

Constitution

Energy Action Limited ACN 137 363 636

28 June 2011

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Preliminary

1. DEFINED TERMS

1.1. In this Constitution:

Alternate Director means a person appointed as an alternate director under clause 56.

ASTC means ASX Settlement and Transfer Corporation Pty Limited ABN 49 008 504 532.

ASTC Settlement Rules means the operating rules of ASTC.

ASX means ASX Limited.

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

Auditor means the Company's auditor.

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

CHESS Holding has the same meaning as in the ASTC Settlement Rules.

Company means Energy Action Limited ACN 137 363 636.

Constitution means the constitution of the Company as amended from time to time.

Corporations Act means the *Corporations Act 2001* (Cth) as amended or replaced from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

CS Facility Rules means the operating rules of an applicable CS facility licensee.

Director means a person appointed to the position of a director of the Company and where appropriate, includes an Alternate Director.

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

Dividend has the same meaning as when used in the Corporations Act.

Executive Director has the meaning given by clause 63.2.

Managing Director means a Director appointed as managing director under clause 63.1.

Member means a person who is a member of the Company under the Corporations Act.

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

Register means the register of Members of the Company.

Representative means a person appointed by a body corporate to act as its representative under clause 41.

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

Seal means the Company's common seal.

Secretary means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if more than one person is appointed, any one or more of such persons.

Shares means shares in the share capital of the Company.

- 1.2. In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

2. INTERPRETATION

- 2.1. In this Constitution, except where the context otherwise requires:
- (a) the singular includes the plural and vice versa, and a gender includes other genders;
 - (b) another grammatical form of a defined word or expression has a corresponding meaning;
 - (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
 - (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - (e) a reference to A\$, \$A, dollar or \$ is to Australian currency; and
 - (f) the meaning of general words is not limited by specific examples introduced by **including**, **for example** or similar expressions.
- 2.2. Headings are for ease of reference only and do not affect interpretation.
- 2.3. The Corporations Act prevails over any inconsistency with this Constitution.

3. REPLACEABLE RULES

The provisions of the Corporations Act that apply to certain companies as replaceable rules are displaced by this Constitution in their entirety and do not apply to the Company.

Shares

4. RIGHTS

Subject to this Constitution and to the terms of issue of Shares, all Shares have, and rank equally with respect to, the following rights:

- (a) the right to receive notice of and to attend and vote at all general meetings of the Company;
- (b) the right to receive Dividends; and
- (c) in a winding up or a reduction of capital or other procedure, the right to receive other distributions (including capital) from the Company,

subject to any amounts unpaid on the Share.

5. ISSUE OF SHARES

- 5.1. Subject to the Corporations Act, the ASX Listing Rules and this Constitution, the Directors may issue and allot, or dispose of, Shares:
- (a) on terms determined by the Directors;
 - (b) at the issue price that the Directors determine (including as to time of payment and whether or not the Shares are issued partly paid, with an amount to be paid in the future); and
 - (c) to Members whether in proportion to their existing shareholdings or otherwise, and to such other persons as the Directors may determine.
- 5.2. The Directors' power under clause 5.1 includes the power to:
- (a) grant options over unissued Shares;
 - (b) issue and allot Shares:
 - (i) with any preferential, deferred or special rights, privileges or conditions;
 - (ii) with any restrictions in regard to Dividend, voting, return of capital or otherwise;
 - (iii) which are liable to be redeemed;
 - (iv) which are bonus Shares for whose issue no consideration is payable to the Company; or
 - (v) which have any combination of the characteristics described in clauses 5.2(b)(i) to 5.2(b)(iv) inclusive.
- 5.3. Unless otherwise provided by the terms of issue, the issue of any new Shares ranking equally with existing Shares is not a variation of the rights conferred on the holders of the existing Shares.

6. COMMISSION AND BROKERAGE

The Company may pay brokerage or commission in relation to an issue of Shares, which may be paid by the Company in cash, by the issue and allotment of Shares, or the issue of debt securities, or by a combination of any of those methods.

7. TRUSTS NOT RECOGNISED

- 7.1. Except as required by law, the CS Facility Rules or as otherwise provided by this Constitution, the Company will not recognise any person as holding a Share on trust and the Company will not be bound to recognise any equitable, contingent, future or partial interest or any other right in respect of a Share except the registered holder's absolute right of ownership.
- 7.2. This clause 7 applies even if the Company has notice of the relevant trust, interest or right.

8. JOINT HOLDERS

- 8.1. If two or more persons are registered as the holders of a Share, they are taken to hold the Share as joint tenants with benefit of survivorship and the person whose name appears first on the Register is the only joint holder entitled to receive notices from the Company.
- 8.2. Any one of the joint holders of a Share may give an effective receipt for any Dividend or return of capital payable to the joint holders.
- 8.3. The Company is entitled to and in respect of CHESS Holdings, must:
 - (a) record the names of only the first three joint holders of a Share on the Register;
 - (b) regard the three joint holders of a Share appearing first on the Register as the registered holders of that Share to the exclusion of any other holders; and
 - (c) disregard the entitlement of any person to be registered on the Register as a holder if the name of the person would appear on the Register after the first three holders for that Share.

9. SHARE CERTIFICATES

- 9.1. The Directors will not, unless they determine otherwise or the ASX Listing Rules require or CS Facility Rules, issue a certificate to a Member for any Shares registered in the Member's name or record any holding as held on a certificated subregister.
- 9.2. Any certificate for Shares must be issued and despatched in accordance with the Corporations Act, the ASX Listing Rules and the CS Facility Rules.
- 9.3. Subject to the ASX Listing Rules, the Directors may in their absolute discretion elect whether to maintain a certificated subregister for any class of Shares.
- 9.4. Subject to the ASX Listing Rules and the CS Facility Rules, Shares may be held on any subregister maintained by or on behalf of the Company or on any branch register kept by the Company.
- 9.5. The Directors may order worn out or defaced certificates to be cancelled and, if necessary, replaced by new certificates.

10. CLASS MEETINGS

- 10.1. The rights attached to any class of Shares may be varied in accordance with the Corporations Act.
- 10.2. All the provisions of this Constitution as to general meetings apply to any special meeting of any class of shareholders which may be held under the operation of this Constitution or the Corporations Act.

Liens

11. COMPANY'S LIEN

- 11.1. To the extent permitted by the ASX Listing Rules, the Company has a first and paramount lien on every partly paid Share and Dividends payable in respect of the Share for all money:
- (a) due and unpaid to the Company at a fixed time, in respect of the Share;
 - (b) presently payable by a holder or the holder of the Share, or the holder's estate, to the Company in respect of the Share; or
 - (c) which the Company is required by law to pay (and has paid) in respect of the Share.
- 11.2. The lien extends to reasonable interest and expenses incurred because the amount is not paid.
- 11.3. If any law for the time being of any country, state or place imposes or purports to impose an immediate or contingent liability on the Company to make any payment or authorises a taxing authority or Government official to require the Company to make payment in respect of Shares or Dividends or other moneys accruing due to the Member who holds the Shares:
- (a) the Member or, if the Member is deceased, the Member's legal personal representative, indemnifies the Company in respect of any such payment or liability; and
 - (b) subject to the Corporations Act and the ASX Listing Rules, the Company:
 - (i) has a lien on the Shares and Dividends and other moneys payable in respect of the Shares, whether the Shares are held by the Member solely or jointly with another person in respect of any payment made or liability incurred by the Company, together with reasonable expenses and interest on any payment made by the Company at a rate to be fixed by the Directors not exceeding 20% per annum from the date of payment by the Company to the date of repayment by the Member;
 - (ii) may set off amounts so paid by the Company against amounts payable by the Company to the Member as Dividends or otherwise; and
 - (iii) may recover as a debt due from the Member or its legal personal representative the amount of all payments made by the Company together with reasonable expenses and interest at the rate and for the period referred to in clause 11.3(b)(i).
- 11.4. The Company may do all things which the Directors think necessary or appropriate to do under the ASX Listing Rules and the CS Facility Rules to enforce or protect the Company's lien.
- 11.5. Unless the Directors determine otherwise, the registration of a transfer of a Share operates as a waiver of the Company's lien on the Share.
- 11.6. The Directors may declare a Share to be wholly or partly exempt from a lien.

12. LIEN SALE

If:

- (a) the Company has a lien on a Share for money presently payable;
- (b) the Company has given the Member or the Member's executors or administrators (as the case may be) holding the Share written notice demanding payment of the money; and
- (c) that Member fails to pay all of the money demanded,

then 14 or more days after giving the notice, the Directors may, if the ASX Listing Rules permit, sell the Share in any manner determined by them.

Transfer of Shares

13. GENERAL

13.1. Subject to this Constitution, a Member may transfer Shares held by that Member.

13.2. Subject to clause 13.3, Shares may be transferred by:

- (a) a written transfer instrument in any usual or common form; or
- (b) any other form approved by the Directors.

13.3. The Company may participate in any computerised or electronic system for market settlement, securities transfer and registration conducted in accordance with the Corporations Act, the ASX Listing Rules and the CS Facility Rules, or corresponding laws or securities exchange or clearing house rules in any other country.

13.4. If the Company participates in a system of the kind described in clause 13.3, then despite any other provision of this Constitution:

- (a) Shares may be transferred, and transfers may be registered, in any manner required or permitted by the ASX Listing Rules or the CS Facility Rules (or corresponding laws or securities exchange or clearing house rules in any other country) applying in relation to the system;
- (b) the Company must comply with and give effect to those rules; and
- (c) the Company may, in accordance with those rules, decline to issue certificates for holdings of Shares.

13.5. A written transfer instrument must be:

- (a) executed by the transferor or (where the Corporations Act permits) stamped by the transferor's broker;
- (b) unless the Directors decide otherwise in the case of a fully paid Share, executed by the transferee or (where the Corporations Act permits) stamped by the transferee's broker; and
- (c) in the case of a transfer of partly paid Shares, endorsed or accompanied by an instrument executed by the transferee or by the transferee's broker to the effect that the transferee agrees to accept the Shares subject to the terms and conditions on which the transferor held them, to become a Member and to be bound by the Constitution.

Subject to the Corporations Act, the written transfer instrument may comprise more than one document.

- 13.6. Except as required, or provided for, by the CS Facility Rules:
- (a) 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
 - (b) a transfer of Shares does not pass the right to any Dividends on the Shares until such registration.

14. TRANSFER PROCEDURE

- 14.1. Except where the Directors determine (to comply with laws or securities exchange or clearing house rules of a foreign country or the CS Facility Rules), for a transfer of Shares that is not an ASTC-regulated transfer:
- (a) the written transfer instrument must be left at the Company's registered office or another place acceptable to the Company;
 - (b) the instrument must be accompanied by a certificate for the Shares dealt with in the transfer where a certificate has been issued, unless the Directors waive production of the certificate on receiving satisfactory evidence of the loss or destruction of the certificate; and
 - (c) the Directors may, if the ASX Listing Rules permit, require other evidence of the transferor's right to transfer the Shares.
- 14.2. For a transfer of Shares that is an ASTC-regulated transfer, a Share transfer must be effected in accordance with the ASX Listing Rules and the ASTC Settlement Rules.

15. RIGHT TO REFUSE REGISTRATION

- 15.1. The Directors may in their absolute discretion refuse to register any transfer of Shares or other securities where the Shares or other securities are not quoted by ASX. Where the Shares or other securities are quoted by ASX, the Directors may in their absolute discretion refuse to register any transfer in any of the circumstances permitted by the ASX Listing Rules.
- 15.2. The Directors must:
- (a) except as permitted by ASX, refuse to register any transfer of Shares or other securities which are Restricted Securities if that transfer is or might be in breach of the ASX Listing Rules or any restriction agreement entered into by the Company under the ASX Listing Rules in relation to the Shares; and
 - (b) refuse to register any transfer where the Company is, or the Directors are, required to do so by the ASX Listing Rules.
- 15.3. Despite clauses 15.1 and 15.2, the Company must not refuse or fail to register or give effect to, or delay or in any way interfere with, a proper ASTC transfer of Shares or other securities quoted by ASX.
- 15.4. If a person has lodged a transfer which the Directors have refused to register, the Company must, within five Business Days after the date of lodgment, give to the lodging person written notice of the refusal and the reasons for it.

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- 15.5. Subject to clause 15.3, Restricted Securities cannot be disposed of during the escrow period except as permitted by the ASX Listing Rules or ASX. The Company will refuse to acknowledge a disposal of Restricted Securities to the extent required under the ASX Listing Rules.

Transmission of Shares

16. TITLE ON DEATH

- 16.1. The legal personal representative of a deceased Member who was the sole holder of Shares is the only person whom the Company will recognise as having any title to the deceased Member's Shares.
- 16.2. If a deceased Member was a joint holder of Shares, the other joint holder is the only person whom the Company will recognise as having any title to the deceased Member's Shares.
- 16.3. The estate of the deceased Member will not be released from any liability to the Company in respect of the Shares.
- 16.4. The Company may register or give effect to a transfer to a transferee who dies before the transfer is registered.

17. ENTITLEMENT TO TRANSMISSION

- 17.1. A person who becomes entitled to a Share in consequence of the death, mental incapacity or bankruptcy of a Member may, subject to clause 15 and to producing to the Company evidence of its entitlement which is satisfactory to the Directors, elect to:
- (a) be registered as the holder of the Share; or
 - (b) transfer the Share to some other person nominated by it.
- 17.2. If the person who has become entitled to a Share:
- (a) elects to be registered as the holder, then the person must deliver or send to the Company a written notice of election signed by him or her; or
 - (b) elects to transfer the Share, then the person must effect a transfer of the Share.
- 17.3. An election to be registered as a holder of a Share under clause 17.1(a) or a transfer of a Share from a Member or deceased Member under this clause 17 is subject to the same limitations, restrictions and provisions of this Constitution as would apply if the election were a transfer or the transfer were made by the Member or deceased Member himself or herself.
- 17.4. A person who:
- (a) has become entitled to a Share by operation of law; and
 - (b) has produced evidence of that person's entitlement which is satisfactory to the Directors,
- is entitled to the Dividends and other rights of the registered holder of the Share.
- 17.5. Where two or more persons are jointly entitled to any Share in consequence of the death of the registered holder, they will be considered to be joint holders of the Share.

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- 17.6. Any person who is registered under this clause must indemnify the Company against all liabilities, costs, losses and expenses incurred by the Company as a result of registering the person.

18. CHANGES TO SHARE CAPITAL

- 18.1. The Company may reduce or alter its share capital in any manner provided for by the Corporations Act including any consolidation or division of Shares. The Directors may do anything which is required to give effect to any resolution authorising a reduction or alteration of the share capital of the Company and, without limitation, may make provision for the issue of fractional certificates or the sale of fractions of shares and the distribution of net proceeds as they think fit.
- 18.2. For the purpose of giving effect to any such reduction or alteration, the Directors may, subject to the CS Facility Rules, settle any difficulty which arises with respect to fractions of Shares in any manner that they think expedient.

Powers of attorney

19. POWERS OF ATTORNEY

- 19.1. If a Member executes or proposes to execute any document or do any act by or through an attorney which is relevant to the Company or the Member's shareholding in the Company, that Member must deliver the instrument appointing the attorney to the Company for notation.
- 19.2. The Company may require the Member to lodge a certified copy of the instrument for retention by the Company, and ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.
- 19.3. Any power of attorney granted by a Member will, as between the Company and the Member who granted the power of attorney:
- (a) continue in force; and
 - (b) may be acted on,
- unless express notice in writing of its revocation or of the death of the Member who granted it is lodged with the Company.
- 19.4. Where a Member proposes that an attorney represent the Member at a general meeting or adjourned meeting, the Member must comply with clause 39.1 of this Constitution.

General meetings

20. CALLING GENERAL MEETING

- 20.1. A Director may call a meeting of Members.
- 20.2. 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 Directors.

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- 20.3. 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.
- 20.4. A general meeting may be held at two or more venues simultaneously using any technology that gives the Members as a whole a reasonable opportunity to participate.

21. NOTICE

- 21.1. Notice of a general meeting must be given in accordance with the Corporations Act to the persons referred to in clause 85.1.
- 21.2. Except as permitted by the Corporations Act, general meetings must be called on at least the minimum number of days notice required by the Corporations Act (which at the date of adoption of this Constitution is 28 days for a company admitted to ASX's official list) and otherwise in accordance with the procedures set out in the Corporations Act.
- 21.3. Subject to the requirements of the Corporations Act, a notice calling a general meeting must:
- (a) specify the place, date and time of the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (b) state the general nature of the business to be transacted at the meeting;
 - (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
 - (d) include such statements about the appointment of proxies as are required by the Corporations Act;
 - (e) specify a place and facsimile number and may specify an electronic address or other electronic means for the purposes of proxy appointments or proxy appointment authorities;
 - (f) subject to the CS Facility Rules, specify particulars of any determination made under regulation 7.11.37 of the *Corporations Regulations 2001* (Cth); and
 - (g) comply with any other requirements of the Corporations Act.

22. BUSINESS

- 22.1. The business of an annual general meeting may include:
- (a) any of the following matters, even if not referred to in the notice of meeting:
 - (i) consideration of the annual financial report, directors' report and auditor's report;
 - (ii) election of directors;
 - (iii) appointment of the auditor;
 - (iv) fixing the auditor's remuneration;
 - (b) any business which under this Constitution or the Corporations Act is required to be transacted at an annual general meeting; and
 - (c) any other business which may lawfully be transacted at a general meeting.

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- 22.2. The chairperson of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to:
- (a) ask questions about or make comments on the management of the Company; and
 - (b) ask the Auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the Auditor's report for the Company in accordance with the Corporations Act.
- 22.3. The Directors may postpone or cancel any general meeting (other than a meeting requested or called by Members under clause 20.3) at any time before the day of the meeting. The Directors must give notice of the postponement or cancellation to all persons entitled to receive notices of a general meeting.
- 22.4. An accidental omission to send a notice of a general meeting (including a proxy appointment form) or the postponement of a general meeting to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

Proceedings at general meetings

23. MEMBER

In clauses 24, 25, 28 and 33, Member includes a Member present in person or by proxy, attorney or Representative.

24. QUORUM

- 24.1. No business may be transacted at a general meeting unless a quorum of Members is present at the commencement of business.
- 24.2. A quorum of Members is 2 Members present and entitled to vote.
- 24.3. If a quorum is not present within 15 minutes after the time appointed for a general meeting:
- (a) the general meeting is automatically dissolved if it was requested or called by Members under clause 20.3; or
 - (b) in any other case:
 - (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
 - (ii) if at the adjourned general meeting a quorum is not present within 15 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

25. CHAIRPERSON

- 25.1. The chairperson, or in the chairperson's absence the deputy chairperson, of Directors' meetings will be the chairperson at every general meeting.
- 25.2. If:
- (a) there is no chairperson or deputy chairperson; or

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- (b) neither the chairperson nor deputy chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
 - (c) the chairperson and deputy chairperson are unwilling to act as chairperson of the general meeting,

the Directors present may elect a chairperson of the general meeting of the Members.

- 25.3. If no chairperson is elected in accordance with clause 25.2, then:
- (a) the Members may elect one of the Directors present as chairperson; or
 - (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.
- 25.4. At any time during a meeting and in respect of any specific item or items of business, the chairperson may elect to vacate the chair in favour of another person nominated by the chairperson (which person must be a Director unless no Director is present or is willing to act). That person is to be taken to be the chairperson and will have all the powers of the chairperson (other than the power to adjourn the meeting), during the consideration of that item of business or those items of business.
- 25.5. If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

26. GENERAL CONDUCT

The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting will be determined by the chairperson, including the procedure for the conduct of the election of Directors.

27. ADJOURNMENT

- 27.1. During the course of the meeting the Chair may adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by the Chair.
- 27.2. If the Chair exercises a right of adjournment of a meeting under this clause, the Chair has the sole discretion to decide whether to seek the approval of the Shareholders Present to the adjournment and, unless the Chair exercises that discretion, no vote may be taken by the Members in respect of the adjournment.
- 27.3. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 27.4. An adjourned general meeting may take place at a different venue from the initial general meeting.
- 27.5. The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 27.6. If a general meeting has been adjourned for more than 30 days, notice of the adjourned general meeting must be given to Members as if it were an original general meeting, but otherwise it is not necessary to give notice of an adjourned general meeting or the business of the adjourned general meeting.

27.7. A poll cannot be demanded on any resolution concerning the adjournment of a general meeting except by the chairperson.

28. DECISIONS

28.1. Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.

28.2. A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded by:

- (a) at least 5 Members entitled to vote on the resolution;
- (b) Members with at least 5% of the votes that may be cast on the resolution on a poll; or
- (c) the chairperson.

28.3. A poll may be demanded:

- (a) before a vote is taken; or
- (b) in the case of a vote taken on a show of hands, immediately before or immediately after, the results of the vote are declared.

28.4. Unless a poll is demanded:

- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
- (b) an entry to that effect in the minutes of the meeting,

are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.

28.5. The demand for a poll may be withdrawn.

28.6. A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the meeting was not entitled to do so.

29. TAKING A POLL

29.1. Subject to clause 29.6, a poll will be taken when and in the manner that the chairperson directs.

29.2. No notice need be given of any poll.

29.3. The result of the poll will determine whether the resolution on which the poll was demanded is carried or lost.

29.4. The chairperson may determine any dispute about the admission or rejection of a vote, and such determination, if made in good faith, will be final and conclusive.

29.5. A poll cannot be demanded on any resolution concerning the election of the chairperson of a general meeting.

29.6. A poll demanded by the chairperson on any resolution concerning the adjournment of a general meeting must be taken immediately.

29.7. After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

30. CASTING VOTE OF CHAIRPERSON

The chairperson does not have a casting vote (in addition to the chairperson's votes as a Member, proxy, attorney or Representative) on a show of hands or on a poll.

31. ADMISSION TO GENERAL MEETINGS

The chairperson of a general meeting may refuse admission to a person, or require a person to leave and not return to, a meeting if the person:

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

which the chairperson considers to be dangerous, offensive or liable to cause disruption; or

- (c) causes any disruption to the meeting.

32. AUDITOR'S RIGHT TO BE HEARD

The Auditor is entitled to:

- (a) attend any general meeting of the Company;
- (b) be heard at any general meeting of the Company on any part of the business of the meeting that concerns the Auditor in their capacity as auditor, even if:
 - (i) the Auditor retires at the general meeting; or
 - (ii) Members pass a resolution to remove the Auditor from office; and
- (c) authorise a person in writing to attend and speak at any general meeting as the Auditor's representative.

Votes of Members

33. ENTITLEMENT TO VOTE

33.1. Subject to this Constitution and to any rights or restrictions attaching to any class of Shares:

- (a) every Member may vote;
- (b) subject to clause 36.5 and the Corporations Act, on a show of hands every Member has one vote; and
- (c) on a poll every 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) is of the total amounts paid and payable, whether or not called (excluding amounts credited), on the Share. An amount paid on a

Share in advance of a call is not to be taken as paid for the purposes of this clause.

33.2. During a breach of the ASX 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 voting rights in respect of those Restricted Securities.

33.3. If a Member:

- (a) dies; or
- (b) through mental or physical infirmity, is incapable of managing the Member's affairs,

and a personal representative, trustee or other person is appointed under law to administer the Member's estate or property, the personal representative, trustee or person so appointed may exercise any rights of the Member in relation to a general meeting as if the personal representative, trustee or person (as the case may be) was a Member.

34. JOINT HOLDERS

34.1. If two or more joint holders purport to vote, the vote of the joint holder whose name appears first in the Register will be accepted, to the exclusion of the other joint holder or holders.

34.2. For the purposes of this clause 34, several executors or administrators of a deceased Member in whose sole name any Shares are registered will be taken to be joint holders of those Shares.

35. OBJECTIONS

35.1. An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.

35.2. An objection must be referred to the chairperson of the general meeting, whose decision made in good faith is final.

35.3. Subject to clause 35.4, a vote which the chairperson does not disallow under an objection is valid for all purposes.

35.4. A vote which the ASX Listing Rules require the Company to disregard is not valid.

36. VOTES BY PROXY

36.1. A Member who is entitled to vote at a general meeting of the Company may appoint not more than two proxies to attend and vote at the general meeting on that Member's behalf.

36.2. A proxy need not be a Member.

36.3. The person appointed as a Member's proxy may be an individual or a body corporate.

36.4. If a Member appoints one proxy, that proxy may, subject to the Corporations Act, vote on a show of hands.

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- 36.5. If a Member appoints two 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 the votes. However, neither proxy may vote on a show of hands.
- 36.6. A proxy may demand or join in demanding a poll.
- 36.7. A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If an appointment directs the way the proxy is to vote on a particular resolution:
- (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
 - (b) if the proxy has two or more appointments that specify different ways to vote on the resolution - the proxy must not vote on a show of hands;
 - (c) if the proxy is the chair - the proxy must vote on a poll and must vote that way; and
 - (d) if the proxy is not the chair - the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.
- 36.8. If:
- (a) a Member nominates the chairperson of the meeting as the Member's proxy; or
 - (b) the chairperson is to act as proxy under clause 38 or otherwise under a default appointment according to the terms of the proxy form,
- then the person acting as chairperson in respect of an item of business at the meeting must act as proxy under the appointment in respect of that item of business.

37. DOCUMENT APPOINTING PROXY

- 37.1. An appointment of a proxy is valid if it is signed, or otherwise authenticated in accordance with the Corporations Act, by the Member making the appointment and contains the information required by subsection 250A(1) of the Corporations Act.
- 37.2. The Company may send a proxy appointment form to Members in a form which has been approved by the Directors or by the chairperson and the Managing Director. That form of proxy must satisfy the ASX Listing Rules and the Corporations Act.
- 37.3. A proxy's appointment is valid at an adjourned general meeting.
- 37.4. A proxy or attorney may be appointed for all meetings or for any number of general meetings or for a particular purpose.
- 37.5. Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
- (a) to vote on:
 - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and
 - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,

even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and

- (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.

38. PROXY IN BLANK

If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either act as proxy or complete the proxy appointment by inserting the name or names of one or more Directors or the Secretary.

39. LODGMENT OF PROXY

39.1. Subject to clause 39.3, the appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the general meeting (or the resumption of an adjourned general meeting) at which the appointee is to attend and vote.

39.2. If the appointment purports to be executed or authenticated under a power of attorney or other authority, the original document or a certified copy of it must be received by the Company at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the general meeting (or the resumption of an adjourned general meeting).

39.3. The Company receives an appointment of a proxy or attorney or other authority under which it was signed or authenticated:

- (a) when the document is received at:
 - (i) the Company's registered office;
 - (ii) a facsimile number at the Company's registered office; or
 - (iii) a place, facsimile number or electronic address specified for that purpose in the notice of general meeting; or
- (b) if a notice of meeting specifies other electronic means by which a Member may give an appointment, when the document given by those means is received by the Company in accordance with the Corporations Act.

40. VALIDITY

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became mentally incapacitated;
- (c) revoked the proxy or power; or
- (d) transferred the Shares in respect of which the vote was cast,

unless the Company received written notification of the death, mental incapacity, revocation or transfer before the relevant general meeting or adjourned general meeting.

41. REPRESENTATIVES OF BODIES CORPORATE

- 41.1. Any Member that is a body corporate may appoint an individual as its representative as provided by the Corporations Act. If a body corporate Member does so:
- (a) unless otherwise specified in the appointment, the representative may, on the Member's behalf, exercise at the relevant general meeting all the powers which the Member could exercise if it were a natural person; and
 - (b) when the representative is present at a meeting, the body corporate Member is considered to be personally present at the meeting.
- 41.2. Any proxy appointed by a Member in accordance with this Constitution that is a body corporate may appoint an individual as its representative to exercise all or any of the powers the body corporate proxy may exercise in its capacity as the Member's proxy. If a body corporate proxy does so:
- (a) unless otherwise specified in the appointment, the representative may, on the body corporate proxy's behalf, exercise at the relevant general meeting all the powers which the body corporate proxy could exercise if it were a natural person; and
 - (b) when the representative is present at a meeting, the body corporate proxy is considered to be personally present at the meeting.
- 41.3. The appointment of a Representative may set out restrictions on the Representative's powers.
- 41.4. The original form of appointment of a Representative, a certified copy of the appointment, or a certificate of the body corporate evidencing the appointment of a Representative is prima facie evidence of a Representative having been appointed.

Appointment and removal of Directors

42. NUMBER OF DIRECTORS

- 42.1. Subject to the Corporations Act, the Company may by resolution passed at a general meeting increase the minimum number of Directors.
- 42.2. Until the Company resolves otherwise in accordance with clause 42.1 there will be a minimum of three Directors (excluding Alternate Directors)
- 42.3. 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.
- 42.4. The Directors and Secretary in office at the time this Constitution becomes effective, continue in office subject to this Constitution.

43. QUALIFICATION

- 43.1. Neither a Director nor an Alternate Director is required to hold any Shares.
- 43.2. A Director (and an Alternate Director when acting as a Director) is entitled to notice of all general meetings and meetings of the holders of any class of Shares.

44. POWER TO REMOVE AND APPOINT

- 44.1. The Company may, subject to the Corporations Act, by resolution passed in general meeting remove any Director before the end of the Director's term of office.
- 44.2. Subject to the provisions of this Constitution, the Company may appoint a person as a Director by resolution passed in general meeting.
- 44.3. 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.

45. ADDITIONAL AND CASUAL DIRECTORS

- 45.1. Subject to clause 42, only the Directors may appoint any person as a Director to fill a casual vacancy or as an addition to the existing Directors.
- 45.2. Unless the Director is the Managing Director and the ASX Listing Rules do not require that Director to be subject to retirement, a Director appointed under clause 45.1 will hold office until the end of the next annual general meeting of the Company, at which the Director is eligible to be re-elected.

46. RETIREMENT

- 46.1. A Director may not hold office for a continuous period in excess of three years or past the third annual general meeting following the Director's appointment, whichever is the longer, without submitting for election or re-election.
- 46.2. If no Director would otherwise be required to submit for election or re-election but the Listing Rules require that an election of Directors be held, the Director to retire at the annual general meeting is the Director who has been longest in office since their last election, but, as between persons who became Directors on the same day, the one to retire is (unless they otherwise agree among themselves) determined by ballot.
- 46.3. A retiring Director under this clause is eligible for re-election without needing to give any prior notice of an intention to submit for re-election and holds office as a Director until the end of the meeting at which the Director retires.
- 46.4. This clause does not apply to the Managing Director or, if there is more than one Managing Director, the Managing Director designated by the Directors for this purpose.

47. NOMINATION OF DIRECTOR

- 47.1. A person, other than a Director retiring under clause 45.2 or under clause 46.1 who seeks re-election, is not eligible for election as a Director at a general meeting unless:
 - (a) the person is proposed as a candidate by a Member (who may be the candidate); and
 - (b) the proposing Member leaves a notice at the Company's registered office which nominates the candidate for the office of Director and includes the signed consent of the candidate.
- 47.2. A notice given in accordance with clause 47.1 must be left at the Company's registered office not less than 35 Business Days before the relevant general meeting,

or any lesser maximum number of business days before the relevant general meeting applicable to the Company under the ASX Listing Rules.

48. VACATION OF OFFICE

The office of a Director immediately becomes vacant if the Director:

- (a) ceases to be a Director by virtue of the Corporations Act;
- (b) is prohibited by the Corporations Act from holding office or continuing as a Director;
- (c) is prohibited from holding or is removed from the office of Director by an order made under the Corporations Act;
- (d) becomes bankrupt or makes any general arrangement or composition with his or her creditors;
- (e) cannot fully participate in the management of the Company because of his or her mental incapacity or is a person whose estate is liable to have a person appointed, under the law relating to the administration of estates of persons who through mental or physical infirmity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Directors incapable of performing his or her duties;
- (f) resigns from his or her office of Director by notice in writing to the Company;
- (g) is removed by a resolution of the Company; or
- (h) is absent from Directors' meetings for three consecutive months without leave of absence from the Directors.

Remuneration of Directors

49. REMUNERATION OF NON-EXECUTIVE DIRECTORS

49.1. Subject to the ASX Listing Rules, the Directors as a whole (other than Executive Directors) may be paid or provided fees or other remuneration for their services as a Director of the Company (including as a member of any Directors' committee or as a director of a child entity of the Company) the total amount or value of which must not exceed an aggregate maximum sum being \$400,000 or as may be determined from time to time by the Company in general meeting. The expression 'fees or other remuneration' in this clause 49.1:

- (a) does not include any amounts which may be paid by the Company under clauses 49.5, 49.6, 49.7, 51 and 88;
- (b) includes the minimum superannuation contribution required to be made by the Company in respect of any Non-Executive Director to avoid the superannuation guarantee charge under the *Superannuation Guarantee Charge Act 1992* (Cth) and the *Superannuation Guarantee (Administration) Act 1992* (Cth) (as amended or replaced from time to time); and
- (c) includes any fees which a non-executive director agrees to sacrifice on a pre-tax basis.

49.2. The notice calling a general meeting at which it is proposed that Members approve an increase of the aggregate maximum sum must state the amount of the increase and

the aggregate maximum sum, and any other matters required by the ASX Listing Rules.

- 49.3. Subject to the ASX Listing Rules, the aggregate maximum sum will be divided among the Non-Executive Directors in such proportion and manner as the Directors agree and, in default of agreement, equally and shall be deemed to accrue from day to day.
- 49.4. Non-Executive Directors may not be paid a commission on or a percentage of profits or operating revenue.
- 49.5. If a Non-Executive Director is required to perform services for the Company which in the opinion of the Directors, are outside the scope of the ordinary duties of a Director, the Company may pay or provide the Director remuneration determined by the Directors which may be either in addition to or instead of the Director's fees or remuneration under clause 49.1.
- 49.6. Non-Executive Directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Company or otherwise in connection with the Company's business.
- 49.7. The Company may also pay a premium for a contract insuring a person who is or has been a Non-Executive Director against liability incurred by the person as a Director, except in circumstances prohibited by the Corporations Act.
- 49.8. Shares may be provided to Non-Executive Directors as part of their remuneration under clauses 49.3 and 49.5 according to the rules of any share plan or facility for the remuneration of Non-Executive Directors that may be introduced by the Company. For the purposes of clause 49.1, the value of any Shares provided will be determined according to the rules of the share plan or facility.

50. REMUNERATION OF EXECUTIVE DIRECTORS

- 50.1. The remuneration of an Executive Director may from time to time be fixed by the Directors. The remuneration may be by way of salary or commission or participation in profits or by all or any of these modes but may not be by commission on, or a percentage of, operating revenue.
- 50.2. The Company may reimburse an Executive Director for his or her expenses properly incurred as a Director or in the course of his or her office.
- 50.3. Except in circumstances prohibited by the Corporations Act, the Company may pay a premium for a contract insuring a person who is or has been an Executive Director against liability incurred by the person as a Director.

51. RETIREMENT BENEFITS

- 51.1. Subject to the requirements of the Corporations Act and the ASX Listing Rules, the Company may give a person a benefit in connection with a Director's retirement from a Board or managerial office in the Company.
- 51.2. The Company may enter into a contract with a Director providing for payment of a benefit on retirement.

Powers and duties of Directors

52. DIRECTORS TO MANAGE COMPANY

- 52.1. The business of the Company is managed by or under the direction of the Directors who may exercise all powers of the Company that this Constitution, the Corporations Act or the ASX Listing Rules do not require to be exercised by the Company in general meeting.

Proceedings of Directors

53. DIRECTORS' MEETINGS

- 53.1. Any Director may at any time, and the Secretary must on the request of any Director, call a meeting of the Directors.
- 53.2. A Directors' meeting must be called by giving reasonable notice of a meeting to each Director, unless the Directors unanimously agree otherwise. The notice may be in writing or given using any technology consented to by all the Directors.
- 53.3. An accidental omission to send a notice of a meeting of Directors to any Director or the non-receipt of such a notice by any Director does not invalidate the proceedings, or any resolution passed, at the meeting.
- 53.4. Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means consented to by all the Directors. The consent may be a standing one.
- 53.5. The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 53.6. A Director who participates in a meeting held in accordance with clause 53.4 is taken to be present and entitled to vote at the meeting.
- 53.7. A Director can only withdraw his or her consent under clause 53.4 to the means of communication between Directors proposed for a Directors' meeting if the Director does so at least 48 hours before the meeting.
- 53.8. Clause 53.4 applies to meetings of Directors' committees as if all committee members were Directors.
- 53.9. The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 53.10. A quorum for meetings of Directors may be fixed by the Directors and unless so fixed, is two Directors present. The quorum must be present at all times during the meeting.
- 53.11. Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, one or more of the Directors may call a general meeting of Members to deal with the matter.

54. DECISIONS

- 54.1. Questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to the Corporations Act, each Director has one vote.

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- 54.2. In the case of an equality of votes, the chairperson does not have a second or casting vote in addition to his or her deliberative vote.
- 54.3. An Alternate Director has one vote for each Director for whom he or she is an alternate. If an Alternate Director is a Director, he or she also has a vote as a Director.

55. DIRECTORS' INTERESTS

- 55.1. Where a Director has a material personal interest in a matter that relates to the affairs of the Company the Director must comply with the Corporations Act.
- 55.2. Subject to the provisions of this clause 55, a Director or a body or entity in which a Director has a direct or indirect interest may:
- (a) enter into any agreement or arrangement with the Company;
 - (b) hold any office or place of profit other than as auditor in the Company; and
 - (c) act in a professional capacity other than as auditor for the Company,
- and the Director or the body or entity 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.
- 55.3. 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.
- 55.4. 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.
- 55.5. A Director who has a material personal interest in a matter that is being considered at a Directors' 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:

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- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
 - (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- 55.6. 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 ASX Listing Rules.
- 55.7. Nothing in this clause affects the duty of a Director to comply with the Corporations Act as regards that director's interests or any conflict of interest.

56. ALTERNATE DIRECTORS

- 56.1. A Director may, with the approval of the Directors, appoint any person as his or her alternate.
- 56.2. An Alternate Director is entitled to notice of Directors' meetings while he or she is acting in that capacity and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.
- 56.3. An Alternate Director is an officer of the Company and is not an agent of the appointor.
- 56.4. The provisions of this Constitution which apply to Directors also apply to Alternate Directors, except:
- (a) where a provision is expressed not to apply to Alternate Directors; and
 - (b) that Alternate Directors are not entitled in that capacity to any remuneration from the Company.
- 56.5. The appointment of an Alternate Director may be revoked at any time by the appointor or by the other Directors.
- 56.6. An Alternate Director's appointment ends automatically when his or her appointor ceases to be a Director.
- 56.7. Any appointment or revocation under this clause must be effected by written notice delivered to the Secretary.
- 56.8. An Alternate Director does not have an interest in a contract or arrangement or a material personal interest in a matter by reason only of the fact that his or her appointor has such an interest.
- 56.9. For the avoidance of doubt, an Alternate Director shall not be taken into account when determining the minimum and maximum number of Directors for the purpose of clause 42.2.

57. REMAINING DIRECTORS

- 57.1. The Directors may act even if there are vacancies on the board.

57.2. If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Director or Directors may act only to:

- (a) appoint a Director or Directors; or
- (b) call a general meeting.

58. CHAIRPERSON

58.1. The Directors may elect a Director as chairperson of Directors' meetings and may determine the period for which the chairperson will hold office.

58.2. If no chairperson is elected or if the chairperson is not present at any Directors' meeting within 10 minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of the meeting.

58.3. The Directors may elect a Director as deputy chairperson to act as chairperson in the chairperson's absence.

59. DELEGATION

59.1. The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to a committee or committees.

59.2. The Directors may at any time revoke any delegation of power under clause 59.1.

59.3. At least one member of each committee of Directors must be a Director.

59.4. A committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.

59.5. Meetings of any committee of Directors will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each member was a Director.

60. WRITTEN RESOLUTIONS

60.1. If all the Directors who are eligible to vote on a resolution have signed a document containing a statement that they are in favour of a resolution set out in the document, then a resolution in those terms is taken to have been passed by the Directors without a meeting. The resolution is passed when the last Director signs.

60.2. For the purposes of clause 60.1, separate copies of a document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy.

60.3. Any document referred to in this clause may be in the form of a facsimile transmission or electronic notification.

60.4. If a resolution is taken to have been passed in accordance with this clause 60, the minutes must record that fact.

60.5. This clause 60 applies to meetings of Directors' committees as if all members of the committee were Directors.

60.6. Any document referred to in this clause 60 must be sent to every Director who is entitled to vote on the resolution.

61. VALIDITY OF ACTS OF DIRECTORS

- 61.1. An act done by a Director is effective even if their appointment, or the continuance of their appointment, is invalid because the Company or Director did not comply with this Constitution or any provision of the Corporations Act.
- 61.2. Clause 61.1 does not confer rights on third parties in respect of dealings between the Company and such third parties.

62. MINUTES

- 62.1. The Directors must cause minutes to be made of:
- (a) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
 - (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
 - (c) all resolutions passed in accordance with clause 60;
 - (d) appointments of officers, but only if the Directors resolve that a minute of the appointment should be made; and
 - (e) all disclosures of interests made in accordance with the Corporations Act.
- 62.2. Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting, and if so signed will be conclusive evidence of the matters stated in such minutes.

Executive Directors

63. APPOINTMENT

- 63.1. The Directors may appoint a Director to the office of Managing Director on such terms as they think fit.
- 63.2. The Directors may appoint a Director to any other full-time or substantially full-time executive position in the Company on such terms as they think fit.
- 63.3. A Director appointed under clauses 63.1 or 63.2, and a Director (however appointed) occupying for the time being a full-time or substantially full-time executive position in the Company or a related body corporate of the Company, is referred to in this Constitution as an Executive Director.
- 63.4. The Directors may, subject to the terms of the Executive Director's employment contract, suspend, remove or dismiss him or her from executive office and appoint another Director in that place. If this occurs, the Executive shall automatically cease to be a Director.
- 63.5. A person ceases to be Managing Director if they cease to be a Director.
- 63.6. A Managing Director is not subject to retirement and re-election under clause 46. Any other Executive Directors are subject to retirement and re-election.

64. POWERS OF EXECUTIVE DIRECTORS

- 64.1. The Directors may confer on an Executive Director any powers exercisable by the Directors, subject to any terms and restrictions determined by the Directors.
- 64.2. The Directors may authorise an Executive Director to sub-delegate all or any of the powers vested in him or her.
- 64.3. Any power conferred under this clause may be concurrent with but not to the exclusion of the Directors' powers.
- 64.4. The Directors may at any time withdraw or vary any of the powers conferred on an Executive Director.

65. APPOINTMENT OF ATTORNEYS AND AGENTS

- 65.1. The Directors may from time to time by resolution or power of attorney appoint any person to be the attorney or agent of the Company:
- (a) for the purposes;
 - (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
 - (c) for the period; and
 - (d) subject to the conditions,
- determined by the Directors.
- 65.2. An attorney or agent appointed under this clause 65 may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

Secretary

66. SECRETARY

- 66.1. There must be at least one Secretary of the Company appointed by the Directors on conditions determined by them.
- 66.2. The Secretary is entitled to attend all Directors' and general meetings.
- 66.3. The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

Seals

67. COMMON SEAL

If the Company has a Seal:

- (a) the Directors must provide for the safe custody of the Seal;
- (b) it must not be used except with the authority of the Directors or a Directors' committee authorised to permit use of the Seal;

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- (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document; and
 - (d) the Directors may determine by resolution either generally or in any particular case that the signature of any Director or the Secretary to a document to which the Seal or a duplicate seal or certificate seal is affixed may be a facsimile applied to the document by specified mechanical means.

68. DUPLICATE SEAL

If the Company has a Seal, the Company may have one or more duplicate seals of the Seal each of which:

- (a) must be a facsimile of the Seal with the addition on its face of the words Duplicate Seal; and
- (b) must only be used with the authority of the Directors or a Directors' committee.

69. SHARE SEAL

If the Company has a Seal, the Company may have a certificate seal which:

- (a) may be affixed to Share, option or other certificates;
- (b) must be a facsimile of the Seal with the addition on its face of the words Share Seal; and
- (c) must only be used with the general or specific authority of the Directors or a Directors' committee.

Inspection of records

70. TIMES FOR INSPECTION

- 70.1. Except as otherwise required by the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 70.2. A Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.
- 70.3. Notwithstanding clauses 70.1 and 70.2, the books of the Company containing the minutes of general meetings will be kept at the Company's registered office and will be open to inspection of Members at all times when the office is required to be open to the public.

Dividends and reserves

71. DIVIDENDS

The Directors may by resolution either:

- (a) declare a Dividend and may fix the amount, the time for and method of payment; or
- (b) determine a Dividend is payable and fix the amount and the time for and method of payment

as permitted by the Corporations Act.

72. AMEND RESOLUTION TO PAY DIVIDEND

If the Directors determine that a Dividend is payable under clause 71(b), they may, if permitted by the ASX Listing Rules, amend or revoke the resolution to pay the Dividend before the record date notified to ASX for determining entitlements to that Dividend.

73. NO INTEREST

Interest is not payable by the Company on a Dividend.

74. RESERVES

- 74.1. The Directors may set aside such amounts otherwise available to pay Dividends, by way of reserves, as they think appropriate before declaring a Dividend or determining to pay a Dividend.
- 74.2. The Directors may apply the reserves for any purpose for which profits (or amounts otherwise available to pay Dividends) may be properly applied.
- 74.3. Pending any application of the reserves, the Directors may invest or use the reserves in the business of the Company or in other investments as they think fit.
- 74.4. The Directors may carry forward any amounts otherwise available to pay Dividends without transferring them to a reserve.

75. DIVIDEND ENTITLEMENT

- 75.1. Subject to the rights of persons (if any) entitled to Shares with special rights as to Dividends:
 - (a) all fully paid Shares on which any Dividend is declared or paid, are entitled to participate in that Dividend equally; and
 - (b) each partly paid Share is entitled to a fraction of the Dividend declared or paid on a fully paid Share of the same class, equivalent to the proportion which the amount paid (not credited) on the Share bears to the total amounts paid and payable, whether or not called, (excluding amounts credited) on the Share.
- 75.2. An amount paid on a Share in advance of a call is not to be taken as paid for the purposes of clause 75.1.

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- 75.3. Unless otherwise determined by the Directors, Shares rank for Dividends from their date of allotment.
- 75.4. Subject to the Corporations Act and the CS Facility 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.

76. RESTRICTED SECURITIES

During a breach of the ASX 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.

77. DEDUCTIONS FROM DIVIDENDS

The Directors 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.

78. DISTRIBUTION OF ASSETS

- 78.1. The Directors may resolve that a Dividend (interim or final) will be paid wholly or partly by the transfer or distribution of specific assets, including fully paid shares in, or debt securities of, any other corporation.
- 78.2. If a difficulty arises in making a transfer or distribution of specific assets, the Directors may:
- (a) deal with the difficulty as they consider expedient;
 - (b) fix the value of all or any part of the specific assets for the purposes of the distribution;
 - (c) determine that cash will be paid to any Members on the basis of the fixed value in order to adjust the rights of all the Members; and
 - (d) vest any such specific assets in trustees as the Directors consider expedient.
- 78.3. If a transfer or distribution of specific assets to 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 transfer or distribution of specific assets.

79. PAYMENT

- 79.1. Any Dividend or other money payable in respect of Shares may be paid:
- (a) by cheque sent through the mail directed to:
 - (i) by the address of the Member shown in the Register or to the address of the joint holder of Shares shown first in the Register; or
 - (ii) by an address which the Member has, or joint holders have, in writing notified the Company as the address to which Dividends should be sent;

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- (b) by electronic funds transfer to an account with a bank or other financial institution nominated by the Member and acceptable to the Company; or
 - (c) by any other means determined by the Directors.

79.2. Any joint holder may give an effectual receipt for any Dividend or other money paid in respect of Shares held by holders jointly.

80. ELECTION TO REINVEST DIVIDEND

The Directors may:

- (a) establish a plan under which Members or any class of Members may elect to reinvest cash Dividends paid by the Company by subscribing for Shares;
- (b) vary, suspend or terminate the arrangements established under clause 80(a).

81. ELECTION TO ACCEPT SHARES IN LIEU OF DIVIDEND (BONUS SHARES)

81.1. The Directors may resolve, in respect of any Dividend which it is proposed to pay on any Shares, that holders of those Shares may elect to:

- (a) forego their right to share in the proposed Dividend or part of the proposed Dividend; and
- (b) instead receive an issue of Shares credited as fully paid.

81.2. If the Directors resolve to allow the election provided for in clause 81.1, each holder of Shares conferring a right to share in the proposed Dividend may, by notice in writing to the Company given in such form and within such period as the Directors may decide, elect to:

- (a) forego the Dividend which otherwise would have been paid to the holder on such of the holder's Shares conferring a right to share in the proposed Dividend as the holder specifies in the notice of election; and
- (b) receive instead Shares to be issued to the holder credited as fully paid, on and subject to such terms and conditions as the Directors may determine.

81.3. Following the receipt of duly completed notices of election under clause 81.1(b), the Directors must:

- (a) appropriate from the Company's excess assets or any reserve available for distribution to Members an amount equal to the aggregate issue price (if any) of the Shares to be issued credited as fully paid to those holders of Shares who have given such notices of election; and
- (b) apply the amount (if any) in paying up in full the number of Shares required to be so issued.

81.4. The Directors may rescind, vary or suspend a resolution of the Directors made under clause 81.1 and the arrangements implemented under the resolution.

81.5. The powers given to the Directors by this clause 81 are additional to the provisions for capitalisation of excess assets provided for by this Constitution. If the Directors exercise their power to capitalise excess assets under clause 83 then any Member who has elected to participate in arrangements established under this clause 81 is deemed,

for the purpose of determining the Member's entitlement to share in the capitalised sum, not to have so elected.

82. UNCLAIMED DIVIDENDS OR OTHER DISTRIBUTIONS

All Dividends or other distributions unclaimed for one year after the time for payment has passed may be invested by the Directors as they think fit for the benefit of the Company until claimed or until required to be dealt with in accordance with any law relating to unclaimed money.

83. CAPITALISATION OF AMOUNTS

83.1. The Directors may resolve:

- (a) to capitalise any sum being amounts otherwise available to pay Dividends or any reserve available for distribution to Members; and
- (b) that:
 - (i) no Shares be issued and no amounts unpaid on Shares be paid up on capitalisation of the sum; or
 - (ii) the sum be applied in any of the ways mentioned in clause 83.2 for the benefit of Members in the proportions in which the members would have been entitled if the sum had been distributed by way of Dividend.

83.2. The ways in which a sum may be applied for the benefit of Members under clause 83.1(b)(ii) are:

- (a) in paying up any amounts unpaid on Shares held or to be held by Members;
- (b) in paying up in full unissued Shares or debt securities to be issued to Members as fully paid; or
- (c) partly as mentioned in clause 83.2(a) and partly as mentioned in clause 83.2(b).

83.3. To the extent necessary to adjust the rights of the Members among themselves, the Directors may:

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

and any agreement made under the authority of clause 83.3(b) is effective and binding on all the Members concerned.

Notices

84. SERVICE OF NOTICES

- 84.1. Notice may be given by the Company to any person who is entitled to notice under this Constitution by:
- (a) serving it on the person;
 - (b) sending it by post, courier, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person or sending it by other electronic means notified by the person;
 - (c) where it is a notice of meeting, giving it in accordance with section 249J(3) of the Corporations Act; or
 - (d) (except in the case of a notice of meeting of Members or other document which is required under the Corporations Act to be given individually to each Member entitled to vote at the meeting and to each Director), advertising in one or more newspapers published daily (except on weekends) throughout Australia as determined by the Directors.
- 84.2. A notice sent by post or courier is taken to be served:
- (a) by properly addressing, prepaying and posting or directing the delivery of the notice; and
 - (b) on the day after the day on which it was posted or given to the courier for delivery.
- 84.3. Subject to the Corporations Act, a notice sent by facsimile transmission or electronic notification is taken to be served:
- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
 - (b) on the day of its transmission except if transmitted after 5.00pm in which case is taken to be served on the next day.
- 84.4. A notice of meeting given to a Member under section 249J(3)(cb) of the Corporations Act is taken to be given on the business day after the day on which the Member is notified that the notice of meeting is available.
- 84.5. A notice given by advertisement is taken to be served on the date on which the advertisement first appears in a newspaper.
- 84.6. A notice may be served by the Company on joint holders under clause 84.1(a) or 84.1(b) by giving the notice to the joint holder whose name appears first in the Register.
- 84.7. Every person who is entitled to a Share by operation of law and who is not registered as the holder of the Share is taken to receive any notice served in accordance with this clause by advertisement or on that person from whom the first person derives title.
- 84.8. A Share certificate, cheque, warrant or other document may be delivered by the Company either personally or by sending it:

(a) in the case of a Member whose address recorded in the Register is not in Australia, by airmail post, facsimile transmission, electronic notification or in another way approved by the Directors, as appropriate; and

(b) in any other case by ordinary post,

and is at the risk of the addressee as soon as it is given or posted.

A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia for the purposes of this clause 84.

- 84.9. A certificate in writing signed by a Director, Secretary or other officer of the Company, or by any person that the Company has engaged to maintain the Register, that a document or its envelope or wrapper was addressed and stamped and was posted or given to a courier is conclusive evidence of posting or delivery by courier.
- 84.10. Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- 84.11. All notices sent by post outside Australia must be sent by prepaid airmail post.
- 84.12. A notice sent by post, courier, facsimile transmission or electronic notification to a Member's address shown in the Register or the address supplied by the Member to the Company for the purpose of sending notices to the Member is deemed to have been served notwithstanding that the Member has died, whether or not the Company has notice of his or her death.

85. PERSONS ENTITLED TO NOTICE

85.1. Notice of every general meeting must be given to:

- (a) every Member;
- (b) every Director and Alternate Director;
- (c) if the Company is admitted to ASX's official list, ASX; and
- (d) the Auditor.

85.2. No other person is entitled to receive notice of a general meeting.

Audit and financial records

86. COMPANY TO KEEP FINANCIAL RECORDS

- 86.1. The Directors must cause the Company to keep written financial records and to prepare financial documents and reports in accordance with the requirements of the Corporations Act and the ASX Listing Rules.
- 86.2. The Directors must cause the financial records and financial documents of the Company to be audited in accordance with the requirements of the Corporations Act and the ASX Listing Rules.

Winding up

87. WINDING UP

- 87.1. Nothing in this clause prejudices the rights of the holders of Shares issued on special terms and conditions.
- 87.2. 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
 - (b) for that purpose, determine how he or she will carry out the division between the 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.
- 87.3. The liquidator may, with the sanction of a special resolution of the Company, vest all or any of the Company's assets in a trustee on trusts determined by the liquidator for the benefit of the contributories.

Indemnity

88. INDEMNITY, INSURANCE AND ACCESS

- 88.1. The Company must indemnify each officer of the Company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer.
- 88.2. Where the Directors consider it appropriate, the Company may execute a documentary indemnity in any form the Directors determine in favour of any officer of the Company.
- 88.3. Where the Directors consider it appropriate, the Company may:
- (a) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer; and
 - (b) bind itself in any contract or deed with any officer of the Company to make the payments.
- 88.4. Where the Directors consider it appropriate, the Company may:
- (a) give a former Director access to certain papers, including documents provided or available to the Directors and other papers referred to in those documents; and
 - (b) bind itself in any contract with a Director or former Director to give the access.
- 88.5. In this clause :
- (a) *officer* means:

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- (i) a Director or Secretary; or
 - (ii) a person appointed as a trustee by, or acting as a trustee at the request of, the Company,
- and includes a former officer.
- (b) *duties of the officer* includes, in any particular case where the Directors consider it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the Company or, where applicable, the subsidiary of the Company to any other corporation.
 - (c) *to the relevant extent* means:
 - (i) to the extent the Company is not precluded by law from doing so;
 - (ii) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and
 - (iii) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.
 - (d) *liability* means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.

89. SHAREHOLDER DISCLOSURE REGARDING ESCROW

If a Member has entered into any arrangement restricting the transfer or other disposal of Shares and those arrangements are of the nature of arrangements which the Company is required to disclose under the ASX Listing Rules, then the Member must provide to the Company such information that the Company requires and within the time that the Company requires, to comply with the Company's disclosure obligations.

90. EXECUTION OF DOCUMENTS

The Company may execute a document in any of the following ways:

- (a) in accordance with section 127(1) of the Corporations Act;
- (b) if the Company has a Seal, in accordance with section 127(2) of the Corporations Act and clauses 67, 68 and 69; or
- (c) in any other way approved by the Directors and permitted by law.

91. PREFERENCE SHARES

If the Company at any time proposes to create and issue any preference shares:

- (a) the preference shares may be issued on the terms that they are, or at the option of either or both the Company and the holder are, liable to be redeemed, whether out of share capital, profits or otherwise;
- (b) the preference shares are to confer on the holders the right to convert the preference shares into ordinary shares if and on the basis the Directors decide at the time of issue of the preference shares;
- (c)
 - (i) the preference shares are to confer on the holders a right to receive out of the profits of the Company available for Dividend a preferential Dividend at the rate or of the amount (which may be subject to an index) and on the basis decided by the Directors at the time of issue of the preference shares;
 - (ii) in addition to the preferential Dividend, the preference shares may participate with the ordinary shares in Dividends determined by the Directors if and to the extent the Directors decide at the time of issue of the preference shares; and
 - (iii) the preferential Dividend may be cumulative if and to the extent the Directors decide at the time of issue of the preference shares;
- (d) the preference shares are to confer on the holders:
 - (i) the right on redemption in a winding up or on a repayment of capital to payment in cash in priority to any other class of shares of:
 - (A) the amount paid or agreed to be considered as paid on each of the preference shares; and
 - (B) the amount (if any) equal to the aggregate of any Dividends accrued (whether determined or not) but unpaid and of any arrears of Dividends; and
 - (ii) the right, in priority to any payment of Dividend on any other class of shares, to the preferential Dividend;
- (e) the preference shares do not confer on the holders any further rights to participate in assets or profits of the Company;
- (f) the holders of the preference shares have the same rights as the holders of ordinary shares to receive notices, reports and accounts and to attend and be heard at all general meetings, but are not to have the right to vote at general meetings except as follows:

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- (i) on any question considered at a meeting if, at the date of the meeting, the Dividend on the preference shares is in arrears;
 - (ii) on a proposal:
 - (A) to reduce the share capital of the Company;
 - (B) that affects rights attached to the preference shares;
 - (C) to wind up the Company;
 - (D) for the disposal of the whole of the property, business and undertaking of the Company;
 - (iii) on a resolution to approve the terms of a buy-back agreement; and
 - (iv) on any question considered at a meeting held during the winding up of the Company; and
 - (g) the Company may issue further preference shares ranking equally in all respects with (but not in priority to) other preference shares already issued and the rights of the issued preference shares are not to be taken to have been varied by the further issue.

92. TRANSITIONAL

- (a) This Constitution supersedes the Constitution in force immediately before the adoption of this Constitution.
- (b) Everything done under any previous Constitution of the Company continues to have the same operation and effect after the adoption of this Constitution as if properly done under this Constitution. In particular (without limitation) every Director and Secretary in office immediately before the adoption of this Constitution is taken to have been appointed and continues in force under this Constitution. All such Directors are deemed to have been re-elected by Members on the date this Constitution is adopted.

93. APPENDIX 15A PROVISIONS

If the Company is admitted to the Official List of ASX, the following clauses apply:

- (a) Notwithstanding anything contained in this constitution, if the ASX Listing Rules prohibit an act being done, the act shall not be done.
- (b) Nothing contained in this Constitution prevents an act being done that the ASX Listing Rules require to be done.
- (c) If the ASX 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 ASX 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.

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- (e) If the ASX Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision.
 - (f) If any provision of this Constitution is or becomes inconsistent with the ASX Listing Rules this Constitution is deemed not to contain that provision to the extent of the inconsistency.