

# **BOUNDARY BEND LIMITED**

ACN 115 131 667

## **Constitution**

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# BOUNDARY BEND LIMITED - Constitution

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## **1 Share Capital and Variation of Rights**

### **1.1 Directors to Issue Shares**

The issue of shares in the Company is under the control of the Directors who:

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

subject to the Corporations Act and any special rights conferred on the holders of any shares or class of shares.

### **1.2 Issue of Shares**

The Company in general meeting may, prior to the issue of any new shares, determine that all or any of them shall be offered in the first instance to all existing Members or to any particular class of shareholder in proportion to the capital respectively held by them.

### **1.3 Class Meetings**

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

### **1.4 Non-Recognition of Interests**

Except as required by law, the Company is not required to recognise:

- (a) a person as holding a share on any trust; or
- (b) any other interest in any share or any other right in respect of a share except an absolute right of ownership in the registered holder,

whether or not it has notice of the trust, interest or right.

### **1.5 Joint Holders of Shares**

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

- (a) they are taken to hold the shares as joint tenants with rights of survivorship; and
- (b) they and their respective personal representatives are liable both jointly and severally for all payments, including calls, which ought to be made in respect of the shares; but
- (c) the Company is not bound:
  - (i) to register more than three persons as joint holders of a share; or
  - (ii) to issue more than one certificate or holding statement in respect of shares jointly held.

## **1.6 Employee Securities Plan**

The Directors may:

- (a) implement an employee securities plan on such terms as they think fit under which securities of the Company or of a related body corporate or options to subscribe for such securities may be issued or otherwise provided to or for the benefit of any employee or class of employees (including any Director) of the Company or of a related body corporate or to an associate of that employee (including a company or trust in which that employee or an associate has an interest);
- (b) amend, suspend or terminate any employee securities plan implemented by them; and
- (c) give financial assistance in connection with the acquisition of securities of the Company or of a related body corporate under any employee securities plan in any way permitted by the Corporations Act.

Any employee securities plan in effect at the time of adoption of this Constitution continues in effect subject to this Constitution.

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## **2 Lien**

### **2.1 Lien on Shares**

The Company has a first and paramount lien on every share for:

- (a) all due and unpaid calls and instalments in respect of that share;
- (b) all money which the Company has been called on by law to pay, and has paid, in respect of that share;
- (c) interest at the Prescribed Interest Rate on the amount due from the date it becomes due until payment; and
- (d) reasonable expenses of the Company in respect of the default in payment.

### **2.2 Lien on Loans Under Employee Securities Plans**

The Company also has a first and paramount lien on each share registered in the name of the Member for all money payable to the Company by the Member for acquiring such shares under an employee securities plan.

### **2.3 Lien on Distributions**

A lien on a share under Article 2.1 or 2.2 extends to all distributions in respect of that share, including dividends.

### **2.4 Exemption from Lien**

The Directors may at any time exempt a share wholly or in part from the provisions of Articles 2.1, 2.2 or 2.3.

### **2.5 Extinguishment of Lien**

The Company's lien on a share is extinguished if a transfer of the share is registered without the Company giving notice of the lien to the transferee.

### **2.6 Company's Rights to Recover Payments**

A Member must reimburse the Company on demand in writing for all payments the Company makes to a government or taxing authority in respect of the Member, the death of a Member, the Member's shares or any distributions on the Member's shares, including dividends, where the Company is either:



- (a) obliged by law to make the relevant payment; or
- (b) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxing authority that the Company is obliged by law to make the relevant payment.

The Company is not obliged to advise the Member in advance of the Company's intention to make the payment.

## **2.7 Reimbursement is a Debt Due**

The obligation of the Member to reimburse the Company under Article 2.6 is a debt due to the Company as if it were a call on all of the Member's shares duly made at the time when the written demand for reimbursement is given by the Company to the Member. The provisions of this Constitution relating to non-payment of calls, including payment of interest and sale of the Member's shares under lien, apply to the debt.

## **2.8 Sale Under Lien**

Subject to Article 2.9, the Company may sell, in any manner the Directors think fit, any share on which the Company has a lien.

## **2.9 Limitations on Sale Under Lien**

A share on which the Company has a lien may not be sold by the Company unless:

- (a) an amount in respect of which the lien exists is presently payable; and
- (b) the Company has, not less than 14 days before the date of sale, given to the registered holder of the share or the person entitled to the share under Articles 7.1, 7.3, 7.4 or 7.5 a notice in writing setting out, and demanding payment of, the amount which is presently payable in respect of which the lien exists.

## **2.10 Transfer on Sale Under Lien**

For the purpose of giving effect to a sale under Article 2.8, the Company may receive the consideration, if any, given for the share so sold and may execute a transfer of the share sold in favour of the purchaser of the share, or do all such other things as may be necessary or appropriate for it to do to effect the transfer. The purchaser is not bound to see to the application of the purchase money.

## **2.11 Irregularity or Invalidity**

The title of the purchaser to a share sold under Article 2.8 or transferred under Article 2.10 is not affected by any irregularity or invalidity in connection with the sale of the share.

## **2.12 Proceeds of Sale**

The proceeds of a sale under Article 2.8 must be applied by the Company in payment of the amount in respect of which the lien exists as is presently payable, and the residue, if any, must be paid to the person entitled to the share immediately before the sale.

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# **3 Calls on Shares**

## **3.1 Directors May Make Calls**

The Directors may:

- (a) make calls on a Member in respect of any money unpaid on the shares of that Member, and not by the terms of issue of those shares made payable at fixed times;
- (b) make a call payable by instalments; and
- (c) revoke or postpone a call.

### **3.2 Time of Call**

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

### **3.3 Members' Liability**

Each Member must, upon receiving not less than 10 Business Days notice specifying the time or times and place of payment, pay to the Company at the time or times and place so specified the amount called on that Member's shares.

### **3.4 Joint Holders' Liability**

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

### **3.5 Non-Receipt of Notice**

The non-receipt of a notice of any call by, or the accidental omission to give notice of a call to, a Member does not invalidate the call.

### **3.6 Interest on Default**

If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due must pay interest on the sum to the time of actual payment at the Prescribed Interest Rate. The Directors may waive payment of that interest wholly or in part.

### **3.7 Fixed Instalments**

Any sum that, by the terms of issue of a share, becomes payable on issue of the share or at a fixed date, is to be taken to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable. In the case of non-payment, all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

### **3.8 Differentiation Between Shareholders**

The Directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

### **3.9 Prepayment of Calls and Interest**

The Directors may:

- (a) accept from a Member the whole or a part of the amount unpaid on a share although no part of that amount has been called;
- (b) authorise payment by the Company of interest on the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the Prescribed Interest Rate, as is agreed on between the Directors and the Member paying the sum; and
- (c) repay to a Member all or any of an amount accepted under paragraph (a).

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## **4 Forfeiture of Shares**

### **4.1 Notice Requiring Payment of Call**

If a Member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the Directors may, at any time afterwards during such time as any part of the call or instalment remains unpaid, give a notice to the Member requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all costs and expenses that may have been incurred by the Company by reason of that non-payment.

#### **4.2 Contents of Notice**

A notice given under Article 4.1 must name a further day, not earlier than the expiration of 14 days from the date of service of the notice, on or before which the payment required by the notice is to be made and must state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

#### **4.3 Forfeiture for Failure to Comply with Notice**

A share in respect of which a notice under Article 4.1 has not been complied with may at any time, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect.

#### **4.4 Dividends and Distributions included in Forfeiture**

A forfeiture under Article 4.3 includes all dividends and other distributions declared or to be made in respect of the forfeited shares and not actually paid or distributed before the forfeiture.

#### **4.5 Sale or Re-Issue of Forfeited Shares**

Subject to the Corporations Act, a share forfeited under Article 4.3 may be sold, re-issued or otherwise disposed of to whom and on such terms as the Directors think fit.

#### **4.6 Notice of Forfeiture**

If any share is forfeited under Article 4.3 notice of the forfeiture must be given to the Member holding the share immediately before the forfeiture and an entry of the forfeiture and its date must be made in the Register.

#### **4.7 Surrender Instead of Forfeiture**

The Directors may accept the surrender of any share which they are entitled to forfeit on any terms they think fit and any share so surrendered is taken to be a forfeited share.

#### **4.8 Cancellation of Forfeiture**

At any time before a sale or disposition of a share, the forfeiture of that share may be cancelled on such terms as the Directors think fit.

#### **4.9 Effect of Forfeiture**

A person whose shares have been forfeited:

- (a) ceases to be a Member in respect of the forfeited shares and loses all entitlement to dividends and other distributions or entitlements on the shares; and
- (b) remains liable to pay the Company all money that, at the date of forfeiture, was payable by that person to the Company in respect of the forfeited shares, plus interest at the Prescribed Interest Rate from the date of forfeiture and also reasonable expenses of sale.

#### **4.10 Evidence of Forfeiture**

A statement in writing declaring that the person making the statement is a director or a secretary of the Company, and that a share in the Company has been forfeited in accordance with this Constitution on the date stated in the statement, is prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.

#### **4.11 Transfer of Forfeited Share**

The Company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute or effect a transfer of the share in favour of the person to whom the share is sold or disposed of.

#### **4.12 Registration of Transferee**

On the execution of the transfer, the transferee must be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.

#### **4.13 Irregularity or Invalidity**

The title of a transferee under Article 4.11 to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.

#### **4.14 Forfeiture Applies to Non-Payment of Instalment**

The provisions of this Constitution as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, as if that sum had been payable by virtue of a call duly made and notified.

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### **5 Indemnity by Members**

#### **5.1 Indemnity for Taxation**

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

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

whether as a consequence of:

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

then, in addition to any right or remedy the Company may have at all or otherwise:

- (i) the Member or the Member's personal representative must fully indemnify the Company against the liability of the Company to make the payment and must reimburse the Company for any payment made immediately after demand for the payment has been made by the Company, together with interest at the Prescribed Interest Rate on the amount paid by the Company from the date of the payment until the date on which the Company is reimbursed in full;
- (j) the Company has a lien upon all dividends, interest and other money payable in respect of the shares held solely or jointly by the Member or the Member's personal representative for all money payable to the Company under this Article 5.1; and
- (k) the Company may refuse to register a transfer of any shares by or to the Member or the Member's personal representative until all money payable to the Company under this Article 5.1 has been paid,

but the Directors may:

- (l) exempt a share from the application of all or any part of this Article 5.1; and

- (m) waive all or any part of a payment due to the Company under this Article 5.1.

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## **6 Transfer of Shares**

### **6.1 Forms of Instrument of Transfer**

Subject to this Constitution, shares in the Company are transferable:

- (a) by instrument in writing in any usual or common form or in any other form that the Directors approve; or
- (b) by any other method of transfer of marketable securities which is approved by the Directors.

### **6.2 Execution and Delivery of Transfer**

If an instrument of transfer is to be used to transfer a share in accordance with paragraph 6.1(a), it must be:

- (a) a proper instrument of transfer within the meaning of the Corporations Act;
- (b) executed by or on behalf of both the transferor and the transferee unless it is a sufficient transfer of marketable securities within the meaning of the Corporations Act; and
- (c) left for registration at the share registry of the Company, accompanied by the information the Directors properly require to show the right of the transferor to make the transfer,

and in that event the Company must, subject to the powers vested in the Directors by this Constitution, register the transferee as the holder of the share.

### **6.3 Effect of Registration**

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

### **6.4 Company to Register Forms Without Charge**

The Company must register all registrable transfer forms, split certificates, renunciations and transfers, issue certificates and transmission receipts and mark or note transfer forms without charge except where the issue of a certificate is to replace a lost or destroyed certificate.

### **6.5 Power to Refuse to Register**

The Directors may refuse to register a transfer of other shares in the Company.

### **6.6 Written Notice of Refusal**

If, in the exercise of their rights under Article 6.5, the Directors refuse to register a transfer of a security they must give written notice of the request or refusal within 5 Business Days to the holder of the security, the transferee and the broker lodging the transfer (if any). Failure to give such notice does not invalidate the decision of the Directors.

### **6.7 Company to Retain Instrument of Transfer**

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

### **6.8 Refusal to Register**

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

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## **7 Transmission of Shares**

### **7.1 Death of Member**

If a Member (who does not own shares jointly) dies, the Company will recognise only the personal representative of the Member as being entitled to the Member's interest in the shares.

### **7.2 Information Given by Personal Representative**

- (a) If the personal representative gives the Directors the information they reasonably require to establish the representative's entitlement to be registered as a holder of the shares, the personal representative:
  - (i) 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; and
  - (ii) is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.
- (b) On receiving an election under paragraph (a)(i)(A), the Company must register the personal representative as the holder of the shares.
- (c) A transfer under paragraph (a)(i)(B) is subject to the provisions of this Constitution that apply to transfers generally.

### **7.3 Death of Joint Owner**

If a Member who owns shares jointly dies, the Company will recognise only the surviving joint holder as being entitled to the Member's interest in the shares. The estate of the Member is not released from any liability in respect of the shares.

### **7.4 Bankruptcy**

- (a) If a person entitled to shares because of the bankruptcy of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares, the person 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.
- (b) On receiving an election under paragraph (a)(i), the Company must register the person as the holder of the shares.
- (c) A transfer under paragraph (a)(ii) is subject to the provisions of this Constitution that apply to transfers generally.
- (d) This Article 7.4 has effect subject to the *Bankruptcy Act 1966*.

### **7.5 Mental Incapacity**

- (a) If a person entitled to shares because of the mental incapacity of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares, the person:

- (i) may:
  - (A) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; and
  - (B) by giving a completed transfer form to the Company, transfer the shares to another person; and
- (ii) is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.
- (b) On receiving an election under paragraph (a)(i)(A), the Company must register the person as the holder of the shares.
- (c) A transfer under paragraph (a)(i)(B) is subject to the provisions of this Constitution that apply to transfers generally.

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## 8 Proportional takeovers

### 8.1 Definitions

In this rule 8:

- (a) **“proportional takeover offer”** means a proportional takeover bid as defined in section 9 of the Corporations Act and regulated by section 648D of the Corporations Act;
- (b) **“relevant day”** in relation to a proportional takeover offer means the day that is the 14<sup>th</sup> day before the end of the period during which the offers under the proportional takeover offer remain open; and
- (c) a reference to an associate of another person has the meaning given to that expression by Division 2 of Part 1.2 of the Corporations Act.

### 8.2 Requirement of Member approval

Where offers have been made under a proportional takeover offer in respect of shares included in a class of shares in the Company:

- (a) the registration of a transfer giving effect to a contract resulting from the acceptance of an offer made under the proportional takeover offer is prohibited unless and until a resolution (in this rule 8.2 referred to as an **“approving resolution”**) to approve the proportional takeover offer is passed in accordance with this rule 8;
- (b) a person (other than the offeror or an associate of the offeror) who, as at the end of the day on which the first offer under the proportional takeover offer was made, held shares in that class is entitled to vote on an approving resolution and, for the purpose of so voting, is entitled to 1 vote for each of the shares;
- (c) an approving resolution must be voted on at a meeting, convened and conducted by the Company, of the persons entitled to vote on the resolution; and
- (d) an approving resolution that has been voted on, is taken to have been passed if it is passed by more than 50% of the votes cast by Members entitled to vote on the resolution, and otherwise is taken to have been rejected.

### 8.3 General meeting requirements

- (a) The provisions of this Constitution that apply in relation to a general meeting of the Company apply with any modifications the circumstances require, in relation to a meeting that is convened under this rule 8 as if the last mentioned meeting were a general meeting of the Company.

- (b) Where takeover offers have been made under a proportional takeover offer, the Directors must ensure that a resolution to approve the proportional takeover offer is voted on in accordance with this rule 8 before the relevant day in relation to the proportional takeover offer.

#### **8.4 Outcome of Member consideration**

- (a) Where a resolution to approve a takeover scheme is voted on in accordance with this rule 8, the Company must, on or before the relevant day in relation to the proportional takeover offer give to the offeror a notice in writing stating that a resolution to approve the proportional takeover offer has been voted on and that the resolution has been passed, or has been rejected, as the case requires.
- (b) Where, at the end of the day before the relevant day in relation to a proportional takeover offer under which offers have been made, no resolution to approve the proportional takeover offer has been voted on in accordance with this rule 8, a resolution to approve the proportional takeover offer must, for the purposes of this rule 8, be treated as having been passed in accordance with this rule 8.
- (c) Where a resolution to approve a proportional takeover offer is voted on in accordance with this rule 8 before the relevant day in relation to the proportional takeover offer and is rejected, then:
  - (i) despite section 652A of the Corporations Act, all offers under the proportional takeover offer that have not, as at the end of the relevant day, been accepted, and all offers under the takeover scheme that have been accepted and from whose acceptance binding contracts have not, at the end of the relevant day, resulted, must be treated as withdrawn at the end of the relevant day; and
  - (ii) a person who has accepted an offer made under the proportional takeover offer is entitled to rescind the contract (if any) resulting from that acceptance.

#### **8.5 Effect of rule**

This rule 8 ceases to have effect on the 3<sup>rd</sup> anniversary of the date of its adoption or of its most recent renewal.

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## **9 General Meetings**

### **9.1 Annual General Meeting**

Annual general meetings of the Company are to be held in accordance with the Corporations Act.

### **9.2 Convening General Meeting**

A Director or the Directors may convene and arrange to hold a general meeting of the Company whenever they think fit and must do so if required to do so under the Corporations Act.

### **9.3 Notice of General Meeting**

- (a) Notice of a meeting of Members must be given in accordance with Part 22 of this Constitution and Part 2G.2, Division 3 of the Corporations Act.
- (b) A person may waive notice of any general meeting by giving notice in writing to the Company to that effect.

### **9.4 Technology**

The Company may hold a meeting of Members in two or more places simultaneously using any technology that, in the opinion of the Directors, gives the Members as a whole a reasonable opportunity to participate.



## **9.5 Cancellation or Postponement**

- (a) Where a meeting of Members (including an annual general meeting) is convened by the Directors they may, whenever they think fit, cancel or relocate the meeting or postpone the holding of the meeting to a date and time determined by them.
- (b) This Article 9.5 does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members or by the Directors on the request of Members.

## **9.6 Notice of Cancellation or Postponement**

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

- (a) to each Member individually; and
- (b) to each other person entitled to be given notice of a meeting of the Company's Members under the Corporations Act.

## **9.7 Contents of Notice of Postponement**

A notice of postponement of a general meeting must specify:

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

## **9.8 Time for Postponement of Meeting**

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

## **9.9 Business at Postponed Meeting**

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

## **9.10 Proxy, Attorney or Representative at Postponed Meeting**

Where:

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

then, by force of this Article 9.10, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the Member appointing the proxy, attorney or Representative gives to the Company at the Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

### **9.11 Non-Receipt of Notice**

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

### **9.12 Appointing a proxy**

- (a) A Member who is entitled to attend and cast a vote at a general meeting of the Company may appoint an individual or a body corporate as the Member's proxy to attend and vote for the Member at the meeting. The proxy need not be a Member.
- (b) For an appointment of a proxy for a general meeting of the Company to be effective, the following documents must be received by the Company at least 48 hours before the meeting:
  - (i) the proxy's appointment; and
  - (ii) if the appointment is signed or otherwise authenticated by the appointor's attorney, the authority under which the appointment was signed or authenticated or a certified copy of the authority.

### **9.13 Body corporate representative**

A Member who is a body corporate may appoint an individual as a Representative to exercise all or any of the powers the body corporate may exercise.

### **9.14 Attorney of Member**

An attorney for a Member may do whatever the Member could do personally as a Member, but if the attorney is to vote at a general meeting of the Company the instrument conferring the power of attorney or a certified copy of it must be produced to the Company at least 48 hours before the meeting, in the same way as the appointment of a proxy.

### **9.15 Electronic Lodgment of Proxies, Attorneys and Representatives**

The Directors may permit proxy, attorney or Representative appointments to be lodged electronically and, subject to any applicable law, may determine what will constitute acceptable authentication or signing of proxy, attorney or Representative appointments for the purpose of electronic lodgment, and may determine such other incidental matters or procedures as are necessary or desirable to permit or facilitate electronic lodgment of proxy, attorney or Representative appointments.

### **9.16 Directors May Waive Requirements of Proxies, Attorneys and Representatives**

Subject to the Corporations Act, the Directors may waive any requirements in relation to the form, execution and lodgment of appointments of a proxy, attorney or Representative and, in particular, may, upon the production of such other evidence as the Directors require to prove the validity of the appointment, accept an oral appointment of a proxy, attorney or Representative or an appointment that is not properly executed.

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## **10 Proceedings at General Meetings**

### **10.1 Reference to a Member**

Unless the contrary intention appears, a reference to a Member in this Part 10 means a person who is a Member, or is a proxy, attorney or Representative of that Member.

### **10.2 Quorum**

The quorum necessary for the transaction of business at a general meeting is:

- (a) if there are less than 50 Members on the Register, 5 Members entitled to vote at the meeting present in person or by proxy, attorney or Representative; and
- (b) otherwise, 25 Members entitled to vote at the meeting present in person or by proxy, attorney or Representative.

### **10.3 Requirement for a Quorum**

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the beginning of a meeting it is taken to be present throughout the meeting unless the chairperson of the meeting (on the chairperson's own motion or at the instance of a Member, proxy, attorney or Representative who is present) declares otherwise.

### **10.4 Quorum and Time**

If, within 30 minutes after the time appointed for a meeting, a quorum is not present, the meeting:

- (a) if convened by a Director, or at the request of Members, is dissolved; and
- (b) in any other case stands adjourned to the same day in the next week and the same time and place or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

### **10.5 Adjourned Meeting**

If, at an adjourned meeting, a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

### **10.6 Chairperson of General Meeting**

If the Directors have elected one of their number as chairperson of their meetings, or in his or her absence a deputy chairperson, that person is entitled to preside as chairperson at a general meeting.

### **10.7 Absence of Chairperson**

If a general meeting is held and:

- (a) a chairperson has not been elected by the Directors; or
- (b) the elected chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairperson of the meeting (in order of precedence):

- (c) the deputy chairperson elected by the Directors (if any);
- (d) a Director chosen by a majority of the Directors present (if more than one Director present);
- (e) the only Director present; or
- (f) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

### **10.8 Conduct of General Meetings**

The chairperson of a general meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is, in the chairperson's opinion, necessary' or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and

- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairperson under this Article 10.8 is final.

#### **10.9 Adjournment of General Meeting**

- (a) The chairperson of a general meeting may, at any time during the meeting, adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.
- (b) In exercising the discretion in paragraph (a), the chairperson may, but need not, seek the approval of the Members present. Unless required by the chairperson, a vote may not be taken or demanded by the Members present in respect of any adjournment.
- (c) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

#### **10.10 Notice of Adjourned Meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for 1 month or more, In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

#### **10.11 Questions Decided by Majority**

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

#### **10.12 Casting Vote for Chairperson**

If there is an equality of votes, either on a show of hands or on a poll, the chairperson of the meeting is entitled to a casting vote in addition to any votes to which the chairperson is entitled as a Member or proxy or attorney or Representative.

#### **10.13 Declaration of Results**

At any general meeting, a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded and the demand is not withdrawn. A declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the chairperson nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

#### **10.14 Poll**

- (a) If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chairperson and the result of the poll is the resolution of the meeting at which the poll was demanded.
- (b) No poll shall be demanded for the election of a chairperson.
- (c) A poll demanded on a question of adjournment must be taken immediately.
- (d) A demand for a poll maybe withdrawn.
- (e) A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

#### **10.15 Entitlement to Vote**

Subject to any rights or restrictions for the time being attached to any class or classes of shares and to this Constitution:

- (a) on a show of hands, each Member present in person and each other person present as proxy, attorney or Representative of a Member has one vote; and
- (b) on a poll, each Member present in person has one vote for each fully paid share held by the Member and each person present as proxy, attorney or Representative of a Member has one vote for each fully paid share held by the Member that the person represents.

#### **10.16 Joint Shareholders Vote**

If a share is held jointly and more than one Member votes in respect of that share, only the vote of the Member whose name appears first in the Register counts.

#### **10.17 Votes of Two Proxies or Attorneys**

If a Member appoints two proxies or attorneys to vote in respect of shares held by the Member and both proxies or attorneys are in attendance at a general meeting:

- (a) only the first person named in the instrument appointing the proxies or attorneys or, if they are named in separate instruments, the person whose surname is earlier in alphabetical sequence, may vote on a show of hands; and
- (b) each proxy or attorney may exercise the votes in respect of those shares for which the proxy or attorney has been validly appointed (or which the proxy may exercise pursuant to the Corporations Act) on a poll.

#### **10.18 Vote of Shareholder of Unsound Mind**

If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, then the Member's committee or trustee or any other person who properly has the management of the Member's estate may exercise any rights of the Member in relation to a general meeting as if the committee, trustee or other person were the Member.

#### **10.19 Vote of Minor**

If a Member is a minor, the parent or guardian of that Member may vote at any general meeting upon producing such evidence of the parental relationship or of the appointment of the guardian as the Directors may require. Any vote tendered by a parent or guardian in accordance with this Article 10.19 must be accepted to the exclusion of the vote of the Member who is a minor.

#### **10.20 Effect of Unpaid Call**

A Member is not entitled at a general meeting to cast a vote attached to a share on which a call is due and payable and has not been paid.

#### **10.21 Validity of Votes**

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies;
- (b) the Member is mentally incapacitated;
- (c) the Member revokes the appointment or authority;
- (d) the Member revokes the authority under which the appointment was made by a third party; or

- (e) the Member transfers the share in respect of which the appointment or authority was given.

#### **10.22 Objection to Voting Qualification**

An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

- (a) may not be raised except before or at that meeting or adjourned meeting; and
- (b) must be referred:
  - (i) if the objection is raised before the meeting, to the Directors; and
  - (ii) if the objection is raised at the meeting, to the chairperson of the meeting, whose decision is final.

Subject to the Corporations Act, a vote not disallowed under the objection is valid for all purposes.

#### **10.23 Director Entitled to Notice of Meeting**

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

#### **10.24 Direct voting**

The Directors may determine that, at any general meeting, a Member who is entitled to attend and vote at that meeting is entitled to a direct vote. A direct vote includes a vote delivered to the Company by post, facsimile transmission or other electronic means approved by the Directors. The Directors may prescribe rules to govern direct voting including rules specifying the form, method and timing of giving the direct vote in order for the vote to be valid.

#### **10.25 Members' Resolution in Writing**

A resolution signed by all Members for the time being shall be as valid and as effectual as if it had been passed at a general meeting duly convened and constituted and the Members may sign separate copies of the resolutions or document circulated for that purpose.

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### **11 Directors**

#### **11.1 Number of Directors**

- (a) The number of Directors is not to be less than 3 nor, subject to ordinary resolution of the Company in general meeting, more than 11.
- (b) Subject to paragraph (a) and any ordinary resolution of the Company in general meeting, the number of Directors shall, from time to time, be determined by the Directors.
- (c) At least 2 Directors must ordinarily reside in Australia.
- (d) A Director need not hold any shares.

#### **11.2 Change of Number of Directors**

The Company in general meeting may, by resolution, increase or reduce the number of Directors and may also determine the rotation in which the increased or reduced number are to retire from office.

#### **11.3 Director Elected at General Meeting**

- (a) The Company may, at a general meeting at which a Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office.

- (b) In default, the retiring Director shall be deemed to have been re-elected unless it is resolved at the meeting that the vacated office should not be filled or a resolution for the re-election of that Director is put and lost.

#### **11.4 Eligibility for Election**

Except for:

- (a) a person who is eligible for election or re-election under Article 11.5; or
- (b) a person whose office as a Director becomes vacant by operation of the Corporations Act, a person is not eligible for election as a Director at a general meeting of the Company unless a consent to nomination signed by the person has been lodged at the Registered Office at least:
  - (c) in the case of a person recommended for election by the Directors, 9 Business Days before the general meeting; and
  - (d) in any other case, 30 Business Days before the general meeting.

Notice of every candidate shall be served by the Company on the Members at least 5 Business Days prior to the meeting at which the election takes place.

#### **11.5 Casual Vacancy**

- (a) The Directors may, at any time, appoint any person to be a Director either to fill a casual vacancy or as an addition to the existing Directors provided the total number of Directors does not exceed the maximum number determined in accordance with Article 11.1.
- (b) A Director appointed under this Article 11.5 holds office until the conclusion of the next annual general meeting of the Company and is eligible for re-election at that meeting.

#### **11.6 Directors' Fees**

The Directors are entitled to be paid Directors' fees for their services as Directors in such sum as they may from time to time determine. The total amount or value of the Directors' fees must not exceed the maximum amount from time to time, which may be determined by the Company in general meeting. The Directors' fees are to be divided among the Directors in the proportion and manner agreed between them or, in default of agreement, equally. The Directors' fees accrue from day to day.

#### **11.7 Additional or Special Duties**

If a Director, at the request of the Directors, performs additional or special duties for the Company the Company may remunerate that Director as determined by the Directors and that remuneration may be either in addition to or in substitution for that Director's remuneration under Article 11.6.

#### **11.8 Expenses**

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

#### **11.9 Directors' Interests**

Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in the Company, except that of Auditor;
- (b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which the Company has an interest of any kind;

- (c) enter into any contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as Auditor;
- (f) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors;
- (g) sign or participate in the execution of a document by or on behalf of the Company; and
- (h) do any of the above despite the fiduciary relationship of the Director's office:
  - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement.

A reference to the Company in this Article 11.9 is also a reference to each related body corporate of the Company.

#### **11.10 Vacation of Office**

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) resigns from the office by notice in writing to the Company;
- (c) is removed from office by a resolution of the Company; or
- (d) is not present personally or by Alternate Director at meetings of the Directors for a continuous period of 3 months without leave of absence from the Directors.

#### **11.11 Actions of Directors**

- (a) All bona fide acts of the Directors in meeting or committee or by any person acting as a Director or Executive Director shall, notwithstanding any defect in the appointment of any such Director or Executive Director or that any of them were disqualified or, subject to paragraph (b), that due notice of any such meeting had not been given, be as valid as if all necessary requirements had been complied with.
- (b) Acts carried out at a Directors' meeting will be void if, within 1 month from the date of such meeting, objection is taken by a Director who did not receive due notice of the meeting.

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## **12 Powers and Duties of Directors**

### **12.1 Directors to Manage Company**

The business of the Company is to be managed by the Directors, who may exercise all such powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.

### **12.2 Specific Powers of Directors**

Without limiting the generality of Article 12.1, the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company or all or any



of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

### **12.3 Appointment of Attorney**

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for such period and subject to such conditions as they think fit.

### **12.4 Provisions in Power of Attorney**

A power of attorney granted under Article 12.3 may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney,

### **12.5 Minutes**

The Directors must cause minutes of meetings to be made and kept in accordance with the Corporations Act.

### **12.6 Signing of Cheques**

The Directors may determine the manner in which, and persons by whom, cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

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## **13 Alternate Directors**

### **13.1 Appointment**

- (a) Subject to the Corporations Act, a Director may appoint a person to be an Alternate Director in the Director's place during such period as the Director thinks fit.
- (b) A person may not act as an Alternate Director for more than one Director.

### **13.2 Directors' Meetings**

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not attend a meeting, is entitled to attend and vote in the appointor's place.

### **13.3 Powers**

An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor except if the appointor has exercised or performed them.

### **13.4 Responsibility for Own Acts and Defaults**

Whilst acting as a Director, an Alternate Director:

- (a) is an officer of the Company and not the agent of the appointor; and
- (b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

### **13.5 Remuneration**

Subject to Article 11.6, an Alternate Director is entitled to be paid such remuneration as the Directors think fit either in addition to or in reduction of the remuneration payable to the appointor.

### **13.6 Termination of Appointment**

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of the appointment of the Alternate Director has not expired and terminates in any event if the appointor ceases to be a Director.

### **13.7 Appointment or Termination in Writing**

An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment and delivered to the Company.

### **13.8 Number of Directors**

- (a) An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.
- (b) In determining whether a quorum is present at a meeting of Directors, an Alternate Director who attends the meeting is to be counted as a Director for the Director on whose behalf the Alternate Director is attending the meeting.

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## **14 Proceedings of Directors**

### **14.1 Directors' Meetings**

The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit. The Directors may use any form of technology to conduct their meetings as they think fit.

### **14.2 Director May Convene a Meeting**

A Director may, at any time, and the Secretary must, on the written request of a Director, convene a meeting of the Directors. At least 48 hours notice of any meeting, and the agenda that is to be relevant to it, shall be given to all the Directors unless all the Directors waive that requirement.

### **14.3 Voting**

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote and that decision is for all purposes a decision of the Directors.

### **14.4 Alternate Directors and Voting**

A person who is present at a meeting of Directors as an Alternate Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director and, if that person is also a Director, has one vote as a Director in that capacity.

### **14.5 Chairperson's Casting Vote**

In the event of an equality of votes, the chairperson of the meeting has a casting vote except at any meeting at which only two of the Directors who are present are entitled to vote.

### **14.6 Quorum for Directors' Meeting**

- (a) No business may be transacted at a meeting of Directors unless a quorum is present at the time when the meeting proceeds to business and throughout the meeting.
- (b) At a meeting of Directors, the number of Directors whose presence in person or by proxy is necessary to constitute a quorum is two Directors or any greater number determined by the Directors.

#### **14.7 Remaining Directors May Act**

If, due to a vacancy or vacancies in the offices of Directors, the number of Directors is reduced below the minimum fixed by Article 11.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a general meeting of the Company.

#### **14.8 Chairperson and Deputy Chairperson**

- (a) The Directors may elect one of their number as chairperson and another as deputy chairperson of their meetings and may also determine the period for which the persons elected are to hold office.
- (b) The offices of chairperson and deputy chairperson may, if the Directors so resolve, be treated as additional or special duties performed by the Directors holding those offices for the purposes of Article 11.7.

#### **14.9 Absence of Chairperson at Directors' Meeting**

If a Directors' meeting is held and:

- (a) a chairperson has not been elected under Article 14.8; or
  - (b) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act; and
  - (c) a deputy chairperson is not present to act as chairperson for that meeting,
- the Directors present must elect one of their number to be a chairperson of the meeting.

#### **14.10 Circular Resolutions**

- (a) If a resolution in writing is submitted to the Directors individually and approved of in writing by a majority of the Directors for the time being, that resolution is to be taken as having been passed by a meeting of the Directors.
- (b) For the purposes of paragraph (a):
  - (i) the meeting is taken as having been held on the day on which, and at the time at which, the document was last assented to by a Director whose assent then constituted assent by a majority of the Directors;
  - (ii) two or more separate documents in identical terms each of which is assented to by one or more Directors are to be taken as constituting one document; and
  - (iii) a Director may signify assent to a document by signing the document or by notifying the Company of the Director's assent in person, or by a cable telegram, telex, facsimile transmission or other document produced by electronic or mechanical or other means where a copy or representation of the Director's signature appears on the document in the possession of the Company or the name of the Director appears on the document at, or towards, the end thereof.
- (c) Where a Director signifies assent to a document otherwise than by signing the document the Director must, by way of confirmation, sign the document at the next meeting of the Directors attended by that Director but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (d) Where a document is assented to in accordance with paragraph (a) the document is to be taken as a minute of a meeting of the Directors.

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## **15 Committees**

### **15.1 Delegation to Committee**

- (a) Without limiting the Directors' power to delegate under section 198D of the Corporations Act, the Directors may delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to a committee or committees consisting of such persons as they think fit.
- (b) Any such delegation must require (and if not so required, it will be deemed) that a quorum of such committee or committees shall consist of at least two non-Executive Directors.

### **15.2 Powers Delegated to Directors' Committees**

A committee to which any powers have been delegated under Article 15.1 must exercise those powers in accordance with any directions of the Directors. A power so exercised is taken to have been exercised by the Directors.

### **15.3 Meetings of Directors' Committee**

- (a) A committee may meet and adjourn as it thinks fit or as determined by the Directors.
- (b) The meetings shall be governed by the provisions of this Constitution for regulating meetings and the proceedings of the Directors so far as they are applicable and are not superseded by any regulations made by the Directors.

### **15.4 Remuneration**

Membership of a committee by a Director may, if the Directors so resolve, be treated as additional or special duties performed by that Director for the purposes of Article 11.7.

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## **16 Executive Directors**

### **16.1 Appointment of Managing Director**

The Directors may appoint one of their number to the office of Managing Director. A Managing Director holds office as a Director by virtue of his or her appointment for such period and upon such terms as may be agreed between the Directors and the Managing Director.

### **16.2 Appointment of Deputy Managing Director**

The Directors may appoint one or more of their number to the office of deputy Managing Director.

### **16.3 Cessation of Office**

- (a) A Managing Director or deputy Managing Director automatically ceases to be Managing Director or deputy Managing Director on ceasing to be a Director or ceasing to be an employee of the Company.
- (b) A Managing Director automatically ceases to be a Director upon ceasing to be Managing Director.

### **16.4 Appointment of Executive Directors**

- (a) The Directors may confer on an Executive Director such title as they think fit.
- (b) An Executive Director (other than a Managing Director or deputy Managing Director) may be appointed on the basis that the Executive Director's appointment:
  - (i) automatically terminates if the Executive Director ceases to be an employee of the Company or of a related body corporate in a capacity other than Director; or

- (ii) as an employee of the Company or of a related body corporate in a capacity other than Director automatically terminates if the Executive Director ceases to be a Director.
- (c) Subject to Article 16.1, an Executive Director may be appointed for such period and on such terms (including as to remuneration) as the Directors think fit.

## **16.5 Removal and Dismissal**

Subject to the terms of any agreement between the Company and an Executive Director, the Executive Director may be removed or dismissed by the Directors at any time, with or without cause.

## **16.6 Powers**

The Directors may:

- (a) confer on an Executive Director such of title powers exercisable by them, on such terms and conditions and with such restrictions, as they think fit; and
- (b) withdraw or vary any of the powers conferred on an Executive Director.

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# **17 Secretary**

## **17.1 Appointment of Secretary**

- (a) There must be at least one Secretary of the Company who is to be appointed by the Directors.
- (b) The Secretary in office at the time of adoption of this Constitution continues in office subject to this Constitution

## **17.2 Suspension and Removal of Secretary**

The Directors may suspend or remove a Secretary from that office.

## **17.3 Powers, Duties and Authorities of Secretary**

A Secretary holds office on the terms and conditions (including as to remuneration), and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.

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# **18 Execution of documents and company seals**

## **18.1 Safe Custody of Common Seals**

The Directors must provide for the safe custody of any seal of the Company.

## **18.2 Use of Common Seal**

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a committee appointed under Part 15 and authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

### **18.3 Seal Register**

- (a) The Company must keep a seal register, and upon the affixing of the common seal or duplicate common seal to any document (other than a certificate for securities of the Company) must enter in the seal register particulars of the document, giving in each case the date of the document, the names of the parties, a short description of the document and the names or initials of the persons signing and countersigning the document on behalf of the Company.
- (b) The seal register must be produced to meetings of the Directors for confirmation of the use of the common seal and duplicate common seal since confirmation was last given.

### **18.4 Existing Seals**

Any seal adopted by the Company prior to the time of adoption of this Constitution as a share seal or an official seal may be taken to be a seal which the Company has under a relevant authority conferred by this Constitution.

### **18.5 Execution of documents without common seal**

The Company may execute a document without using a common seal if the document is signed by:

- (a) 2 directors of the Company; or
- (b) a director and a company secretary of the Company.

### **18.6 Execution of documents - general**

- (a) Articles 18.2 and 18.5 do not limit the ways in which the Directors may authorise documents, including deeds, to be executed by or on behalf of the Company.
- (b) A Director may sign any document as Director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested and his or her signature complies with the requirements of this Constitution as to execution despite his or her interest.

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## **19 Inspection of Records**

### **19.1 Inspection by Members**

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than Directors).

### **19.2 Right of a Member to Inspect**

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

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## **20 Dividends and Reserves**

### **20.1 Payment of Dividends**

- (a) Subject to the Corporations Act, this Constitution and the rights of persons (if any) entitled to shares with special rights to dividend, the Directors may determine that a dividend is payable, fix the time for determining the entitlement to the dividend, fix the amount and the time for payment and authorise the payment or crediting by the Company to, or at the direction of, each Member entitled to that dividend.
- (b) The Directors may pay such interim dividends as are justified by the position of the Company.

## **20.2 Suspension of Dividends**

The Directors may, in their absolute discretion, suspend or revoke payment of any interim, final or other dividend declared under Article 20.1 before payment thereof.

## **20.3 No Interest on Dividends**

Interest is not payable by the Company on a dividend.

## **20.4 Reserves and Profits Carried Forward**

The Directors may:

- (a) before paying any dividend, set aside out of the profits of the Company such sums as they think proper as a reserve to be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied; and
- (b) carry forward so much of the profits remaining as they consider ought not to be distributed as dividends, without transferring those profits to a reserve.

Pending application, any sum set aside as a reserve may, at the discretion of the Directors, be used in the business of the Company or be invested as the Directors think fit.

## **20.5 Dividends and Classes of Shares**

Subject to any specific rights to dividend upon which any shares may be issued, a dividend may be declared and paid on the shares of one or more classes to the exclusion of others and if dividends are declared on shares of more than one class, the dividend declared on one class may be at a higher or lower rate than other classes.

## **20.6 Calculation and Apportionment of Dividends**

Subject to the rights of any persons entitled to shares with special rights as to dividend and to the terms of any shares issued to the contrary, the profits of the Company are divisible among the Members so that, on each occasion on which a dividend is paid:

- (a) the same sum is paid on each share of a class on which all amounts payable have been paid; and
- (b) the sum paid on a share on which all amounts payable have not been paid is the proportion of the sum referred to in paragraph (a) that the amount paid on the shares bears to the total of the amounts paid and payable on the share.
- (c) To determine the amount paid on a share, exclude any amount:
- (d) paid or credited as paid in advance of a call; and
- (e) credited as paid on a share to the extent that it exceeds the value, (ascertained at the time of issue of the share) of the consideration received for the issue of the share.

## **20.7 Deductions From Dividends**

The Directors may deduct from any dividend payable to, or at the direction of, a Member all sums of money (if any) presently payable by that Member to the Company on account of calls or otherwise in relation to shares in the Company.

## **20.8 Distribution of Specific Assets**

When resolving to pay a dividend, the Directors may:

- (a) resolve that the dividend be satisfied either wholly or partly by the distribution of specific assets to some or all of the persons entitled to the dividend, including fully paid shares in, debentures or debenture stock of, the Company or any other body corporate; and

- (b) direct that the dividend payable in respect of any particular shares be satisfied wholly or partly by such a distribution and that the dividend payable in respect of other shares be paid in cash.

#### **20.9 Resolution of Distribution Difficulties**

If a difficulty arises in regard to a distribution under Article 20.8, the Directors may:

- (a) settle the matter as they consider expedient;
- (b) fix the value for distribution of the specific assets or any part of those assets;
- (c) determine that cash payments will be made to or at the direction of, any Member on the basis of the value so fixed in order to adjust the rights of all parties; and
- (d) vest any such specific assets in trustees as the Directors consider expedient.

If a distribution of specific assets to, or at the direction of, a particular Member or Members is illegal or, in the Directors' opinion, impracticable, the Directors may make a cash payment to the Member or Members on the basis of the cash amount of the dividend instead of the distribution of specific assets.

#### **20.10 Payment**

A dividend, interest or other money payable in cash in respect of shares may be paid:

- (a) by cheque sent through the post directed to the address in the Register of the holder or, in the case of joint holders, to the address of the joint holder first named in the Register;
- (b) by credit to or deposit in any bank account authorised by the holder (or their attorney);
- (c) by cheque sent through the post directed to such other address as the holder or joint holder in writing directs; or
- (d) by some other method of direct credit determined by the Directors to the holder or holders shown on the Register or to such person or place directed by them.

#### **20.11 Effectual Receipt from Joint Holder**

Any one of two or more joint holders may give an effectual receipt for any dividend, interest or other money payable in respect of the shares held by them as joint holders.

#### **20.12 Election to Reinvest Dividend**

The Directors may grant to Members or any class of Members the right to elect to reinvest cash dividends paid by the Company by subscribing for shares in the Company on such terms and conditions as the Directors think fit.

#### **20.13 Election to Accept Shares in Lieu of Dividend**

The Directors may determine in respect of any dividend which it is proposed to pay on any shares of the Company that holders of the shares may elect:

- (a) to forego the right to share in the proposed dividend or part of such proposed dividend; and
- (b) to receive instead an issue of shares credited as fully paid on such terms as the Directors think fit.

#### **20.14 Dividend Selection Plans**

The Directors may implement a dividend selection plan on such terms as the Directors think fit under which participants may elect:



- (a) to receive a dividend from the Company paid wholly or partly out of any particular fund or reserve or out of profits derived from any particular source; or
- (b) to forego a dividend from the Company in place of some other form of distribution from the Company or another body corporate or trust, and

may amend, suspend or terminate any dividend selection plan implemented by them.

## **20.15 Unclaimed Dividends**

Unless otherwise required by law, all unclaimed dividends which have been declared for more than 1 year may be invested or otherwise used by the Directors for the benefit of the Company until claimed.

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## **21 Capitalisation of Profits**

### **21.1 Capitalisation of Reserves and Profits**

The Directors:

- (a) may resolve to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to Members; and
- (b) may, but need not, resolve to apply the sum in any of the ways mentioned in Article 21.2, for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of that sum by way of dividend.

### **21.2 Applying a Sum for the Benefit of Members**

The ways in which a sum may be applied for the benefit of Members under Article 21.1 are:

- (a) in paying up any amounts unpaid on shares held by Members;
- (b) in paying up in full unissued shares or debentures to be issued to Members as fully paid; or
- (c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b)

### **21.3 Effecting the Resolution**

The Directors may do all things necessary to give effect to a resolution made pursuant to Article 21.1 and, in particular, to the extent necessary to adjust the rights of the Members among themselves, may:

- (a) make cash payments in cases where shares or debentures become issuable in fractions; and
- (b) authorise any person to make, on behalf of all or any of the Members entitled to any further shares or debentures on the capitalisation, an agreement with the Company providing for:
  - (i) the issue to them, credited as fully paid up, of any further shares or debentures; or
  - (ii) the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement so made is effective and binding on all the Members concerned.

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## **22 Service of Documents**

### **22.1 Document Includes Notice**

In this Part 22, a reference to a document includes a notice.

## **22.2 Methods of Service on Members and Directors**

The Company may give a document to a Member, Director or Alternate Director (“the recipient”):

- (a) personally;
- (b) by sending it by pre-paid post to:
  - (i) the address for the Member in the Register; or
  - (ii) the Director’s or Alternate Director’s usual residential or business address, (as the case may be) or an alternative address nominated by the recipient;
- (c) by sending it to a facsimile number or electronic address nominated by **the recipient**.

## **22.3 Methods of Service on the Company**

Subject to this Constitution, a document may be given by a Member, Director or Alternate Director to the Company:

- (a) by serving it on the Company at the Registered Office;
- (b) by sending it by pre-paid post to the Registered Office; or
- (c) by sending it to the principal facsimile number at the Registered Office.

## **22.4 Post**

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary pre-paid post; and
- (b) if sent to an address outside Australia, must be sent by airmail, and in either case is taken to have been received;
- (c) in the case of a notice of general meeting, two days after the date of its posting; and
- (d) in any other case, at the time at which the document would be delivered in the ordinary course of post.

## **22.5 Facsimile or Electronic Transmission**

If a document is sent by facsimile or electronic transmission (including a notice given pursuant to Article 22.6(b)), delivery of the document is taken:

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

## **22.6 Electronic Notice**

- (a) Notwithstanding Article 22.2, the Company may give a notice to a Member by:
  - (i) sending it to the Member by any electronic means (if any) nominated by the Member; or
  - (ii) notifying the Member in accordance with paragraph (b).
- (b) Without limiting paragraph (a), if the Member nominates:
  - (i) an electronic means by which the Member may be notified that notices are available; and

(ii) an electronic means the Member may use to access notices,

the Company may give the Member notice by notifying the Member using the means nominated under paragraph (b)(i):

(iii) that the notice is available; and

(iv) how the Member may use the means nominated under paragraph (b)(ii) to access the notice,

(c) A notice given to a Member under paragraph (a) is taken to be given on the Business Day after the day on which the Member is notified that the notice is available.

## **22.7 Joint Holders**

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.

## **22.8 Persons Entitled to Shares**

A person who, by operation of law, transfer or other means whatsoever, becomes entitled to any share is absolutely bound by every document given in accordance with this Part 22 to the person from whom that person derives title prior to registration of that person's title in the Register.

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## **23 Winding Up**

### **23.1 Distribution of Assets**

If the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company, divide among the Members in kind the whole or any part of the property of the Company and may for that purpose set such value as the liquidator considers fair on any property to be so divided and may determine how the division is to be carried out as between the Members or different classes of Members.

### **23.2 Powers of Liquidator to Vest Property**

The liquidator may, with the sanction of a special resolution of the Company, vest the whole or any part of any such property in trustees on such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Member is compelled to accept any shares or other securities in respect of which there is any liability on the part of the holder,

### **23.3 Shares Issued on Special Terms**

Articles 23.1 and 23.2 do not prejudice or affect the rights of a Member holding shares issued on special terms and conditions.

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## **24 Indemnity and Insurance**

### **24.1 Indemnity**

(a) The Company shall indemnify each officer of the Company against all liabilities (excluding legal costs) incurred as an officer of the Company except:

(i) a liability owed to the Company or a related body corporate;

(ii) a liability for a pecuniary penalty or compensation order under Part 9.4B of the Corporations Act; or

(iii) a liability that is owed to another person (not being the Company or a related body corporate) which did not arise out of conduct in good faith,

- (b) The Company shall indemnify each officer of the Company against legal costs incurred in defending an action for a liability incurred as an officer of the Company except if the costs are incurred;
- (i) in defending or resisting proceedings in which the person is found to have a liability for which they cannot be indemnified under section 199A(2) of the Corporations Act;
  - (ii) in defending or resisting criminal proceedings in which the person is found guilty;
  - (iii) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
  - (iv) in connection with proceedings for relief to the person under the Corporations Act in which the court denies the relief.

## 24.2 Insurance

Except where not permitted by law (including section 199B of the Corporations Act), the Company may pay insurance premiums in respect of contracts insuring a Director against a liability incurred by the Director in that capacity.

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## 25 Miscellaneous

### 25.1 Definitions

In this Constitution, unless the contrary intention appears:

“**Alternate Director**” means a person appointed as an alternate director under Article 13.1.

“**Article**” means an article of this Constitution.

“**Auditor**” means the appointed auditor of the Company.

“**Business Day**” means a day other than a Saturday, Sunday or public holiday.

“**Constitution**” means this constitution as amended from time to time.

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

“**Director**” means a person holding office as a director of the Company, and where appropriate includes an Alternate Director.

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

“**Executive Director**” means a Director who is also an employee of the Company or of a related body corporate in a capacity other than Director, and includes a Managing Director or a deputy Managing Director.

“**Managing Director**” means a person appointed as a managing director under Part 16.

“**Member**” means a person entered in the Register as a holder of shares in the capital of the Company.

“**Part**” means a part of this Constitution.

“**Prescribed Interest Rate**” means the rate determined by the Directors for the purpose of this Constitution and, in the absence of a determination, means the rate (and the higher or highest rate if more than one) from time to time ordinarily charged by the Company’s principal bankers on unsecured overdraft amounts of less than \$100,000.00.

“**Register**” means the register of Members of the Company under the Corporations Act and, if appropriate, includes a branch register.

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

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

“**Secretary**” means a person appointed under Article 17.1 as a secretary of the Company and, where appropriate, includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

## **25.2 Interpretation**

In this Constitution, unless the contrary intention appears;

- (a) words or expressions importing a gender include the other gender;
- (b) words or expressions denoting individuals include corporations, firms, unincorporated bodies, government authorities and instrumentalities;
- (c) words or expressions importing the singular include the plural and vice versa;
- (d) a reference to legislation or a provision of legislation includes:
  - (i) all regulations, orders or instruments issued under the legislation or provision; and
  - (ii) any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision;
- (e) a power, an authority or a discretion reposed in a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
- (f) a reference to an amount paid on a share includes an amount credited as paid on that share;
- (g) where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors; and
- (h) “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.

## **25.3 Corporations Act**

In this Constitution, unless the contrary intention appears:

- (a) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act;
- (b) the same meaning as in that provision of the Corporations Act; and
- (c) “section” means a section of the Corporations Act.

## **25.4 Headings and Parts**

- (a) Headings are inserted for convenience and are not to affect the interpretation of this Constitution.
- (b) This Constitution is divided into Parts as indicated by its Contents.

## **25.5 Submission to Jurisdiction**

Each Member submits to the non-exclusive jurisdiction of the Supreme Court of South Australia, the Federal Court of Australia and the courts which may hear appeals from those courts.

## **25.6 Replaceable Rules Not to Apply**

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.