



**Havilah Resources**

**Corporations Act 2001**

**Constitution**

**of**

**Havilah Resources Limited  
ACN 077 435 520**

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## Part 1: Introduction

### 1 Definitions and interpretation

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#### 1.1 Definitions

In this Constitution:

**Alternate Director** means an alternate director of the Company.

**Approving Resolution** means a resolution passed in accordance with clause 21.

**Approving Resolution Deadline** in relation to a proportional takeover bid means the day that is the fourteenth (14th) day before the last day of the bid period.

**ASX** means ASX Limited (ACN 008 624 691) operating as the Australian Securities Exchange.

**ASX Settlement** means ASX Settlement Pty Limited (ACN 008 504 532).

**ASX Settlement Rules** means the operating rules of ASX Settlement or of any relevant organisation which is an alternative or successor to, or replacement of, ASX Settlement or of any holder of an applicable Australian CS facility licence granted under the Corporations Act.

**Board** means all or some of the Directors acting as a board.

**Business Day** has the same meaning as in the Listing Rules.

**Call** includes an instalment of a call and any amount due on allotment of a Share or at a time or in circumstances specified in the terms of issue and **Called** has a corresponding meaning.

**Clearing and Settlement Facility** has the same meaning as in Section 768A.

**Company** means Havilah Resources Limited ACN 077 435 520.

**Constitution** means this Constitution as amended or replaced from time to time.

**Corporations Act** means the *Corporations Act 2001 (Cth)* as it applies to the Company.

**CSF Rules** means the rules of the Clearing and Settlement Facility.

**Director** means a director of the Company and includes an Alternate Director.

**Dividend** includes bonus.

**Exchange** means the ASX or the Company's Home Branch, as the context requires and includes any body corporate succeeding to all or most of the powers, functions and duties of the ASX.

**Executive Director** means a person appointed by the Board as Managing Director or otherwise a Director occupying a full-time or substantially full-time executive position in the Company or a related body corporate.

**Holder** means, in relation to Securities issued by the Company, a person whose name is entered in the Company's register of holders of those Securities.

**Home Branch** has the same meaning as in the Listing Rules.

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

**Managing Director** means a Director appointed as managing director of the Company.

**Marketable Parcel** means the number of Securities which in aggregate constitutes a marketable parcel of Securities in the Company under the Listing Rules.

**Member** has the same meaning as in Section 231.

**Minority Holder** means any Holder of Securities (including a Holder who holds Shares) who from time to time holds less than a Marketable Parcel of those Securities.

**Minority Holding** means the Securities in respect of which the Holder is a Minority Holder.

**Non-Executive Director** means a director who is not an Executive Director.

**Non-Marketable Parcel** means a parcel of Securities which is less than a Marketable Parcel.

**Notice Date** means the date of the Notice of Divestiture sent by the Company to a Minority Holder advising that the Company intends selling the Minority Holding under the provisions of clause 12.

**Notice of Divestiture** means a notice given to a Minority Holder in accordance with clause 12.3.

**proper ASTC transfer** has the same meaning as in regulation 1.0.02 of the *Corporations Regulations 2001 (Cth)*.

**Replaceable Rule** means any provision of those Sections and sub-Sections of the Corporations Act which are designated under Section 141 as replaceable rules and so capable of being replaced or modified by a company's constitution.

**Restricted Securities** has the same meaning as in the Listing Rules.

**Secretary** means a person appointed by the Board to perform the duties of a secretary of the Company.

**Section** is a reference to a section in the Corporations Act.

**Securities** mean a Share, debenture or other interest in or of the Company.

**Shares** means shares in the share capital of the Company.

**Takeover** means:

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

## 1.2 Interpretation

In this Constitution:

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) references to natural persons include corporations;
- (c) reference to a Section is to a section of the Corporations Act and includes any section that substantially replaces that section and deals with the same matter;
- (d) headings are for ease of reference only and do not affect the interpretation of this Constitution; and
- (e) subject to clause 1.1, words and expressions in this Constitution have the same meaning as in a provision of the Corporations Act which deals with the same matter.

## **2 Replaceable Rules**

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The Replaceable Rules are displaced by this Constitution and do not apply to the Company except to the extent that they are expressly contained in this Constitution.

## **3 Listing Rules**

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If the Company is admitted to the official list of ASX, the following clauses apply:

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

## **4 Corporations Act**

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Despite any other provision in this Constitution:

- (a) if the Corporations Act prohibits a thing being done, the thing may not be done;
- (b) if the Corporations Act requires a thing to be done, authority is given for that thing; and
- (c) if a provision of this Constitution is or becomes inconsistent with the Corporations Act that provision must be read down or failing that severed from this Constitution to the extent of the inconsistency.

## **Part 2 – Securities**

### **5 Share rights**

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Subject to this Constitution and to the terms of issue of particular Shares, a Share has attached the right:

- (a) to receive notice of and to attend and vote at all meetings of Members of the Company;
- (b) to receive Dividends;
- (c) to receive notices, reports and audited accounts; and
- (d) in a winding up to participate equally in the distribution of the assets of the Company (both capital and surplus), subject only to any amounts unpaid on the Share.

## **6 Issue of Shares**

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### **6.1 Issue of Shares**

Subject to this Constitution, the Listing Rules, the Corporations Act and any special rights conferred on the holders of any existing Securities or class of Securities in the Company:

- (a) Shares and other Securities in the Company may be issued or otherwise disposed of by the Board in such manner as it thinks fit and any such Shares or Security may be issued with such preferred, deferred or other special rights or such restrictions as to Dividends, voting, return of capital, payment of Calls or otherwise, to such persons and on such terms and conditions as the Board determines; and
- (b) the Board may grant to any person options to take up unissued Shares or Securities in the Company, in such manner and on such terms and conditions as it thinks fit.

### **6.2 Preference Shares**

- (a) Subject to the Corporations Act, the Company may issue preference Shares which are, or at the option of the Company are to be, liable to be redeemed, in such manner and on such terms and conditions as the Board determines.
- (b) Holders of preference Shares have the right to vote only:
  - (i) during a period during which a Dividend (or part of a Dividend) in respect of the preference Shares is in arrears;
  - (ii) on a proposal to reduce the entity's share capital;
  - (iii) on a resolution to approve the terms of a buy-back agreement;
  - (iv) on a proposal that affects rights attached to the preference Shares;
  - (v) on a proposal to wind up the Company;
  - (vi) on a proposal for the disposal of the whole of the Company's property, business and undertaking; and
  - (vii) during the winding up of the Company.
- (c) Each preference Share confers on the holder a right to:
  - (i) receive a preferential Dividend at a commercial rate and on the basis decided by the Board in preference to holders of ordinary Shares; and
  - (ii) return of capital in preference to holders of ordinary Shares when the Company is wound up or the Company is ended.
- (d) The preferential Dividend may be cumulative only to the extent the Board decides.
- (e) Without limiting the terms upon which a preference Share may be issued by the Board, a preference Share may, at the discretion of the Board:
  - (i) restrict or prohibit the right of a holder to participate in Share issues by the Company or any capitalisation of profits;
  - (ii) convert, or at the option of the Company or the holder, be convertible into some other class of Share on terms determined by the Board;
  - (iii) rank in priority to preference Shares already issued or with different rights to preference Shares already issued; or
  - (iv) confer on its holder the right, on redemption, to the payment of Dividends or any amount paid on the Share.



## **7 Commission and brokerage**

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Any brokerage or commission which may be paid by the Company may be made in cash, by the issue and allotment of Securities or a combination of any of those methods.

## **8 Trusts not recognised**

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Except as required by law, the CSF Rules or as otherwise provided by this Constitution, the Company will not recognise any person as holding a Security non-beneficially and the Company is not bound to recognise (even when having actual notice) any equitable, contingent, future or partial interest or any other right in respect of a Security except the registered holder's absolute right of ownership.

## **9 Joint holders**

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- 9.1 If two or more persons are registered as the holders of a Security, they are taken to hold the Security as joint tenants with benefit of survivorship.
- 9.2 Joint holders of a Security are liable severally as well as jointly in respect of all payments that ought to be made to the Company in respect of the Security.
- 9.3 Any one of the joint holders of a Security may give an effective receipt for any amount payable by the Company to the joint holders.

## **10 Certificates**

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- 10.1 The Company must issue and deliver a certificate or other document for a Security at the times and in the form required by the Corporations Act, the CSF Rules or the Listing Rules as applicable.
- 10.2 Subject to the Listing Rules, the Board may decide whether the Company should elect to maintain a certificated subregister for any class of Securities.
- 10.3 Subject to the Listing Rules and the CSF Rules, Securities may be held on any subregister maintained by or on behalf of the Company.
- 10.4 The Board may order worn out, lost or defaced certificates to be cancelled and, if necessary, replaced by new certificates.

## **11 Alteration of capital**

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### **11.1 Variation of class rights**

- (a) The rights attached to Securities in a class of Securities may, unless their terms of issue state otherwise, be varied or cancelled:
- (i) with the written consent of holders of such Securities with at least seventy-five percent (75%) of the votes in the class; or
  - (ii) with the sanction of a special resolution passed at a meeting of the class of holders holding Securities in the class.
- (b) The rights attached to Securities in a class of Securities are not (subject to the Corporations Act, the Listing Rules and their terms of issue) varied by:
- (i) the issue of more Securities that rank equally with the existing Securities; or

- (ii) the conversion of Securities to new Securities that rank equally with the existing Securities.
- (c) A meeting of the class of holders must be called and held in the same way, so far as possible, in which a meeting of the Company's Members may be called and held.

### 11.2 Converting shares

- (a) The Company may by ordinary resolution passed at a general meeting convert all or any of its Shares into a larger or smaller number of Shares.
- (b) Subject to the Listing Rules, where Shares are converted under clause 11.2(a), the Company in general meeting may determine by special resolution that as between the Shares resulting from that conversion, one or more of the Shares has some preference or special advantage in relation to dividends, capital, voting or anything else over or compared with one or more of the other Shares.

### 11.3 Reductions of capital

- (a) Subject to the Corporations Act and the Listing Rules, the Company may reduce its share capital in any manner.
- (b) Without limiting the generality of clause 11.3(a), the Company when reducing its share capital may resolve that such reduction be effected wholly or in part by the distribution of specific assets (whether held in the name of the Company or in the name of any wholly owned subsidiary of the Company) and in particular paid up shares, debentures or other securities of any other corporation or in any one or more of such ways.
- (c) Where the Company pursuant to a reduction of its share capital distributes to its Members shares in another corporation:
  - (i) the Members will be deemed to have agreed to become members of that corporation; and
  - (ii) each of the Members appoints the Company and any of the Directors as its agent to execute any transfer of shares or other document required to effect the distribution of shares to that Member.

### 11.4 Power to buy back Shares

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

## 12 Sale on Non-Marketable parcels

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### 12.1 Power to sell Non-Marketable Parcels

- (a) Subject to the provisions of the Listing Rules, the Company may and hereby is authorised to dispose of Minority Holdings in the manner prescribed by this clause 12. Subject to the provisions of clause 12.1(b), this clause 12 may be invoked only once in any twelve (12) month period.
- (b) Clause 12.1(a) automatically ceases to have effect following the announcement of a Takeover and begins to have effect once more after the close of the offers made under the Takeover.

### 12.2 Notice

- (a) The Company must not sell a Minority Holding unless it has, not less than forty-two (42) days prior to the sale, given a Notice of Divestiture in writing to the Minority Holder of its intention to dispose of the Minority Holding.

- (b) Every Minority Holder on whom a Notice of Divestiture has been served may by notice in writing addressed to the Secretary and delivered to the registered office of the Company within forty-two (42) days after the Notice Date request the Company to exempt the Minority Holding from this clause 12, in which event the provisions of this clause 12 will not apply to that Minority Holding.
- (c) If the ASX Settlement Rules apply to the Minority Holding, the Notice of Divestiture must state that for the purpose of selling the Minority Holding pursuant to this clause 12 that are in an ASX Settlement holding, the Company may initiate a holding adjustment to move those Securities from the ASX Settlement holding to:
  - (i) a holding on an electronic sub-register maintained by the Company in accordance with the Listing Rules; or
  - (ii) a certificated holding.

### 12.3 Procedure

- (a) For the purposes of the sale of Securities under this clause 12, each Minority Holder:
  - (i) appoints the Company as the Minority Holder's agent, to sell within a reasonable period after the period ending forty-two (42) days after the Notice Date all of the Securities in the Minority Holding in the ordinary course of trading on the stock market conducted by ASX acting in good faith and to receive the sale consideration on behalf of the Minority Holder; and
  - (ii) appoints the Company, each of the Directors and the Secretaries severally from time to time as the Minority Holder's attorney in the name and on behalf of the Minority Holder to effect all transfers and execute all deeds or other documents or instruments necessary to transfer the Securities from the Minority Holder to the transferee.
- (b) The transferee of Securities sold pursuant to this clause 12 will not be responsible for the regularity of proceedings or to the application of the purchase money in respect of the sale of a Minority Holder's Securities, and after the transferee's name has been entered in the register in respect of such Securities, the validity of the sale or other disposal may not be impeached by any person and the remedy of any person aggrieved by the sale or other disposal will be in damages only and against the Company exclusively. The Company may issue to the transferee such certificates as may be required in order to vest title in the transferee. The title of the transferee to Securities sold pursuant to this clause 12 will not be affected by any irregularity or invalidity in connection with the sale or disposal of the Securities to the transferee.
- (c) If the relevant Securities are certificated, the Company must cancel the certificates of all Minority Holders whose Securities are sold under this clause 12.
- (d) If all the Securities of two (2) or more Minority Holders to whom this clause 12 applies are sold to one purchaser, the transfer may be effected by one transfer document.

### 12.4 Sale consideration

- (a) The Company will receive the consideration (if any) in respect of the sale or disposal of Securities pursuant to this clause 12. The proceeds of any sale or other disposal of Securities pursuant to this clause 12 (**Sale Consideration**) are to be paid to the Minority Holder or as the Minority Holder may direct. The Company must bear all costs as a result of the sale or disposal of Securities pursuant to this clause 12.
- (b) Payment by the Company of any consideration under the provisions of this clause 12 will be at the risk of the Minority Holder to whom it is sent.
- (c) The Sale Consideration so received by the Company must be paid into a bank account opened and maintained by the Company for that purpose only.

- (d) The Company holds the Sale Consideration so received in trust for a Minority Holder whose Securities are sold pursuant to this clause 12, pending distribution of the Sale Consideration. The Company must as soon as practicable after the sale of the Securities of a Minority Holder, and to the extent that it may reasonably do so, distribute the Sale Consideration received to such Minority Holder entitled to the Sale Consideration provided that the Company has received any certificates issued to the Minority Holder with respect to the Security or in the case of loss or destruction of any such certificate, the statement and undertaking prescribed by Section 1070D(5).
- (e) Where the Sale Consideration is held in trust by the Company for a Minority Holder under this paragraph and has been so held for not less than two (2) years, the Company must pay the money in accordance with applicable legislative requirements,

### 12.5 Certificates

A certificate in writing under the hand of any two (2) Directors or of any one Director and a Secretary of the Company that:

- (a) any notice required to be served by or on the Company was or was not served, as the case may be;
- (b) any advertisement required to be published was published; and
- (c) any resolution of the Board required to be made was made,

will, for the purpose of this clause 12, be sufficient evidence of the facts stated as against all persons claiming to be entitled to such Securities and to the right and title of the Company to dispose of such Securities.

## 13 Calls

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Subject to the terms on which a partly-paid Share is issued, the Corporations Act and the Listing Rules:

- (a) the Board may make Calls on the holder of the Share for any money unpaid on the Share;
- (b) a Call is made when the resolution of the Board authorising it is passed;
- (c) the Board may require a Call to be paid by instalments;
- (d) a Call on a Share is not effective unless it is made payable at least fourteen (14) days after the Call is made (or such longer period as the Listing Rules may require);
- (e) at least seven (7) days before a Call on Shares becomes payable, the Company must give the holders of the Shares notice of:
  - (i) the amount of the Call;
  - (ii) the day when it is payable;
  - (iii) the place for payment; and
  - (iv) any other matters the Listing Rules may require;
- (f) if the notice is not given, the Call is not payable; and
- (g) the Board may revoke or postpone a Call before its due date for payment.

## **14 Failure to pay a call**

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Subject always to the Corporations Act, if a Call is made on a partly-paid Share and the Call is unpaid at the end of fourteen (14) days after it became payable:

- (a) the holder of the Share is liable to pay to the Company interest (at the rate of fourteen percent (14%) per annum or such lesser rate as the Board may determine) on the unpaid Call on and from the day the Call was payable to the day it is paid, unless the Board waives that interest in whole or in part;
- (b) the holder of the Share is liable to pay to the Company expenses incurred by the Company in connection with the non-payment;
- (c) the Company may recover from the holder of the Share the unpaid Call, interest and expenses as a debt;
- (d) the Company has under clause 17 a lien on the Share and over any Dividends or other amounts it pays on the Share; and
- (e) the Company may under clause 19 declare the Share and any Dividends or other amounts it pays on the Share to be forfeited.

## **15 Payment of calls in advance**

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15.1 The Company may:

- (a) accept from a holder the whole or part of the amount unpaid on a partly-paid Share before the amount accepted has been Called;
- (b) pay interest on any amount accepted, until the amount is payable under a Call and at a rate (not exceeding fourteen percent (14%) per annum) agreed between the holder and the Company; and
- (c) subject to any contract between the Company and the holder, repay all or any of the amount accepted in excess of the amount Called on the Share.

15.2 Payment of an amount in advance of a Call does not entitle the holder to any Dividend, benefit or advantage (other than, if applicable, the payment of interest under this clause 15) to which the holder would have been entitled if the holder had paid the amount when it became due.

## **16 Indemnity by Member**

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If the Company is required by the law of any place to pay an amount in respect of the Securities or Dividends or other amounts paid on Securities of a Member:

- (a) the Member or, if the Member is deceased, the Member's legal personal representative indemnifies the Company in respect of any such liability;
- (b) the Company has under clause 17 a lien on the Securities and Dividends or other amounts it pays on those Securities;
- (c) the Company may set off amounts so paid by the Company against amounts payable by the Company to the Member as Dividends or otherwise; and
- (d) the Company may recover as a debt due from the Member (or its legal personal representative as applicable) the amount of all payments so made by the Company together with interest (at the rate of fourteen percent (14%) per annum or such lesser rate as the Board may determine) and expenses incurred by the Company in connection with the legal liability.

This clause does not prejudice any right or remedy that the law may confer or purport to confer on the Company.

## **17 Lien**

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- 17.1 To the extent permitted by the Listing Rules and the Corporations Act, the Company has a first and paramount lien over Securities and over Dividends and other amounts it pays on them for:
- (a) an unpaid Call due but unpaid on those Securities;
  - (b) if the Securities were acquired under an employee Share scheme or other employee incentive scheme, an amount owed to the Company for acquiring them; or
  - (c) an amount that the Company is required by law to pay (and has paid) in respect of the Securities of the holder or deceased former holder.
- 17.2 The lien extends to interest (at the rate of fourteen percent (14%) per annum or such lesser rate as the Board may determine) on the amount owing and reasonable expenses incurred by the Company because the amount is not paid.
- 17.3 The Company may do all things that the Board thinks necessary or appropriate to do under the CSF Rules and the Listing Rules to enforce or protect the Company's lien.
- 17.4 Unless the Board determines otherwise, the registration of a transfer of a Security operates as a waiver of the Company's lien over the Security.
- 17.5 The Board may declare a Security to be wholly or partly exempt from a lien.

## **18 Sale to enforce a lien**

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If:

- (a) the Company has a lien on a Security for money presently payable;
- (b) the Company has given the holder or the legal personal representatives of the holder (as the case may be) written notice demanding payment of the money; and
- (c) that Member fails to pay all of the money demanded,

then fourteen (14) or more days after giving the notice, the Board may (subject to the Listing Rules) sell the Security in a manner and on terms determined by it.

## **19 Forfeiture**

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- 19.1 A partly-paid Share and any Dividends the Company pays on them are forfeited if:
- (a) a Call on the Share is unpaid at the end of fourteen (14) days after it became payable;
  - (b) the Company has given the holder of the Share written notice to the effect that:
    - (i) the Company demands payment of the Call, interest on the amount owing and expenses incurred by the Company because the amount is not paid and specifies a day (not earlier than seven (7) days after the date of the notice) on or before which the payment required by the notice must be paid; and
    - (ii) the Company may declare the Share forfeited if those amounts are not paid on time;
  - (c) the holder of the Share fails to pay all of the money demanded within the time specified; and

- (d) the Board determines (before or after the above notice is given) to forfeit the Share.
- 19.2 Promptly after a Share has been forfeited the Company should:
- (a) give to the former holder of the Share notice of the forfeiture; and
- (b) record the forfeiture and its date in the register of Members,
- but a failure to do so does not invalidate a forfeiture.
- 19.3 On forfeiture, Shares become the property of the Company and forfeited Shares must be within a reasonable time either:
- (a) (subject to the Listing Rules and the Corporations Act) cancelled by resolution passed at a general meeting. The notice of meeting must include each of the following.
- (i) details of the forfeited Shares, including their total issue price, the amount called but unpaid, and the amount uncalled;
- (ii) the outstanding liability of the former holder, and what action the Company has taken (and will take) to recover that amount; and
- (iii) a voting exclusion statement; or
- (b) (subject to the Listing Rules and the Corporations Act) re-issued, auctioned or sold by the Company in a manner and on terms that the Board determines.
- 19.4 A former holder of a forfeited Share ceases to have an interest in the Share but (subject always to the Corporations Act) despite the forfeiture remains liable to pay to the Company all Calls at the time of forfeiture due on the Share, plus accrued and accruing interest and expenses. The liability may only be released or waived with the approval of holders or ordinary Shares in accordance with the Listing Rules.
- 19.5 Subject to the Corporations Act, at any time up to or on the last Business Day before a forfeited Share is cancelled, re-issued, auctioned or sold:
- (a) the Board may annul the forfeiture of the Share on terms that the Board determines; or
- (b) the former holder may redeem the Share by paying to the Company all Calls at the time of the forfeiture due on the Share, plus interest and expenses accrued to the date of redemption.

## **20 Sale or re-issue on enforcement**

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On a sale of a Share to enforce a lien, or on a sale, auction or re-issue of a forfeited Share:

- (a) (subject to the Listing Rules and the Corporations Act) the Company may sell, auction or re-issue the Share on terms that the Board determines;
- (b) the Company or any person appointed by the Board may effect a transfer of the Share in favour of the buyer or allottee;
- (c) the Company may receive the proceeds of the sale, auction or re-issue and apply them to pay:
- (i) first, the expenses of the sale, auction or re-issue;
- (ii) then, any expenses necessarily incurred in respect of the enforcement of the lien or the forfeiture;
- (iii) then, the Calls on the Share that are due and unpaid at the time of the forfeiture; and

- (iv) then, interest accrued on the above amounts,  
the balance (if any) must be paid to the former holder of the Share, but payable only after the Company has received any certificate relating to the Share (or is satisfied that the certificate has been lost or destroyed);
- (d) a buyer or allottee:
  - (i) is not bound to check the regularity of the transaction or the application of the proceeds of the sale, auction or re-issue;
  - (ii) obtains title to the Share despite any irregularity in the sale, auction or re-issue; and
  - (iii) is not subject to complaint or remedy by the former holder of the Share in respect of the purchase, whose only remedy must be for damages against the Company; and
- (e) a statement signed by a Director or a Secretary that a Share has been regularly forfeited and sold, auctioned or re-issued, or regularly sold without forfeiture to enforce a lien, is sufficient evidence of the matters stated as against all persons claiming to be entitled to the Share.

## **21 Proportional takeover bid**

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- 21.1 Registration of a transfer giving effect to a contract resulting from the acceptance of an offer made under a proportional takeover bid is prohibited unless and until an Approving Resolution approving the proportional takeover bid is passed.
- 21.2 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 the proportional takeover bid was made, held bid class Shares is entitled to:
  - (a) vote on a Approving Resolution; and
  - (b) has one vote for each bid class Share held.
- 21.3 Where offers have been made under a proportional takeover bid, the Board must ensure that an Approving Resolution is voted on at a meeting of the persons described in clause 21.2 before the Approving Resolution Deadline.
- 21.4 An Approving Resolution is passed if more than fifty percent (50%) of the votes cast on the resolution are cast in favour of the resolution, and otherwise is taken to have been rejected.
- 21.5 The provisions of this Constitution that apply to a general meeting of the Company apply, with such modifications as the circumstances require, to a meeting that is called under this clause 21 as if the meeting was a general meeting of the Company.
- 21.6 If an Approving Resolution to approve the proportional takeover bid is voted on in accordance with this clause before the Approving Resolution Deadline, the Company must, on or before the Approving Resolution Deadline, give:
  - (a) the bidder; and
  - (b) each relevant financial market,  
a written notice stating that an Approving Resolution to approve the proportional takeover bid has been voted on and whether it was passed or rejected.
- 21.7 If no resolution has been voted on in accordance with this clause 21 as at the end of the day before the Approving Resolution Deadline, a resolution to approve the proportional takeover bid is taken, for the purposes of this clause 21, to have been passed in accordance with this clause 21.



- 21.8 Under the Corporations Act, this clause 21 automatically ceases to have effect on that date which is three (3) years:
- (a) after the date of adoption of this Constitution by the Company; or
  - (b) if this clause 21 has been renewed since the date of adoption of this Constitution, the date on which this clause 21 was last renewed, provided that the resolution renewing this clause 21 did not state that this clause 21 is renewed for a specified period of less than three (3) years.

## **22 Transfer of securities**

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- 22.1 Subject to this Constitution a Member may transfer all or any of the Shares held by the Member.
- 22.2 A person transferring Shares remains the holder of the Shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the register of Members in respect of the Shares.
- 22.3 A transfer of a Security that is a proper ASTC transfer must be effected in accordance with the Listing Rules and CSF Rules.
- 22.4 For a transfer of Security that is not a proper ASTC transfer:
- (a) a proper instrument of transfer must be lodged with the Company;
  - (b) the instrument must be accompanied by a certificate for those Securities where a certificate has been issued, unless the Board waives production of the certificate on receiving satisfactory evidence of the loss or destruction of the certificate; and
  - (c) if the Listing Rules permit, the Board may require other evidence of the transferor's right to transfer.
- 22.5 Subject to the Corporations Act, the Board may refuse to register a transfer of Securities in any circumstances permitted by the Listing Rules. The Board must refuse to acknowledge or register a transfer or disposal of Restricted Securities during the escrow period (except as permitted by the Listing Rules or the ASX) and of any Securities where the Company is, or the Board is, required to do so by the Listing Rules.
- 22.6 The Board may suspend registration of transfers of Shares in the Company at the times and for the periods they determine. The periods of suspension must not exceed thirty (30) days in any one (1) calendar year.
- 22.7 Where the Board refuses to register a transfer, it must send the notice of the refusal and the reason for refusal to the lodging party in accordance with the Listing Rules.
- 22.8 Notwithstanding any other provision contained in this Constitution, but subject to the Listing Rules, the Company may not prevent, delay or interfere with the generation of a proper ASTC transfer or the registration of a paper-based transfer of Shares in registrable form.

## **23 Member's attorney**

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- 23.1 To act by an attorney in relation to the Company, a holder of Securities or the attorney must:
- (a) produce to the Company for noting, the instrument appointing the attorney or a certified copy of that instrument;
  - (b) pay any fee set by the Company for noting; and
  - (c) if required at any time, produce to the Company any other evidence the Company thinks appropriate that the instrument is effective and continues to be in force.

23.2 A power of attorney granted by a holder of Securities will, as between the Company and that holder:

- (a) continue in force; and
- (b) may be acted on,

unless the Company has received written notice of its revocation or of the death or dissolution of that holder.

## **24 Transmission of shares on death**

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24.1 If a Shareholder who does not own Shares jointly dies, the Company will recognise only the personal representative of the deceased Shareholder as being entitled to the deceased Shareholder's interest in the Shares.

24.2 If the personal representative gives the Board the information the Board reasonably requires to establish the representative's entitlement to be registered as holder of the Shares:

- (a) the personal representative may:
  - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the Shares; or
  - (ii) by giving a completed transfer form to the Company, transfer the Shares to another person; and
- (b) the personal representative is entitled, whether or not registered as the holder of the Shares, to the same rights as the deceased Shareholder.

24.3 On receiving an election under clause 24.2(a)(i), the Company must register the personal representative as the holder of the Shares.

24.4 A transfer under clause 24.2(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

24.5 If a Shareholder who owns Shares jointly dies, the Company will recognise only the survivor as being entitled to the deceased Shareholder's interest in the Shares.

24.6 The estate of the deceased Shareholder is not released from any liability in respect of the Shares.

## **25 Transmission of Shares on bankruptcy**

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25.1 If a person entitled to Shares because of the bankruptcy of a Shareholder gives the Board the information the Board reasonably requires to establish the person's entitlement to be registered as holder of the Shares, the person may:

- (a) by giving a written and signed notice to the Company, elect to be registered as the holder of the Shares; or
- (b) by giving a completed transfer form to the Company, transfer the Shares to another person.

25.2 On receiving an election under clause 25.1(a), the Company must register the person as the holder of the Shares.

25.3 A transfer under clause 25.1(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

25.4 This clause 25 has effect subject to the Bankruptcy Act 1966 (Cth).

## **26 Transmission of Shares on mental incapacity**

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- 26.1 If a person entitled to Shares because of the mental incapacity of a Shareholder gives the Board the information the Board reasonably requires to establish the person's entitlement to be registered as the holder of the Shares:
- (a) the person may:
    - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the Shares; or
    - (ii) by giving a completed transfer form to the Company, transfer the Shares to another person; and
  - (b) the person is entitled, whether or not registered as the holder of the Shares, to the same rights as the Shareholder.
- 26.2 On receiving an election under clause 26.1(a)(i), the Company must register the person as the holder of the Shares.
- 26.3 A transfer under clause 26.1(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

## **Part 3 – Meetings of Members**

### **27 Calling of meetings of Members**

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- 27.1 A Director may call a meeting of Members.
- 27.2 The Directors must call annual general meetings in accordance with the Corporations Act, to be held by the Company at times to be determined by the Board.
- 27.3 Members may also request or call and arrange to hold general meetings in accordance with the procedures and requirements set out in the Corporations Act.
- 27.4 A general meeting may be held at two (2) or more venues simultaneously using any technology that gives Members as a whole a reasonable opportunity to participate.

### **28 Notice of meetings of Members**

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- 28.1 Notice to joint Members of a meeting of the Company's Members must be given to the joint Member named first in the register of Members.
- 28.2 A notice of meeting of the Company's Members sent by post is taken to be given three (3) days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the Business Day after it is sent.
- 28.3 When a meeting of the Company's Members is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one (1) month or more.

### **29 Postponement or cancellation**

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- 29.1 A meeting of the Company's Members may be postponed or cancelled at any time before the day of the meeting:
- (a) if called by the Directors on the request of a Member or Members under Section 249D, by that Member or those Members so notifying the Company;

- (b) if called by a Member or Members under Section 249E, by that Member or those Members so notifying the Company;
  - (c) if called by a Member or Members under Section 249F, by that Member or those Members so notifying the Company; or
  - (d) if called by the Directors of their own volition, by the Board as it may determine.
- 29.2 The Board must give notice of the postponement or cancellation to all persons entitled to receive notices of that meeting.
- 29.3 Any Members postponing or cancelling a meeting must pay the expenses of the postponement or cancellation unless the Board determines otherwise.

### **30 Quorum of meetings of Members**

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- 30.1 The quorum for a meeting of the Company's Members is five (5) Members entitled to vote at the meeting and the quorum must be present at all times during the meeting.
- 30.2 In determining whether a quorum is present, count individuals attending as proxies or body corporate representatives. However, if a Member has appointed more than one (1) proxy or representative, count only one (1) of them. If an individual is attending both as a Member and as a proxy or body corporate representative, count them only once.
- 30.3 A meeting of the Company's Members that does not have a quorum present within thirty (30) minutes after the time for the meeting set out in the notice of meeting:
- (a) is dissolved if the meeting was called:
    - (i) on the request of Members under Section 249D;
    - (ii) by Members under Section 249E; or
    - (iii) by Members under Section 249F; otherwise
  - (b) is adjourned to the date, time and place the Board specifies. If the Board does not specify one (1) or more of those things, the meeting is adjourned to:
    - (i) if the date is not specified—the same day in the next week; and
    - (ii) if the time is not specified—the same time; and
    - (iii) if the place is not specified—the same place.
- 30.4 If no quorum is present at the resumed meeting within thirty (30) minutes after the time for the meeting, the meeting is dissolved.

### **31 Chairing meetings of Members**

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- 31.1 The Directors may elect an individual to chair meetings of the Company's Members.
- 31.2 The Directors at a meeting of the Company's Members must elect an individual present to chair the meeting (or part of it) if an individual has not already been elected by the Directors to chair it or, having been elected, is not available to chair it, or declines to act, for the meeting (or part of the meeting). Those Directors must elect the chair (or failing him or her, any deputy chair) of Board meetings to chair a meeting of Members if that person is available and willing to act.
- 31.3 The Members at a meeting of the Company's Members must elect a Member present to chair the meeting (or part of it) if:

- (a) a chair has not previously been elected by the Directors to chair the meeting; or
- (b) a previously elected chair is not available, or declines to act, for the meeting (or part of the meeting).

### **32 General conduct of meetings of Members**

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The chair of a meeting of Members has general conduct of the meeting and may determine the procedures to be followed, subject to the general law and the requirements of the Corporations Act. Without limiting those powers, the chair may refuse a person admission to, or require the person to leave and not return to, a meeting if the person:

- (a) refuses to permit reasonable examination of any article in his or her possession; or
- (b) is in possession of any:
  - (i) electronic or recording device;
  - (ii) placard or banner; or
  - (iii) other article,

which the chair considers to be dangerous, offensive or liable to cause disruption.

Subject to the above, a Director (including an Alternate Director) is entitled to attend and be heard at any meeting of the Members.

### **33 Adjournment**

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- 33.1 The chair of a meeting of Members must adjourn a meeting of the Company's Members if the Members present with a majority of votes at the meeting agree or direct that the chair must do so. The chair may adjourn a meeting with the meeting's consent on a show of hands.
- 33.2 A poll cannot be demanded on a resolution concerning the adjournment of a meeting of Members except by the chair of that meeting.
- 33.3 Only unfinished business is to be transacted at a meeting of Members resumed after an adjournment.

### **34 Voting at meetings of Members**

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- 34.1 Subject to this Constitution, the Listing Rules, the Corporations Act and to any rights or restrictions attaching to any class of Shares, at a meeting of the Company's Members:
  - (a) on a show of hands, each Member has one vote;
  - (b) (subject to Section 250L(4)) on a poll, each Member has:
    - (i) for each fully paid Share held by the Member, one vote; and
    - (ii) for each partly-paid Share held by the Member, a fraction of a vote equivalent to the proportion which the amount paid (not credited nor paid in advance of a Call) is of the total amounts paid and payable (excluding amounts credited) for the Share.
- 34.2 A Member is entitled to be counted in a quorum or vote only in respect of Shares on which all Calls due and payable have been paid.
- 34.3 A vote that the Corporations Act or the Listing Rules require the Company to disregard must not be counted. In particular during a breach of the Listing Rules relating to Shares which are

Restricted Securities, or a breach of a restriction agreement, the holder of the relevant Restricted Securities is not entitled to voting rights in respect of those Restricted Securities.

- 34.4 The validity of a resolution is not affected by the failure of a proxy, attorney or other representative of a Member to vote in accordance with the instructions of the Member.
- 34.5 The chair at a meeting of the Company's Members has a casting vote, and also, if he/she is a Member, any vote he/she has in his/her capacity as a Member.
- 34.6 If a Share is held jointly and more than one (1) Member votes in respect of that Share, only the vote of the Member whose name appears first in the register of Members counts.
- 34.7 A challenge to a right to vote at a meeting of the Company's Members:
- (a) may only be made at the meeting; and
  - (b) must be determined by the chair of that meeting, whose decision is final.
- 34.8 At a meeting of the Company's Members:
- (a) A resolution put to the vote at that meeting must be decided on a show of hands unless a poll is demanded.
  - (b) Before a vote is taken, the chair of that meeting must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
  - (c) On a show of hands, a declaration by the chair of that meeting is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chair of that meeting nor the minutes of that meeting need to state the number or proportion of the votes recorded in favour or against.
  - (d) A poll demanded on a matter other than the election of a chair of that meeting or the question of an adjournment must be taken when and in the manner the chair of that meeting directs.
  - (e) A poll on the election of a chair of that meeting or on the question of an adjournment must be taken immediately.
- 34.9 The Directors may determine that at any general meeting or class meeting, a Member who is entitled to attend that meeting is entitled to a direct vote. A 'direct vote' includes a vote delivered to the Company by post, fax or other electronic means approved by the Directors. The Directors may specify the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.

## **35 Proxy voting at meetings of Members**

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- 35.1 A Member who is entitled to attend and cast a vote at a meeting of the Company's Members may appoint a person (who need not be a Member) as the Member's proxy to attend and vote for the Member at the meeting. The person appointed as the Member's proxy may be an individual or a body corporate.
- 35.2 The appointment may specify the proportion or number of votes that the proxy may exercise.
- 35.3 Each Member may appoint a proxy. If the Member is entitled to cast two (2) or more votes at the meeting, they may appoint two (2) proxies. If the Member appoints two (2) proxies and the appointment does not specify the proportion or number of the Member's votes each proxy may exercise, each proxy may exercise half of the votes.
- 35.4 Disregard any fractions of votes resulting from the application of clause 35.2 or clause 35.3.
- 35.5 The Board or the chair of a meeting of Members may in any particular case allow an appointment of a proxy as valid even if it contains only some of the information required by

Section 250A(1). An appointment that does not contain the proxy's name or the name of the office held by the proxy is valid and deemed to be in favour of the chair of the meeting.

- 35.6 A proxy entitled to vote at a meeting of Members must vote in any way specified in the appointment. If a Member appoints one proxy, that proxy may vote on a show of hands. If a Member appoints two (2) proxies, neither proxy is entitled to vote on a show of hands.
- 35.7 Unless the Company has received written notice of the matter before the start or resumption of the meeting of Members at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
- (a) the appointing Member dies;
  - (b) the Member is mentally incapacitated;
  - (c) the Member revokes the proxy's appointment;
  - (d) the Member revokes the authority under which the proxy was appointed by a third party; or
  - (e) the Member transfers the Share in respect of which the proxy was given.
- 35.8 Subject to Sections 249Y(1)(b) and 250A(4) and the express terms of an appointment, a proxy may vote:
- (a) on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and
  - (b) on any procedural motion put to the meeting.

## **Part 4 – Directors**

### **36 Number of Directors**

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- 36.1 Until the Company resolves otherwise in accordance with clause 37.1 there will be:
- (a) a minimum of three (3) Directors (not counting Alternate Directors); and
  - (b) a maximum of ten (10) Directors (not counting Alternate Directors).
- 36.2 Subject to the Corporations Act, the Company may by resolution passed at a general meeting increase or reduce the minimum number of Directors or increase or reduce the maximum number of Directors.
- 36.3 Subject to any resolution of the Members determining the maximum and minimum numbers of Directors, the Directors may from time to time determine the respective numbers of Executive and Non-Executive Directors.

### **37 Appointment of Directors**

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- 37.1 The initial Directors of the Company are the persons who have consented to act as Directors. Those persons hold office subject to this Constitution.
- 37.2 A Director is not required to hold any Shares in the capital of the Company.
- 37.3 A person is not eligible for election as a Director at a meeting of Members unless:
- (a) the person is a Director retiring by rotation who seeks re-election; or

- (b) at least thirty (30) Business Days before the meeting the Company receives at its registered office both:
  - (i) a signed consent to act as a Director by the person; and
  - (ii) a nomination in writing (in one (1) or more copies) signed by at least fifty (50) Members or Members between them with at least five percent (5%) of the votes that may be cast at the meeting.

37.4 The Board may appoint a person as a Director. A person can be appointed as a Director in order to make up a quorum for a Board meeting even if the total number of Directors is not enough to make up that quorum.

### **38 Removal and appointment of Directors**

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38.1 The Company may, subject to the Corporations Act, by resolution passed in general meeting:

- (a) remove any Director before the end of the Director's term of office; and
- (b) if the outgoing Director is a Non-Executive Director, elect another person to replace the Director.

38.2 A person appointed under clause 38.1 will hold office for the remainder of the term for which the Director replaced would have held office if the Director had not been removed.

38.3 Subject to the provisions of this Constitution, the Company may appoint a person as a Director by resolution passed in general meeting.

38.4 A Director appointed or elected at a general meeting is taken to have been appointed or elected with effect from immediately after the end of that general meeting unless the resolution by which the Director was appointed or elected specifies a different time.

38.5 If the conduct or position of any Director is such that continuance in office appears to the majority of the Board to be prejudicial to the interests of the Company, a majority of Directors at a meeting of the Board specifically called for that purpose may suspend that Director.

38.6 A suspended Director may not take any part in the business or affairs of the Company until the suspension has been terminated.

38.7 Within fourteen (14) days of suspension of a Director, the other Directors must call a general meeting, at which the Members may consider a motion to remove the Director from office in accordance with clause 38.1(a).

38.8 If a motion to remove a suspended Director from office is not carried at the general meeting called to consider the matter, the suspension of the Director is terminated and the Director is reinstated in his or her office.

### **39 Additional and casual directors**

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39.1 Subject to clause 37, the Board may appoint any person as a Director to fill a casual vacancy or as an addition to the existing Directors.

39.2 Unless the Director is an Executive Director and the Listing Rules do not require that Director to be subject to retirement as set out in clause 40, a Director appointed under clause 39.1 will hold office until the end of the next annual general meeting of the Company, at which the Director may be re-elected but he or she will not be taken into account in determining the number of Directors who must retire by rotation at the meeting in accordance with clause 40.2.



## **40 Retirement**

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- 40.1 A Director appointed to fill a casual vacancy or as an addition to the Directors must retire from office at the next annual general meeting.
- 40.2 A Director must retire from office at the end of the third annual general meeting following the Director's last appointment or three (3) years, whichever is longer.
- 40.3 A retiring Director is eligible for re-election. If a Director retires at a general meeting, the Company may by resolution elect a person to fill the vacated office. If the vacated office is not filled and the retiring Director has offered himself or herself for re-election, the retiring Director is re-elected unless, at the meeting at which he or she retires:
- (a) it is resolved not to fill the vacated office; or
  - (b) a resolution for the re-election of the Director is put and lost.
- 40.4 This clause 40 does not apply to the Managing Director (but if there is more than one Managing Director, only one is entitled not to be subject to re-election under this clause). This clause 40 is subject to Section 203D(7) if that Section applies.

## **41 Resignation**

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A Director may resign as a Director by giving a written notice of resignation to the Company at its registered office unless such resignation would result in the Company contravening Section 201A(2).

## **42 Disqualification**

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A person ceases to be a Director:

- (a) if and when the Corporations Act or this Constitution otherwise requires or permits; or
- (b) if appointed as an Executive Director (including Managing Director) and thereafter ceases to be an employee of the Company.

Subject to the Corporations Act, that person is eligible for reappointment or re-election as a Director.

## **43 Remuneration of Non-Executive Directors**

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- 43.1 Subject to the Corporations Act and the Listing Rules, the Non-Executive Directors may collectively be paid remuneration for their services of a fixed sum not exceeding the aggregate maximum sum from time to time determined by the Company in general meeting. For the avoidance of doubt, remuneration in this provision does not include an amount that might be paid under clause 45 or clause 46.
- 43.2 The aggregate maximum sum must be divided among the Non-Executive Directors in such proportion and manner as the Board agrees and, in default of agreement, equally. The remuneration of the Non-Executive Directors accrues from day to day.
- 43.3 If a Non-Executive Director is required to perform services for the Company which in the opinion of the Board are outside the scope of the ordinary duties of a Director, the Company may pay the Director a fixed sum determined by the Board in addition to or instead of the Director's remuneration under clause 43.1. No payment may be made under this provision if the effect of the payment would be to exceed the aggregate amount of Directors' remuneration determined by the Company in general meeting.

- 43.4 Non-Executive Directors may not be paid a commission on or a percentage of profits or operating revenue.

#### **44 Remuneration of Executive Directors**

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The Board may determine the remuneration of an Executive Director. The remuneration may be by way of salary or commission or participation in profits or by all or any of these modes but must not include a commission on, or a percentage of, operating revenue.

#### **45 Expenses**

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The Company may pay the Directors' travelling and other expenses that they properly incur:

- (a) in attending Board meetings or any meetings of committees of the Board;
- (b) in attending any general meetings of the Company; and
- (c) in connection with the Company's business.

#### **46 Insurance**

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Subject to the Corporations Act, the Company may pay a premium in respect of a contract insuring a person who is or has been an Executive Director or Non-Executive Director against liability incurred by the person as a Director.

#### **47 Termination benefits**

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The Company may pay a gratuity, pension or allowance, on retirement or loss of office, to or for the benefit of a Director or to his or her widow or widower or dependants, only with the approval of the holders of ordinary Shares and in accordance with the Corporations Act and the Listing Rules.

#### **48 Meetings of Directors**

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- 48.1 Subject to the Corporations Act (particularly Section 195) and this Constitution, the Directors may meet together, adjourn and regulate their meetings as they think fit.
- 48.2 A Director may call a Board meeting. The Secretary must, at the request in writing of a Director, call a Board meeting.
- 48.3 Unless all Directors entitled to vote at the meeting otherwise agree, a person calling a Board meeting must give to each Director individually a notice of meeting that:
- (a) sets out the place, date and time for the meeting (and, if the meeting is to be held in two (2) or more places, the technology that will be used to facilitate this);
  - (b) states the general nature of the meeting's business and particularly any proposal to make a special decision;
  - (c) is accompanied by relevant information so far as reasonably available (if not already given to the Director); and
  - (d) is given at least two (2) clear days before the meeting (or such other period as all the Directors in office may as a matter of general policy determine otherwise).

- 48.4 The Board may elect a Director to chair its meetings. The Board may determine the period for which the Director is to be the chair. The Board must elect a Director present to chair a meeting, or part of it, if:
- (a) a Director has not already been elected to chair the meeting; or
  - (b) a previously elected chair is not available or declines to act, for the meeting or the part of the meeting.
- 48.5 Unless the Board determines otherwise, the quorum for a Board meeting is two (2) Directors and the quorum must be present at all times during the meeting.
- 48.6 A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- 48.7 The chair of a Board meeting has a casting vote if necessary in addition to any vote he/she have in his/her capacity as a Director.

## **49 Alternate Directors**

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- 49.1 A Director (other than an Alternate Director) may appoint an Alternate Director to exercise some or all of the Director's powers for a specified period or without specifying a period, provided the Board (without the vote of the appointing Director) has approved the appointment.
- 49.2 If the appointing Director requests the Company to give the Alternate Director notice of Board meetings, the Company must do so.
- 49.3 When an Alternate Director exercises the appointing Director's powers, the exercise of the powers is just as effective as if the powers were exercised by the appointing Director.
- 49.4 The appointing Director may terminate the Alternate Director's appointment at any time.
- 49.5 Appointments and terminations of Alternate Directors must be in writing. A copy must be given to the Company.
- 49.6 The Alternate Director's appointment ceases when the appointing Director ceases to be a Director.
- 49.7 An Alternate Director has one vote for each Director for whom he or she is an Alternate Director. If an Alternate Director is also a Director, he or she also has a vote as a Director.
- 49.8 The provisions of this Constitution that apply to the Directors also apply to Alternate Directors, except that Alternate Directors as such are not entitled to any remuneration from the Company.

## **50 Director's interests**

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- 50.1 Subject to the Corporations Act and the Listing Rules, a Director and an entity in which a Director has a direct or indirect interest in any capacity:
- (a) as required by the Corporations Act, a Director must give the Board notice of any material personal interest in a matter that relates to the affairs of the Company;
  - (b) subject to the provisions of this clause 50, a Director or a body or entity in which a Director has a direct or indirect interest may:
    - (i) enter into any agreement or arrangement with the Company;
    - (ii) hold any office or place of profit other than as auditor in the Company; and

(iii) act in a professional capacity other than as auditor for the Company,

and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.

- 50.2 The fact that a Director holds office as a Director, and has fiduciary obligations arising out of that office:
- (a) will not void or render voidable a contract made by a Director with the Company;
  - (b) will not void or render voidable a contract or arrangement entered into by or on behalf of the Company and in which the Director may have any interest; and
  - (c) will not require the Director to account to the Company for any profit realised by or under any contract or arrangement entered into by or on behalf of the Company and in which the Director may have any interest.
- 50.3 A Director may be or become a Director or other officer of, or otherwise be interested in
- (a) any related body corporate of the Company; or
  - (b) any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise, and is not accountable to the Company for any remuneration or other benefits received by the Director as a Director or officer of or from having an interest in, that body corporate.
- 50.4 A Director who has a material personal interest in a matter that is being considered at a Board meeting must not:
- (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter,
- unless permitted to do so by the Corporations Act in which case the Director may:
- (c) be counted in determining whether or not quorum is present at any meeting of Directors;
  - (d) consider that contract or arrangement or proposed contract or arrangement;
  - (e) sign or countersign any document relating to that contract or arrangement or proposed; and
  - (f) vote in respect of or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- 50.5 A Director must give to the Company such information about the Shares or other Securities in the Company in which the Director has a relevant interest and at the times that the Secretary requires, to enable the Company to comply with any disclosure obligations it has under the Corporations Act or the Listing Rules.

## **51 Circulating resolutions**

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- 51.1 The Directors may pass a resolution without a Board meeting being held if a majority of the Directors entitled to vote on the resolution (and being not less than the number required for a quorum at a Board meeting) sign a document containing a statement that they are in favour of the resolution set out in the document.
- 51.2 The resolution is passed when the last Director required to make up a majority signs. Signature of a document by an Alternate Director is not required if the relevant appointing Director has signed the document.

- 51.3 Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. A facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.
- 51.4 A document referred to in this clause 51 must be sent to every Director who is entitled to vote on the resolution (whether or not the Director signs the document).

## **52 Managing Director**

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- 52.1 The Board may appoint one (1) or more Directors to the office of Managing Director of the Company for the period, and on the terms (including as to remuneration) as the Board sees fit.
- 52.2 A person ceases to be Managing Director if he/she ceases to be a Director.
- 52.3 The Board may revoke or vary an appointment of a Managing Director, subject to any agreement made between the Managing Director and the Company.
- 52.4 The Board may confer on a Managing Director any of the powers that the Board can exercise.
- 52.5 The Board may revoke or vary a conferral of powers on the Managing Director, subject to any agreement made between the Managing Director and the Company.

## **53 Directors' powers**

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- 53.1 The business of the Company is to be managed by or under the direction of the Board.
- 53.2 The Board may exercise all the powers of the Company except any powers that the Corporations Act or this Constitution requires the Company to exercise in general meeting.

## **54 Delegation of powers**

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- 54.1 The Board may delegate any of its powers, other than those which by law must be dealt with by the Directors as a board, to a committee or person.
- 54.2 A delegation of powers by the Board:
- (a) may authorise the delegate to sub-delegate all or any of the powers vested in the delegate; and
  - (b) may be concurrent with or to the exclusion of the exercise by the Board of those powers.

## **55 Exercise of powers**

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A Director may act in the best interests of a holding company of which this Company is a wholly-owned subsidiary.

## **Part 5 – Other matters**

### **56 Secretary**

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- 56.1 The Board must appoint at least one Secretary of the Company and may at any time terminate any such appointment(s).

- 56.2 A Secretary holds office on the terms and conditions (including as to remuneration) that the Board determines.

## **57 Seal**

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### **57.1 Types of Seals**

- (a) The Company may have a common seal and may have:
- (i) a duplicate common seal, which must be a facsimile of the common seal with the addition on its face of the words "Share Seal" or "Certificate Seal"; and
  - (ii) an official seal for use in any place outside the state of its incorporation, which must be a facsimile of the common seal with the addition on its face of the name of every place where it is to be used.
- (b) The Board must provide for the safe custody of all seals in such manner as it thinks fit.

### **57.2 Use of seal**

- (a) The seal must be used only by the authority of the Directors and every document to which the seal is affixed must be signed by a Director and countersigned by the Secretary or a second Director or by some other person appointed generally or in a particular case by the Directors for that purpose.
- (b) The seal may be affixed to or printed on certificates for Shares, options and other Securities by mechanical means so as to produce a facsimile of such seal and signatures. In addition, the Directors may determine generally or in a particular case, that the seal and the signatures of the Director, Secretary or other person appointed by the Directors for the purpose of signing documents to which the seal is affixed, may be affixed, printed or otherwise written on documents by a specified mechanical means so as to produce a facsimile of such seal and signatures.

### **57.3 Cheques and Negotiable Instruments**

All cheques, bills of exchange, promissory notes, bankers drafts and other negotiable instruments and all receipts for money paid to the Company, must be signed, accepted, drawn, made, endorsed or otherwise executed for and on behalf of the Company by such persons (whether Directors or officers of the Company or not) in such manner as the Directors determine from time to time.

## **58 Accounts and audit**

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### **58.1 Requirements as to accounts and audits**

The Directors must ensure that the Company complies with the requirements under the Corporations Act as to accounts and audit.

### **58.2 Auditor**

The auditor of the Company or his/her agent authorised by him/her in writing for the purpose, is entitled to attend general meetings, to receive all notices of and other communications relating to general meetings which a Member is entitled to receive and to be heard at any general meeting which he attends on any part of the business of the meeting which concerns the auditor in his/her capacity as such, but does not have the right to vote at any general meeting.

## **59 Dividend rights**

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### **59.1 Power to declare Dividends**

Subject to this Constitution and the terms on which Shares are on issue:

- (a) the Directors may declare or pay Dividends as they see fit; and
- (b) the Directors may declare or determine that a Dividend is payable and fix:
  - (i) the amount;
  - (ii) the time for payment; and
  - (iii) the method of payment.

The methods of payment may include the payment of cash, the issue of Shares, the grant of options and the transfer of assets. The Directors may determine to establish and make rules for a Dividend reinvestment plan and/or a Dividend election plan in relation to any Dividend payable or to become payable by the Company.

### **59.2 Different classes of Shares**

Subject to the rights of holders of Shares issued on special terms:

- (a) a Dividend may be declared and paid on the Shares of one or more classes (if any) to the exclusion of the other or others;
- (b) if the Directors determine to declare Dividends on Shares of more than one class, the Dividend declared on the Shares of the class may be at a higher or lower rate than or at the same rate as the Dividend declared on the Shares of the other class or classes (if any).

### **59.3 Same class of Shares**

- (a) Subject to their terms of issue, Shares rank for Dividend from their date of allotment.
- (b) Subject to the Corporations Act, the Dividend to be paid to the holder of a partly-paid Share must not exceed that proportion of the Dividend to be paid to the holder of a fully paid Share that the amount paid (not credited nor paid in advance of a Call) is of the total amounts paid and payable (excluding amounts credited) for the Share.

### **59.4 Other provisions**

- (a) Notice of a Dividend declared must be given to the Members.
- (b) Subject to the Corporations Act and the CFS Rules, a transfer of Shares registered after the record date notified to ASX for determining entitlements to a Dividend paid or payable in respect of the transferred Shares, does not pass the right to that Dividend.
- (c) Interest is not payable on a Dividend.
- (d) During a breach of the Listing Rules relating to Shares which are Restricted Securities, or a breach of a restriction agreement, the holder of the relevant Restricted Securities is not entitled to any Dividend in respect of those Restricted Securities.

## **60 Payments by the Company**

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60.1 The Company may deduct from a Dividend payable to a Member all sums presently payable by the Member to the Company on account of Calls or otherwise in relation to Shares in the Company.

60.2 A Dividend or other money payable in respect of Shares may be paid:

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- (a) by cheque sent through the mail directed to:
  - (i) the address of the holder of the Shares shown in the register of Members or in the case of joint holders to the address of the joint holder of Shares named first in the register of Members; or
  - (ii) an address which the holder or that joint holder has in writing notified the Company as the address to which Dividends should be sent; or
- (b) by credit to or deposit in an account in Australia with an Australian ADI authorised by the holder of the Shares (or in the case of joint holders of which more than one have authorised an account, to the account authorised by that one of them named first in the register of Members).

## **61 Notices**

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The Company may give a notice required under this Constitution in any manner required or permitted by the Corporations Act for the giving by a company of a notice of meeting to a Member. A notice so given is taken to be served when such notice under the Corporations Act would be taken to be served. A certificate in writing signed by an officer of the Company, or by any person that the Company has engaged to maintain the register of Members, that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.

## **62 Winding up**

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Subject to the rights of the holders of Shares issued on special terms, if the Company is wound up the liquidator may with the sanction of a special resolution of the Company:

- (a) divide among the Members in kind all or any of the Company's assets and for that purpose determine (subject to the Corporations Act and the Listing Rules) how the liquidator will carry out the division between the Members or between different classes of Members, but may not require a Member to accept any Shares or other Securities in respect of which there is any liability; and/or
- (b) vest all or any of the Company's assets in a trustee on trusts determined by the liquidator for the benefit of the contributories.

## **63 Indemnity**

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- 63.1 To the extent permitted by law and that the officer is not indemnified by another person (including an insurer under an insurance policy any part of the premium of which is contributed by the Company), the Company indemnifies every person who is or has been an officer of the Company against any liability incurred by that person:
- (a) as such an officer of the Company; and
  - (b) to a person other than the Company or a related body corporate of the Company, unless the liability arises out of conduct on the part of the officer which:
    - (c) involves a lack of good faith; or
    - (d) is contrary to the Company's express instructions.
- 63.2 To the extent permitted by law and that the officer is not indemnified by another person (including an insurer under an insurance policy any part of the premium of which is contributed by the Company), the Company indemnifies every officer of the Company against any liability



for costs and expenses incurred by the person in his or her capacity as officer of the Company:

- (a) in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application, in relation to such proceedings, in which the court grants relief to the person under the Corporations Act.

63.3 Unless the Directors otherwise determine, this clause ceases to apply in favour of a person who does not to the satisfaction of the Directors cooperate with the Company in investigating, defending or resolving the matter to which this clause would otherwise apply.

63.4 The Company may execute a documentary indemnity (not inconsistent with applicable law or this clause) in any form in favour of a person who is or has been an officer of the Company.

63.5 In this clause 63, officer includes:

- (a) a Director and a Secretary;
- (b) an executive officer as defined by the Corporations Act; and
- (c) full-time employees of the Company as determined by the Directors.