votes which is required by the Corporations Act.
- (b) The chair, or the chair of the next meeting, must sign the minutes within a reasonable time.
- (c) The minute books must be kept at the Company's registered office or principal place of business in Australia.
- (d) Members may inspect the minute books between the hours of 9:00am and 5:00pm on any Business Day. No amount may be charged for inspection.



## 11 Directors

### 11.1 Number of directors

The board of directors may decide the number of directors (not counting alternate directors) but that number must be:

- (a) at least 3; and
- (b) not be more than 9,

unless the Company in general meeting resolves otherwise. At least two directors must reside ordinarily in Australia.

### 11.2 Appointment of directors

- (a) Subject to this Constitution, the Company may by resolution at a general meeting appoint a natural person as a director. The resolution may specify whether the person to be appointed is to be appointed as an executive director or non-executive director.
- (b) Subject to this Constitution, the directors may by resolution appoint a natural person as a director (either as an additional director or to fill a casual vacancy).
- (c) An appointment of a person as a director is not effective unless a signed consent to the appointment is provided by that person to the Company. The appointment of a person as a director will take effect on the later of the date of appointment and the date on which the Company receives the signed consent.

### 11.3 Confirmation of appointment

- (a) If a person is appointed as a director by the directors, the Company must confirm the appointment at the next annual general meeting. If the appointment is not confirmed, the person ceases to be a director at the conclusion of the annual general meeting.
- (b) **Rule 11.3(a)** does not apply to a managing director. If there is more than one managing director, only one of them is entitled not to have his or her appointment confirmed under **rule 11.3(a)**.

### 11.4 Eligibility

A person is eligible for election to the office of director at a general meeting only if:

- (a) the person is in office as a director immediately before that meeting;
- (b) the person has been nominated by the directors for election at that meeting;
- (c) in any other case, not less than the number of members specified in the Corporations Act as being required to give notice of a resolution at a general meeting of the Company have, at least 45 Business Days but no more than 90 Business Days before the meeting, given the Company:

- (i) a notice signed by the members stating their intention to nominate the person for election; and
- (ii) a notice signed by the person so nominated stating his or her consent to the nomination.

### **11.5 Removal of director**

- (a) The Company may remove a director by resolution at a general meeting.
- (b) Subject to the Corporations Act, at least 2 months' notice must be given to the Company of the intention to move a resolution to remove a director at a general meeting.
- (c) If notice of intention to move a resolution to remove a director at a general meeting is received by the Company, the director must be given a copy of the notice as soon as practicable.
- (d) The director must be informed that the director may:
  - (i) submit a written statement to the Company for circulation to the members before the meeting at which the resolution is put to a vote; and
  - (ii) speak to the motion to remove the director at the general meeting at which the resolution is to be put to a vote.

### **11.6 Cessation of directorship**

A person ceases to be a director and the office of director is vacated if the person:

- (a) is removed from office as a director by a resolution of the Company at a general meeting or in accordance with the Corporations Act;
- (b) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors generally;
- (c) resigns as a director in accordance with this Constitution;
- (d) is subject to assessment or treatment under any mental health law and the directors resolve that the person should cease to be a director;
- (e) is convicted on indictment of an offence and the directors do not within one month after that conviction, resolve to confirm the director's appointment or election (as the case may) to the office of director;
- (f) dies;
- (g) is disqualified from acting as a director under the Corporations Act; or
- (h) is absent from board meetings for a continuous period of six months without leave of absence from the directors and a majority of the other directors have not, within 10 Business Days of having been given a notice by the secretary giving details of the absence, resolved that leave of absence be granted.

## **11.7 Election and retirement of directors**

- (a) No director (other than a managing director) may retain office (without re-election) for more than 3 years or past the third annual general meeting following the director's appointment, whichever is the longer.
- (b) When required to do so by the Corporations Act or the Listing Rules, the Company must hold an election of directors. In the event that the Company is required to hold an election of directors, if there is not otherwise a vacancy on the board of directors and no director is required to cease to hold office under **rule 11.3(a)** or **11.7(a)**, then the director who has been in office longest since his or her last election or appointment must retire.
- (c) For the purposes of **rule 11.7(b)**, if there are 2 or more directors who were last elected or appointed on the same day, and an agreement cannot be reached between those directors as to who will retire, the director who will retire will be determined by lot.
- (d) A retiring director is eligible for re-appointment.
- (e) If there is more than one managing director, only one of them (as nominated by the other directors) will not be subject to **rule 11.7(a)**.
- (f) The Company may by resolution at an annual general meeting fill an office vacated by a director under this **rule 11.7** by electing or re-electing an eligible person to that office.
- (g) The retirement of a director from office and the re-election of a director or the election of any new director will not become effective until the end of the meeting at which the retirement and re-election or election occur.
- (h) In the event that a director required to retire under **rule 11.3(a)** or **11.7(a)** ceases for any reason to be a director between the date of the notice calling the relevant meeting and the date of the meeting, no other director is required to retire at that meeting.

## **11.8 Resignation of directors**

A director may resign from the office of director by giving notice of resignation to the Company at its registered office.

## **11.9 Remuneration of directors**

- (a) The non-executive directors will be remunerated for their services as directors by:
  - (i) an amount or value of remuneration each year (if any) as the Company in general meeting determines; or
  - (ii) an aggregate amount or value of remuneration (if any) not exceeding the maximum amount or value as the Company in general meeting determines, to be divided among the non-executive directors in such proportion and manner as they agree or if they do not agree, equally.

- (b) The remuneration for non-executive directors must be a fixed amount or value and not a commission on or percentage of profits or operating revenue.
- (c) The aggregate maximum amount of remuneration for non-executive directors must not be increased except with the prior approval of the Company in general meeting. Particulars of the amount of the proposed increase and the new maximum amount or value that may be paid to the non-executive directors as a whole must be detailed in the notice convening the meeting.
- (d) The directors may:
  - (i) at any time after a director dies or ceases to hold office as a director for any other reason, pay or provide to the director or a legal personal representative, spouse, relative or dependent of the director, in addition to the remuneration of that director under this **rule 11.9**, a pension or benefit for past services rendered by that director; and
  - (ii) cause the Company to enter into a contract with the director or legal personal representative, spouse, relative or dependent of the director to give effect to such a payment or provide for such a benefit.

#### **11.10 Reimbursement of expenses**

Directors and alternates are entitled to be reimbursed by the Company for reasonable costs and expenses incurred or to be incurred in connection with attending to the Company's affairs, including attending and returning from general meetings of the Company or meetings of the directors or committees of the board.

#### **11.11 Extra services**

If a director, with the concurrence of the directors, performs extra services or makes any special exertions for the benefit of the Company, the directors may cause that director to be paid out of the funds of the Company such special and additional remuneration as the directors decide is appropriate having regard to the value to the Company of the extra services or special exertions. Any amount paid will not form part of the aggregate remuneration permitted under this Constitution.

#### **11.12 Pensions and similar benefits**

The directors may establish or support, or assist in the establishment or support, of funds and trusts to provide pension, retirement, superannuation or similar payments or benefits to or in respect of the directors or former directors and grant pensions or allowances to those persons or their dependents, either by periodic payment or a lump sum.

### **11.13 Director's interests**

- (a) Subject to the Corporations Act and the Listing Rules, no director is disqualified from office due to the fact that such director holds any other office or association:
  - (i) with the Company;
  - (ii) with any of the Company's subsidiaries;
  - (iii) with any company in which the Company is or becomes a shareholder or otherwise interested; or
  - (iv) arising from contracting or arranging with the Company or any other company referred to in **rule 11.13(a)(ii)** or **11.13(a)(iii)**, either as vendor, purchaser or otherwise.
- (b) A contract or arrangement entered into by or on behalf of the Company in which a director is in any way interested (including any contract referred to in **rule 11.13(a)**) is not invalid or voidable merely because the director holds office as a director or because of the fiduciary obligations arising from that office.
- (c) A director who is interested in any arrangement involving the Company is not liable to account to the Company for any profit realised under the arrangement merely because the director holds office as a director or because of the fiduciary obligations arising from that office, provided that the director complies with the disclosure requirements applicable under the Corporations Act regarding that interest.
- (d) A director who has an interest in a matter that is being considered at a meeting of directors may, despite that interest, vote, be present and be counted in a quorum at the meeting, unless prohibited by the Corporations Act. No act, transaction, agreement, instrument, resolution or other thing is invalid or voidable only because a director fails to comply with that prohibition.

### **11.14 Powers and duties of directors**

- (a) Subject to this Constitution, the Corporations Act and the Listing Rules, the activities of the Company are to be managed by, or under the direction of, the directors.
- (b) Subject to this Constitution, the Corporations Act and the Listing Rules, the directors may exercise all rights, powers or capacities of the Company that are not required to be exercised by the Company in a general meeting.
- (c) The powers of the directors include the power to:
  - (i) borrow or otherwise raise money;
  - (ii) mortgage, charge (including in the form of a floating charge) any of the Company's assets (both present and future); and
  - (iii) issue debentures and other shares.

- (d) The directors may delegate any of their powers to:
  - (i) a director;
  - (ii) a committee of directors;
  - (iii) an employee of the Company; or
  - (iv) any other person.
- (e) A director, committee or person to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (f) The acceptance of a delegation of powers by a director may, if the directors so resolve, be treated as an extra service or special exertion performed by the delegate for the purposes of **rule 11.11**.
- (g) The provisions of this Constitution applying to meetings and resolutions of the board of directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of the board of directors, except to the extent they are contrary to any direction given under **rule 11.14(e)**.

#### **11.15 Negotiable instruments**

All negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed in such manner as the directors may determine.

#### **11.16 Alternate directors**

- (a) A director may, with the approval of a majority of the other directors, appoint a person to be the director's alternate for such period and on such terms as the director decides.
- (b) An alternate director may, but need not be, a member.
- (c) A person may act as an alternate director for more than one director.
- (d) An alternate is not an agent of the director appointing the alternate.
- (e) The Company is not responsible for ensuring that the terms of appointment of an alternate are complied with and accordingly, is not liable if those terms are not complied with.
- (f) An alternate is not entitled to receive any fee (or other remuneration) from the Company for services performed as an alternate but will be entitled to reimbursement for reasonable costs and expenses incurred in connection with attendance at meetings of the directors.
- (g) If the notice appointing the alternate provides that the alternate is to receive notice of board meetings, the Company must provide each alternate with notice. By notice to the Company, the director who appointed an alternate may at any time require that the notice of board meetings cease to be given to the alternate.

- (h) If an appointing director is not present at any meeting of the directors, that director's alternate director may exercise any powers that the appointing director may exercise.
- (i) An alternate director is entitled, if the appointing director does not attend a meeting of the directors, to attend and vote in place of the appointing director.
- (j) An alternate is entitled to a vote for each director that the alternate represents in addition to any vote the alternate may have as a director in the alternate's own right.
- (k) A director who appointed an alternate may terminate or suspend the appointment of the alternate at any time by notice to the alternate, the directors and the Company.
- (l) An alternate may terminate the alternate's appointment at any time by notice to the directors and the Company.
- (m) A termination of appointment does not take effect until the Company has received notice of termination.
- (n) An alternate ceases to be an alternate if the person who appointed that alternate ceases to be a director.

## **12 Board meetings**

### **12.1 Convening meetings**

- (a) A director may at any time convene a board meeting by notice to the other directors.
- (b) The secretary must, if requested by a director, call a meeting of the directors.

### **12.2 Notice of meetings**

- (a) Notice of each board meeting must be given to the directors and each alternate entitled to receive notice (if any).
- (b) Each notice must state:
  - (i) the date, time and place (or places) of the board meeting;
  - (ii) the general nature of the business to be conducted at the board meeting; and
  - (iii) any proposed resolutions.

### **12.3 Omission to give notice**

- (a) No resolution passed at or proceedings of any board meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:
  - (i) that board meeting;

- (ii) any change of place (or places) of that board meeting;
  - (iii) postponement of that board meeting; or
  - (iv) resumption of that adjourned board meeting.
- (b) A person who attends a board meeting waives any objection that person may have to a failure to give notice of the meeting.

#### **12.4 Use of technology**

- (a) A board meeting may be convened or held using telephone or other electronic means.
- (b) If a number of directors equal to the quorum is able to hear or to see and to hear each other director contemporaneously using telephone or electronic means, there is a meeting and a quorum is present. The rules relating to meetings of directors apply to each such meeting as determined by the chair of the meeting.
- (c) A director participating at a meeting using technology consented to by all directors is treated as being present in person at the meeting.
- (d) A meeting using technology consented to by all directors is to be taken to be held at the place determined by the chair of the meeting.
- (e) If, before or during the meeting, any technical difficulty occurs where one or more directors cease to participate, the chair may adjourn the meeting until the difficulty is remedied or may, where a quorum of directors remains present, continue with the meeting.
- (f) A director is presumed conclusively to have been present and to have formed part of a quorum at all times during a meeting using technology consented to by all directors, unless the chair consents to that director leaving in which case that director will be treated as having been present until that director leaves.

#### **12.5 Quorum at meetings**

- (a) No business may be transacted at a meeting of the directors unless a quorum is present at the time the meeting proceeds to business.
- (b) A quorum at a board meeting is at least two of the directors present in person. The quorum must be present at all times during the board meeting.
- (c) If there is a vacancy in the office of a director, the remaining directors may act, provided however if the number of directors is not sufficient to constitute a quorum, they may act only in an emergency or to increase the number of directors to a number sufficient to constitute a quorum or call a general meeting.

#### **12.6 Chair of meetings**

- (a) The directors may elect one of their number as chair. The person that has been elected as chair may chair each subsequent board meeting unless and until the directors determine otherwise.



- (b) The directors may from time to time appoint a deputy chair who in the absence of the chair at a meeting of the directors may exercise all the power and authorities of the chair.
- (c) The election of a chair or deputy chair by the directors must be made by majority vote.
- (d) If the chair is not present within 30 minutes after the time appointed for a board meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that board meeting, the deputy chair will act as chair of the meeting or, if the deputy chair is not present or is unwilling or unable to act, the directors present may elect a director present to chair that board meeting.

## **12.7 Passing resolutions at meetings**

- (a) A resolution of the directors must be passed by a majority of the votes cast by the directors entitled to vote on the resolution.
- (b) Subject to this Constitution and the Corporations Act, each director present at a board meeting in person or by alternate has one vote.
- (c) If votes are equal on a proposed resolution:
  - (i) the chair of the meeting does not have a second or casting vote; and
  - (ii) the proposed resolution is taken as lost.

## **12.8 Conduct of meetings**

The chair of each board meeting has charge of the conduct of that meeting, of the procedures to be adopted and the application of those procedures at that meeting.

## **12.9 Written resolutions**

- (a) The board may pass a resolution without a board meeting being held if:
  - (i) written notice of the resolution has been given to all directors; and
  - (ii) a majority of directors entitled to vote on the resolution (excluding any director on an approved leave of absence, any director who expressly indicates his or her abstention in writing to the Company, any director who disqualifies himself or herself from considering the resolution in question and any director who would be prohibited by the Corporations Act from voting on the resolution in question):
    - (A) sign a document containing a statement that they are in favour of the resolution set out in the document; or
    - (B) telephone or email the secretary or the chair and signify assent to the resolution and clearly identify its terms.
- (b) For the purposes of **rule 12.9(a)(ii)(A)**, signatures can be contained in more than one document, with each document to be identical to each other document.

- (c) A resolution passed under **rule 12.9(a)** is taken to have been passed by a meeting of the Board at the time when the last director required to constitute a majority of the directors under **rule 12.9(a)(ii)** having signed or assented to the resolution signs or assents to that resolution.

#### **12.10 Minutes of meetings**

- (a) Within one month after each board meeting, the directors must record or cause to be recorded in the minute book:
  - (i) the proceedings and resolutions of each board meeting; and
  - (ii) all resolutions passed without a board meeting.
- (b) The chair, or the chair of the next board meeting, must sign the minutes within a reasonable time.
- (c) The minute book must be kept at the Company's registered office or principal place of business in Australia.
- (d) The directors may inspect the minute book between the hours of 9:00am and 5:00pm on any Business Day. No amount may be charged for inspection.

#### **12.11 Committee meetings**

- (a) The directors may delegate any powers to a committee of directors.
- (b) A committee to which any powers have been 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 any necessary changes, to meetings and resolutions of a committee of directors, except to the extent they are contrary to any direction given under **rule 12.11(b)**.
- (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 directors for the purposes of **rule 11.11**.

#### **12.12 Validity of acts**

An act done by a board meeting, a committee of the board or a person acting as a director is not invalidated by:

- (a) a defect in the appointment of a person as a director or a member of a committee; or
- (b) a person so appointed being disqualified or not being entitled to vote, if that circumstance was not known by the board, committee or person when the act was done.

## 13 Executive officers

### 13.1 Managing director

- (a) The directors may appoint one or more of the directors to the office of managing director for such period, and on such terms (including as to remuneration), as the directors determine.
- (b) The directors may confer on a managing director any of the powers that the directors may exercise.
- (c) The directors may vary or revoke a conferral of any power on a managing director.
- (d) The directors may at any time vary or revoke an appointment of a managing director.
- (e) A person ceases to be a managing director if they cease to be a director.

### 13.2 Secretary

- (a) The Company must have at least one secretary. The directors have the power to appoint a natural person to act as secretary on the terms and for such period as the directors may determine.
- (b) Any secretary appointed may be removed at any time by the directors.

### 13.3 Provisions applicable to all executive officers

- (a) A reference in this **rule 13.3** to an **executive officer** is a reference to a managing director, executive director or secretary appointed under this Constitution.
- (b) Subject to any contract with the Company and the Listing Rules, the appointment of an executive officer may be for the period, at the remuneration and on the conditions the directors decide.
- (c) The remuneration payable by the Company to an executive officer must not include a commission on, or percentage of, operating revenue.
- (d) The directors may:
  - (i) delegate to or give an executive officer any powers, discretions and duties they decide;
  - (ii) withdraw, suspend or vary any of the powers, discretions and duties given to an executive officer; and
  - (iii) authorise the executive officer to delegate any of the powers, discretions and duties given to the executive officer.
- (e) Unless the directors decide differently, the office of a director who is employed by the Company or by a subsidiary of the Company automatically becomes vacant if the director ceases to be so employed.
- (f) An act done by a person acting as an executive officer is not invalidated by:
  - (i) a defect in the person's appointment as an executive officer;

- (ii) the person being disqualified to be an executive officer; or
- (iii) the person having vacated office, if the person did not know that circumstance when the act was done.

## 14 Execution of documents

### 14.1 Manner of execution

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

- (a) 2 directors; or
- (b) a director and a secretary; or
- (c) any other person or persons authorised by the directors for that purpose.

### 14.2 Seal

If the Company has a Seal:

- (a) the directors must provide for the safe custody of the Seal (and any duplicate of it);
- (b) the Seal (and any duplicate of it) must not be used without the prior authority of the directors, and when used, the Seal must be used in accordance with any direction of the directors; and
- (c) if a document is to be executed by the use of the Seal, the affixing of the Seal must be signed by:
  - (i) 2 directors; or
  - (ii) a director and a secretary; or
  - (iii) any other person or persons authorised by the directors for that purpose.

For the purposes of this **rule 14.2(c)**, the directors may decide either generally or in a particular case that the Seal and the signature of any director, secretary or other person is to be printed on or affixed to any certificates for securities in the Company by some mechanical or other means.

## 15 Inspection and access to records

- (a) A person who is not a director does not have the right to inspect any of the board papers, books, records or documents of the Company, except as provided by law, or this Constitution, or as authorised by the directors, or by resolution of the members.
- (b) The Company may enter into contracts with its directors or former directors agreeing to provide continuing access for a specified period

after the director ceases to be a director to board papers, books, records and documents of the Company which relate to the period during which the director or former director was a director on such terms and conditions as the directors think fit and which are not inconsistent with this **rule 15**.

- (c) The Company may procure that its subsidiaries provide similar access to board papers, books, records or documents as that set out in **rule 15(a)** and **15(b)**.
- (d) This **rule 15** does not limit any other rights of the directors or former directors.

## **16 Distributions**

### **16.1 Dividends**

- (a) Subject to the Corporations Act, the Listing Rules and this Constitution, the directors may determine or declare that a dividend (whether interim, final or otherwise) is payable and fix:
  - (i) the amount of the dividend;
  - (ii) the time for payment; and
  - (iii) the method of payment.
- (b) The directors may rescind a determination to pay a dividend at any time before the dividend is declared, if the directors determine that the Company's financial position no longer justifies payment of the dividend.
- (c) The directors may pay any dividend required to be paid under the terms of issue of any share.
- (d) Payment of a dividend does not require confirmation at a general meeting.
- (e) The directors will determine the manner of payment of a dividend which may include the payment of cash, the issue of shares or securities of any body corporate, the grant of options or the distribution of assets.
- (f) Interest is not payable on a dividend.
- (g) To the extent permitted by law, the directors may resolve to pay a dividend out of any available account, including the capital of the Company.

### **16.2 Unpaid calls and other amounts**

- (a) Subject to this Constitution and the terms on which shares (or class of shares) are issued, the directors may retain the dividends payable on shares in respect of which there are any unpaid calls.

- (b) Subject to **rule 16.2(a)**, the directors may retain from any dividend payable to a member any amount presently payable by the member to the Company and apply the amount retained to the amount owing.

### **16.3 Method of payment**

- (a) The directors may decide the method of payment of any dividend or other amount in respect of a share. Without limiting any other method of payment which the Company may adopt, a dividend may be paid:
  - (i) by cheque sent by post or by courier to the addresses of each member or to an address directed by that member or joint holder, as the case may be;
  - (ii) by electronic funds transfer to an account (of a type approved by the directors) nominated by and in the name of each member, and in the case of any joint holder of any share, to the account (of a type approved by the directors) nominated by and in the name of the joint holder whose name appears first in the register; or
  - (iii) by any other method determined by the directors.
- (b) A cheque sent under **rule 16.3(a)(i)**:
  - (i) may be made payable to bearer or to the order of the member to whom it is sent or any other person the member directs; and
  - (ii) is sent at the member's risk.
- (c) If:
  - (i) a member does not have a registered address or the Company believes that a member is not known at the member's registered address; or
  - (ii) the directors determine that dividends will be paid in cash by electronic funds transfer in accordance with **rule 16.3(a)(ii)** and:
    - (A) no account (of a type approved by the directors) is nominated by a member; or
    - (B) the electronic funds transfer into a nominated account is rejected or refunded,

the Company may credit the amount payable to an account of the Company (**Company Account**) to be held until the member claims the amount payable or nominates a valid account into which payment may be made.

- (d) The Company does not hold any money in the Company Account as a trustee and no interest will be paid to the member on monies held in the Company Account unless the directors determine otherwise.
- (e) An amount credited to the Company Account is treated as paid to the member at the time it is credited to the Company Account.
- (f) If:

- (i) a cheque for an amount payable under **rule 16.3(a)(i)** is not presented for payment; or
- (ii) an amount is held in the Company Account,  
for more than 11 calendar months, the directors may reinvest the amount, after deducting reasonable expenses, into shares in the Company on behalf of, and in the name of, the member concerned. The shares may be acquired on market or by way of new issue at a price the directors accept to be the market price at the time.
- (g) If the directors exercise their power to reinvest under **rule 16.3(f)** and there are residual amounts remaining, the residual amounts may be retained in the Company Account or donated to a charity on behalf of the member, as the directors decide.
- (h) The Company's liability to pay the relevant dividend amount in respect of a member to which this **rule 16.3** applies, is discharged when shares are issued or transferred to that member in accordance with **rule 16.3(f)**.
- (i) The directors may do anything necessary or desirable (including executing any document) on behalf of the member to effect the reinvestment under **rule 16.3(f)** or donation under **rule 16.3(g)**.
- (j) The directors may determine other rules to regulate the operation of this **rule 16.3** and may delegate their power under this rule to any person.

#### **16.4 Transfer of assets**

- (a) The directors may direct payment of a dividend wholly or partly by the distribution of specific assets (including shares or securities of any body corporate) to some or all of the members. The directors may determine in respect of the payment of any dividend to allow members to elect to receive the amount of the dividend to which that member is entitled in shares instead of in cash.
- (b) To give effect to any direction, the directors may do all things that it considers appropriate including:
  - (i) fixing the value for distribution of any specific asset or any part of any such asset; or
  - (ii) making a cash payment to any member to adjust the value of distributions made to members.

#### **16.5 Record date**

- (a) Subject to the Operating Rules, the directors will determine the date which will be the date on which persons who are members at midnight at the end of that date will be entitled to receive the dividend.
- (b) Subject to **rule 4.5**, a transfer of any share that has not been registered or left with the Company for registration on or before the date determined in **rule 16.5(a)** is not effective (as against the Company) to pass any right

or entitlement in respect of a dividend payable to holders of shares as at that date.

#### **16.6 Entitlement to dividends**

Subject to the terms on which shares (or any class of shares) are issued, all dividends will be payable equally on all shares, save and except that a partly paid share confers an entitlement on the holder only to that proportion of the dividend that the amount actually paid (not credited as paid) on that share bears to the total amounts paid and payable on the shares.

#### **16.7 Unclaimed dividends**

Subject to the Corporations Act and any other applicable law, the directors may apply the amount of unclaimed dividends in investments for the benefit of the Company.

#### **16.8 Capitalisation of profits**

- (a) Subject to the Corporations Act, this Constitution, the Listing Rules and the terms of issue of shares (or class of shares), the directors may capitalise any amount:
  - (i) forming part of the undivided profits of the Company;
  - (ii) representing profits arising from an ascertained accretion to capital or a revaluation of the assets of the Company;
  - (iii) arising from the realisation of any assets of the Company; or
  - (iv) otherwise available for distribution as a dividend.
- (b) The directors may resolve that all or any part of any capitalised amount is to be applied in:
  - (i) paying up any amount unpaid on any share;
  - (ii) paying up in full unissued shares to be issued to members as fully paid;
  - (iii) partly paying up any amount unpaid on any share and paying up in full unissued shares to be issued as fully paid; or
  - (iv) any other method permitted by law.
- (c) Each member is entitled to benefit from any such capitalisation on the same basis that that member is entitled to dividends.

#### **16.9 Additional powers**

- (a) To give effect to any resolution to reduce the capital of the Company, to satisfy any dividend under **rule 16.1** or to capitalise any amount under **rule 16.7**, the directors may do all things that it considers appropriate including:
  - (i) disregarding any fractional entitlement to any share;
  - (ii) making a cash payment in respect of any fractional entitlement;



- (iii) fixing the value for distribution of any specific asset or any part of any such asset;
  - (iv) vesting any of those specific assets, cash, shares or other securities in a trustee on trust for the persons entitled to the distribution or capitalised amount;
  - (v) making a cash payment to any member to adjust the value of distributions made to members; or
  - (vi) authorising any person, on behalf of members entitled to receive any specific assets, cash, shares or other shares (as a result of the distribution or capitalisation) to enter into an agreement with the Company or any other person which provides, as appropriate, for the distribution or issue to those members of shares or other shares credited as fully paid up or for payment by the Company on their behalf of the amounts (or any part thereof) remaining unpaid on their existing shares, by applying their respective proportions of the amount resolved to be distributed or capitalised, which agreement will be binding on all members affected.
- (b) Any agreement made under an authority referred to in **rule 16.9(a)(vi)** is effective and binds all members concerned.
- (c) If a distribution, transfer or issue of specific asset, shares or securities of any body corporate to a particular member or members is in the directors' discretion considered impracticable or contrary to any law of Australia or anywhere else in the world or would give rise to parcels of securities which do not constitute a marketable parcel, the directors may make a cash payment to those members or allocate the assets or securities to a trustee to be sold on behalf of, and for the benefit of, those members, instead of making the distribution, transfer or issue to those members.
- (d) If the Company distributes to members (either generally or to specific members) shares or securities in another body corporate or trust (whether as a dividend or otherwise and whether or not for value), each of those members appoints the Company as his or her agent to do anything needed to give effect to that distribution, including:
- (i) agreeing to the member becoming a member of that body corporate;
  - (ii) agreeing to the member being bound by the constitution of that body corporate; and
  - (iii) executing any transfer of shares or securities, or other document required to give effect to the distribution of shares or other securities to that member.

## **16.10 Reserves**

- (a) Subject to this Constitution, the directors may set aside out of the profits of the Company, any provision or reserve as it determines.
- (b) The directors may appropriate to the Company's profits any amount previously set aside as a provision or reserve.
- (c) Any amount set aside as a provision or reserve does not have to be kept separate from any other asset of the Company and such amount may be used in the Company's business or as the directors determine.
- (d) The directors may carry forward any part of the profits they consider should not be distributed as dividends or capitalised and need not transfer those profits to a reserve or provision.

## **16.11 Dividend reinvestment plan**

The directors may:

- (a) establish a dividend reinvestment plan on terms they decide, under which:
  - (i) the whole or any part of any dividend or interest due to members or holders of any convertible shares of the Company who participate in the plan on their shares or any class of shares or any convertible shares; or
  - (ii) any other amount payable to members, may be applied in subscribing for or purchasing securities of the Company; and
- (b) amend, suspend, recommence or terminate a dividend reinvestment plan.

## **17 Notices**

### **17.1 General**

In this **rule 17**, a reference to a **document** includes a notice and a notification by electronic means

### **17.2 Notices to holders of shares**

- (a) In addition to any other way allowed by the Corporations Act, a document may be given by the Company to a holder of a share by being:
  - (i) personally delivered;
  - (ii) left at the holder's current address as recorded in the register or an alternate address nominated by that holder;
  - (iii) sent to the holder's address as recorded in the register by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
  - (iv) sent by fax or other electronic means (including by providing a Uniform Resource Locator link to any document or attachment) to

the holder's current fax number or electronic address nominated by that holder.

- (b) Documents for overseas shareholders must be forwarded by air mail or fax or in another way that ensures it will be received quickly.
- (c) A document may be given by the Company to the joint holders of a share by giving it to the joint holder first named in the register in respect of the share.
- (d) A person who by operation of law, transfer or other means whatsoever becomes entitled to a share is absolutely bound by every document given in accordance with this **rule 17** to the person whom that person derives title prior to registration of that person's title in the register.
- (e) Where a holder of a share does not have a registered address or where the Company believes that holder is not known at the holder's registered address, all notices are taken to be:
  - (i) given to the member if the notice is exhibited in the Company's registered office for a period of 48 hours; and
  - (ii) served at the commencement of that period.

### **17.3 Notices to directors**

A document may be given by the Company to a director or alternate director by being:

- (a) personally delivered to him or her;
- (b) left at, or sent by pre-paid ordinary mail to, his or her usual residential or business address, or any other address he or she has supplied to the Company for giving notices; or
- (c) sent by fax or other electronic means to the fax number or electronic address he or she has supplied to the Company for giving notices.

### **17.4 Notices by directors to the Company**

A document may be given by a director or alternate director to the Company by being:

- (a) delivered to the Company's registered office;
- (b) sent by pre-paid ordinary mail to the Company's registered office; or
- (c) sent by fax or other electronic means to the principal fax number or electronic address at the Company's registered office.

### **17.5 Notices by post**

- (a) Where a document is sent by post (including air mail), service of the notice is deemed to have occurred by properly addressing, prepaying and posting the document and is deemed to have been received at 10:00am on the day after the date of its posting.

- (b) A certificate in writing signed by any manager, secretary or other officer of the Company that the envelope containing the document was so addressed, prepaid and posted is conclusive evidence of that fact.

## **17.6 Notices by fax or other electronic means**

- (a) A document is given:
  - (i) if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee; and
  - (ii) if sent by email, at the time the email is sent.
- (b) A certificate in writing signed by any manager, secretary or other officer of the Company that the document was sent by fax, email or other electronic means on a particular date is conclusive evidence of that fact.

## **17.7 After hours service**

If a document is given:

- (a) after 5:00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9:00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

## **17.8 Electronic signatures**

A signature to any notice given by the Company under this **rule 17** may be printed or affixed by some mechanical or other means.

# **18 Indemnity and insurance**

## **18.1 Indemnity**

- (a) To the extent permitted by and subject to the Corporations Act, the Company must indemnify each officer, director and secretary of the Company or subsidiary of the Company in respect of any liability, loss, damage, cost or expense incurred or suffered or to be incurred or suffered by the officer, director or secretary in or arising out of the conduct of any activity of the Company or relevant subsidiary of the Company or the proper performance of any duty of that officer, director or secretary.
- (b) The indemnity in **rule 18.1(a)**:
  - (i) is enforceable without the officer, director, or secretary first having to make a payment or incur an expense;
  - (ii) is enforceable by the officer, director or secretary notwithstanding that the officer, director or secretary has ceased to be an officer, director or secretary of the Company or relevant subsidiary of the Company; and

- (iii) applies to any liability, loss, damage, cost or expense incurred or suffered or to be incurred or suffered by the officer, director, or secretary whether incurred before or after the date of this Constitution.

## **18.2 Documenting indemnity**

The Company may enter into an agreement containing an indemnity in favour of any officer, director or secretary on such terms as the directors determine.

## **18.3 Insurance**

- (a) To the extent permitted by and subject to the Corporations Act, the Company may pay any premium in respect of a contract of insurance between an insurer and an officer, a director or secretary of the Company or subsidiary of the Company or any person who has been an officer, a director or secretary of the Company or subsidiary of the Company in respect of liability suffered or incurred in or arising out of the conduct of any activity of the Company or relevant subsidiary of the Company and the proper performance by the officer, director or secretary of any duty.
- (b) If the directors determine, the Company may execute a document containing rules under which the Company agrees to pay any premium in relation to such a contract of insurance.

## **18.4 Savings**

Nothing in this **rule 18**:

- (a) affects any other right or remedy that a person to whom this **rule 18** applies may have in respect of any liability referred to in this **rule 18**;
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom this **rule 18** does not apply; or
- (c) limits or diminishes the terms of any indemnity conferred or agreement to indemnify entered into prior to the adoption of this Constitution.

# **19 Winding up**

## **19.1 Distribution of surplus on winding up**

- (a) Subject to this Constitution and the terms on which shares (or any class of shares) are issued, if the Company is wound up, any property that remains after satisfaction of:
  - (i) all debts and liabilities of the Company; and
  - (ii) the payment of the costs, charges and expenses of winding up,must be distributed among the members in accordance with their respective rights.
- (b) Any amount that would otherwise be distributable to the holder of a partly paid share under **rule 19.1(a)** must be reduced by the amount unpaid on

that share as at the date of distribution. Where the effect of such reduction is to reduce the distribution to a negative amount, the holder must contribute that amount to the Company.

## **19.2 Dividing property**

- (a) If the Company is wound up, whether voluntarily or otherwise, the liquidator may, with the sanction of a special resolution:
  - (i) divide amongst the members the whole or any part of the Company's property; and
  - (ii) decide how the division is to be carried out as between the members or classes of members.
- (b) Any division of property under this **rule 19.2** need not accord with the legal rights of members and where it does not do so, a member may dissent and exercise the same rights as if the special resolution sanctioning the division was a special resolution passed under section 507 of the Corporations Act.
- (c) A member will not be compelled to accept any shares or other shares upon a division of property under this **rule 19.2** if there is any liability owing in respect of such share or other share.

## **20 General**

### **20.1 Submission to jurisdiction**

Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State or Territory in which the Company is taken to be registered for the purposes of the Corporations Act, the Federal Court of Australia and the courts which may hear appeals from those courts.

### **20.2 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.