
C O R P O R A T I O N S A C T
C O M P A N Y L I M I T E D B Y S H A R E S

Constitution

of

Nanosonics Limited
(ABN 11 095 076 896)



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1. PRELIMINARY

1.1 Application of the Corporations Act

- (a) This Constitution is subject to the Corporations Act.
- (b) The replaceable rules for a company under the Corporations Act do not apply to the Company.
- (c) In this Constitution, unless the context requires otherwise or as otherwise defined in rule 1.2, a term in a rule:
 - (i) about a matter dealt with by a provision of the Corporations Act has the same meaning as in that provision of the Corporations Act; and
 - (ii) that is defined in section 9 of the Corporations Act has the same meaning as in that section.

1.2 Definitions

In this Constitution, unless the context otherwise requires:

ASX means Australian Stock Exchange Limited.

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

CHESS means Clearing House Electronic Subregister System.

CHESS approved securities means securities of the Company which are approved by SCH in accordance with the SCH Business Rules.

CHESS Rules means the SCH Business Rules and the provisions of the Corporations Act and Listing Rules concerning the electronic share registration and transfer system as and to the extent that they apply to the Company.

Commonwealth means the Commonwealth of Australia and its external territories.

Company means Nanosonics Limited (ABN 11 095 076 896) or whatever the Company's name may be from time to time.

Constitution means the constitution of the Company established pursuant to this constitution and as amended from time to time.

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

Dividend Reinvestment Plan means a plan whereby participating members, subject to the terms of the plan, elect in respect of some or all of their shares to apply the dividends payable on those shares to subscribe for additional shares in the Company.

Dividend Selection Plan means a plan whereby participating members, subject to the terms of the plan, elect in respect of some or all of their shares:

- (a) to receive the dividends payable on those shares wholly or partly by way of a payment out of any particular fund or reserve or out of profits derived from any particular source; or
- (b) not to receive the dividends payable on those shares, and in place of those dividends to receive some other form of distribution from the Company or another body corporate or trust, including paid up shares or other securities of the Company, other body corporate or trust.

Employee Share Plan or **Employee Option Plan** means a plan whereby selected directors, officers and employees of the Company and its related bodies corporate, subject to the terms of the plan, may be issued shares or options over shares in the Company.

Listing Rules means the Listing Rules of ASX and any other rules of ASX which are 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.

Register means the register of members kept as required by the Corporations Act and, while the Company is listed, includes CHESS or other subregister established and administered under the SCH Business Rules.

Representative, for a body corporate, means a representative under section 250D of the Corporations Act or a corresponding previous law.

Restriction Agreement has the same meaning as in the Listing Rules.

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

SCH means the ASX Settlement and Transfer Corporation Pty Limited (ACN 008 504 532) as approved as the securities clearing house under the Corporations Act.

SCH Business Rules means the business rules (within the meaning of chapter 7 of the Corporations Act) of SCH.

Seal means any common seal, duplicate seal, certificate seal or share seal of the Company as specified in this Constitution and if not specified, means each of them.

Transmission Event means:

- (a) for an individual member:
 - (i) the death of a member;
 - (ii) the bankruptcy of the member;
 - (iii) the member becoming of unsound mind; or
 - (iv) the member becoming a person, who is or whose estate is, liable to be dealt with under a law about mental health.

- (b) for a body corporate:
 - (i) the dissolution of the member; or
 - (ii) the succession by another body corporate to the assets and liabilities of the member.

Unmarketable Parcel of Shares means a number of shares held by a member which is less than the number the ASX's business rules define as a marketable parcel of shares.

1.3 Interpretation

In this Constitution, unless the context otherwise requires:

- (a) a reference to a word includes the singular and the plural of the word and vice versa;
- (b) a reference to a gender includes any gender;
- (c) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
- (d) a term, which refers to a natural person, includes a company, a partnership, an association, a corporation, a body corporate, a joint venture, an unincorporated body or a governmental agency;
- (e) headings and bold typing are included for convenience only and do not affect interpretation;
- (f) a reference to a party to this agreement includes a reference to that party's successors and permitted assigns;
- (g) a reference to a statute or statutory provision includes but is not limited to:
 - (i) a statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision; and
 - (ii) subordinate legislation made under the statute or statutory provision including but not limited to an order, regulation, or instrument;
- (h) a member is present at a general meeting if the member is present in person or by proxy, attorney or Representative;
- (i) a director is present at a meeting of directors, if the director is present in person or is represented by a duly appointed alternate director or by any other means of participation such as telephone or other audio communications equipment whereby all persons attending or participating in the meeting can hear each other;
- (j) a reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person, who occupies or performs the duties of that office or position;

- (k) a reference in a rule to a partly paid share is a reference to a share on which there is an amount unpaid; and
- (l) a reference in a rule about partly paid shares to a call or an amount called for a share includes but is not limited to a reference to a sum, that by the terms of issue of a share, becomes payable on issue or at a fixed date.

1.4 Powers under this Constitution

In this Constitution, unless the context otherwise requires:

- (a) the Company may do any of the following, which under the Corporations Act a company limited by shares may do if authorised by its constitution:
 - (i) take any action; or
 - (ii) exercise any power;
- (b) the Company may do these things, in any manner permitted by the Corporations Act;
- (c) if under this Constitution a person may do a particular act or thing, then the person does the act or thing at that person's discretion;
- (d) if this Constitution confers a power, then the person may exercise the power as necessary and for the period the person holds the office;
- (e) if this Constitution imposes a duty, then the person must perform the duty as necessary and for the period the person holds the office;
- (f) if this Constitution confers power on a person to delegate a function or power then the person may delegate:
 - (i) concurrently or to the exclusion of that person's performance or exercise of that function or power;
 - (ii) generally; or
 - (iii) by limiting the delegation in the manner that the person sets out in the delegation;
- (g) the delegation need not be to a specified person but may be to any person holding, occupying or performing the duties of, a specified office or position;
- (h) the delegation may include the power to delegate;
- (i) if the person's action depends upon the opinion, belief or state of mind of that person, then the delegate has the same capacity to act upon the delegate's opinion, belief or state of mind;
- (j) a delegate's action is taken as the act of the person who delegated the power or function;

- (k) if this Constitution confers a power to do a particular act or thing, then the power includes but is not limited to the power to repeal, rescind, revoke, amend or vary that act or thing;
- (l) if this Constitution confers a power to do a particular act or thing about a particular matter, then the power includes but is not limited to a power to do that act or thing:
 - (i) for some only of those matters;
 - (ii) for a particular class or particular classes of those matters; and
 - (iii) to make different provision for different matters or different classes of matters;
- (m) if this Constitution confers a power to appoint a person to an office or position, then the power includes but is not limited to a power:
 - (i) to appoint a person to act in the office or position until another person is appointed;
 - (ii) subject to any contract between the Company and the person, to remove or suspend the person appointed; and
 - (iii) to appoint another person temporarily in the place of:
 - (A) a person removed or suspended; or
 - (B) a sick or absent holder of an office or position.

1.5 Listing Rules compliance

If and for so long as the Company is admitted to the official list of ASX, the following clauses apply:

- (a) notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done;
- (b) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
- (e) if the Listing Rules require this Constitution not to contain a provision and 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 Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency;

- (g) where any shares in the capital of the Company are at any time classified under the Listing Rules or by ASX as Restricted Securities, then notwithstanding any other provision of this Constitution or the terms of issue of the Restricted Securities:
 - (i) the Restricted Securities may not be sold, assigned, transferred or otherwise disposed of, and the Company must not acknowledge, deal with, accept or register any sale, assignment, transfer or other disposal of those securities, during the escrow period in relation to those securities except as permitted by the Listing Rules, ASX or Restriction Agreement in relation to those securities; and
 - (ii) in the event of a breach of the Listing Rules relating to the Restricted Securities, or the Restriction Agreement in relation to the Restricted Securities, the member holding the Restricted Securities shall cease to be entitled to any dividends or other distributions and to any voting rights in respect of the Restricted Securities for so long as the breach subsists.

1.6 Plebiscite on proportional takeover scheme

- (a) Where offers have been made under a takeover scheme in respect of shares included in a class of shares in the Company where each offer relates to a proportion of the shares in the class that the offeree holds ("**proportional takeover scheme**"):
 - (i) the registration of a transfer giving effect to a contract resulting from the acceptance of an offer made under the proportional takeover scheme is prohibited unless and until a resolution to approve the proportional takeover scheme ("**approving resolution**") is passed in accordance with the provisions of this rule 1.6;
 - (ii) 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 scheme was made, held shares included in that class is entitled to vote on an approving resolution, and for the purposes of so voting, and notwithstanding anything to the contrary contained in this Constitution, is entitled to one vote for each of the last mentioned shares and the offeror or associate is not entitled to vote on an approving resolution;
 - (iii) an approving resolution shall be voted on at a meeting, convened and conducted by the Company, of the persons entitled to vote on the resolution; and
 - (iv) an approving resolution that has been voted on shall be taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than one half, and otherwise shall be taken to have been rejected.
- (b) The provisions of this Constitution that apply in relation to general meetings of the Company apply, with such modifications as the circumstances require, in relation to a meeting that is convened pursuant to this rule 1.6 as if the last mentioned meeting was a general meeting of the Company.

- (c) Where offers have been made under a proportional takeover scheme the directors shall ensure that a resolution to approve the proportional takeover scheme is voted on in accordance with this rule 1.6 before the fourteenth day before the last day of the offer period under the proportional takeover scheme or such other day as may be prescribed from time to time by the Corporations Act (“**relevant day**”).
- (d) Where a resolution to approve a proportional takeover scheme under which offers have been made is voted on in accordance with this rule 1.6 before the relevant day in relation to the proportional takeover scheme and is rejected, then:
 - (i) notwithstanding sections 652A, 652B and 652C of the Corporations Act, all offers under the proportional takeover scheme that have not, as at the end of the relevant day, been accepted, and all offers under the proportional takeover scheme that have been accepted and from whose acceptance binding contracts have not, as at the end of the relevant day, resulted (“**accepted offers**”), are deemed to be withdrawn at the end of the relevant day;
 - (ii) the offeror shall, as soon as practicable after the end of the relevant day, return to each person who has accepted any of the accepted offers any documents that were sent by the person to the offeror with the acceptance of the offer;
 - (iii) the offeror is entitled to rescind, and shall, as soon as practicable after the end of the relevant day, rescind, each contract resulting from the acceptance of an offer made under the proportional takeover scheme; and
 - (iv) a person who has accepted an offer made under the proportional takeover scheme is entitled to rescind the contract (if any) resulting from that acceptance.
- (e) This rule 1.6 shall cease to have effect on the third anniversary of the date of adoption or last renewal of the rule.

1.7 Currency

- (a) The Company may pay an amount payable to the holder of a share in the currency of a country other than Australia for any reason including but not limited to:
 - (i) on account of dividend;
 - (ii) return of capital;
 - (iii) participation in the property of the Company on a winding up;
 - (iv) with the agreement of the holder; or
 - (v) under the terms of issue of the share.
- (b) The directors may fix a date up to 30 days before the payment date, as the date on which an exchange rate is determined.

2. SHARE CAPITAL

2.1 Shares

- (a) Without prejudice to any special right conferred on a holder of a share or class of shares, the directors may issue, grant options in relation to or otherwise dispose of a share to a person as the directors think fit.
- (b) The directors' discretion includes but is not limited to terms on:
 - (i) price, conditions and timing;
 - (ii) a special right or restriction which may be preferred or deferred; and
 - (iii) dividends, voting, return of capital and participation in the property of the Company on a winding up.
- (c) The directors may differentiate between each holder of a partly paid share on:
 - (i) the amount of a call that a member must pay; and
 - (ii) the time the member must pay that amount.

2.2 Preference shares

- (a) The Company may issue preference shares including preference shares which:
 - (i) are liable to be redeemed; or
 - (ii) at the option of the Company, are liable to be redeemed.
- (b) If and for so long as the Company is admitted to the official list of the ASX, the rights attached to preference shares are those set out in Appendix A or those approved by special resolution as applicable to those shares.

2.3 Power to pay brokerage, commission and interest on share capital

- (a) The Company may pay brokerage or commission in the manner provided by the Corporations Act.
- (b) The Company may satisfy a payment of brokerage or commission by:
 - (i) paying cash;
 - (ii) issuing fully or partly paid shares; or
 - (iii) any combination of these.
- (c) The Company may pay interest on its share capital in the manner provided by the Corporations Act.

2.4 Joint holders of shares

- (a) If 2 or more persons are registered as the holders of a share, then they hold it:
 - (i) as joint tenants with rights of survivorship; and
 - (ii) subject to this rule 2.4.
- (b) A joint holder and that person's legal personal representative is liable severally as well as jointly for each payment, including a call, which ought to be made for a share.
- (c) Subject to rule 2.4(b), on the death of any 1 joint holder, a survivor is the only person the Company recognises as having any title to the share.
- (d) Any 1 joint holder may give effectual receipts for dividend, interest or other distribution or payment for the share.
- (e) The Company is not bound to register more than 3 persons as joint holders of a share.
- (f) Rule 2.4(e) does not apply to persons jointly entitled to be registered as the holders of a share following a Transmission Event.

2.5 Equitable and other claims

- (a) Subject to the law and an express rule in this Constitution, the Company is entitled to treat the registered holder of a share as the absolute owner of that share.
- (b) Even if the Company has notice of a trust, claim or interest, the Company is not:
 - (i) obliged to recognise a person as holding a share upon any trust; or
 - (ii) subject to an absolute right of ownership in the registered holder, obliged to recognise any equitable, contingent, future or partial claim to or interest in a share on the part of any person.
- (c) With the consent of the directors, the Company may identify a share in the register as a share held subject to a trust.
- (d) Nothing in rule 2.5(c) limits the operation of rules 2.5(a) and (b).

2.6 Certificates

- (a) A member is entitled without charge to:
 - (i) 1 certificate for the marketable securities of the Company of each class registered in the member's sole name;
 - (ii) several such certificates, each for a reasonable part of those marketable securities.

- (b) The Company may determine:
 - (i) if the Corporations Act, the Listing Rules or the SCH Business Rules, as they apply to the Company, allow the Company not to issue a certificate for particular securities, such that the Company:
 - (A) need not issue a certificate for those securities;
 - (B) may cancel a certificate for those securities without issuing another certificate; and
 - (C) may ignore references in this Constitution to a certificate for those securities; and
 - (ii) for marketable securities held by 2 or more persons, if the Company may treat the holders as 1 person, such that delivery of a certificate to any 1 joint holder is sufficient delivery to each of them.
- (c) If a share certificate is worn out, defaced, destroyed or lost, it may be renewed in accordance with the Corporations Act, the Listing Rules and the SCH Business Rules, on such evidence being produced as the directors require. The member to whom such renewed share certificate is issued must, on demand, pay to the Company all costs incidental to the investigation of the evidence relating to the defacement, destruction or loss of the relevant share certificate required by the directors.

3. CALLS, FORFEITURE, INDEMNITIES, LIEN AND SURRENDER

3.1 Calls

- (a) Subject to this Constitution and to the terms of issue of a share, the directors may call upon a member for any money unpaid on a share which is not by the terms of issue, payable at a fixed time.
- (b) The directors may require a member to pay a call by instalments.
- (c) The Company must give the member at least 14 days notice to pay a call.
- (d) The notice must specify:
 - (i) the name of the member;
 - (ii) the number of shares held by that member;
 - (iii) the amount that the member must pay;
 - (iv) the time and the place of payment;
 - (v) the consequences of non-payment by the member as set out in this rule 3;
 - (vi) the last day for trading partly paid "call unpaid" shares; and

- (vii) the last day for the Company's registry to accept transfers of partly paid "call unpaid".
- (e) Each member must pay the amount stated in the notice in the manner set out in the notice.
- (f) A call is made when the directors pass the resolution authorising the call.
- (g) The directors may revoke or postpone a call.
- (h) The directors may extend the time for payment of a call.
- (i) A call is valid, even if:
 - (i) a member does not receive a notice of a call; or
 - (ii) the Company omits to give a member a notice of a call.
- (j) If a person does not pay a sum called for a share in full by the due date, then the person must pay:
 - (i) interest on the sum which is unpaid, from and including the due date for payment to the date of actual payment; and
 - (ii) any costs, expenses or damages, which the Company incurs for the non-payment or late payment of the sum.
- (k) The Company must determine the interest rate under rule 3.9.
- (l) If under the terms of issue, a sum unpaid on a share becomes payable on issue or at a fixed date, then:
 - (i) the sum is payable as if the Company has duly made and notified the member of the call; and
 - (ii) the person must pay the sum of the call on the date on which it is payable under the terms of issue of the share.
- (m) To the extent permitted by law, the directors may waive or compromise all or a part of a payment due to the Company:
 - (i) under the terms of issue of a share; or
 - (ii) under this rule 3.1.

3.2 Proceedings for recovery of calls

- (a) The following is conclusive evidence of a debt in any proceedings for the recovery of a call amount, interest, costs or expenses that the Company incurs following the non-payment or late payment of a call:
 - (i) the name of the defendant is entered in the Register as the holder or 1 of the holders of the share for which the call is claimed;

- (ii) the resolution making the call is recorded in the minute book; and
 - (iii) notice of the call was duly given to the defendant.
- (b) It is not necessary to prove any matter including the appointment of the directors, who made the call.
- (c) In this rule 3.2, a defendant may include but is not limited to a person against whom the Company alleges a set-off or counter-claim.

3.3 Payments in advance of calls

- (a) The directors may accept from a member an amount unpaid on a share, even if the Company has not called that amount.
- (b) The directors may authorise the Company to pay interest upon an amount accepted under rule 3.3(a):
 - (i) until the amount becomes payable; and
 - (ii) at a rate agreed between the directors and the member paying the amount.
- (c) The directors may repay to a member any of the amount accepted under rule 3.3(a).

3.4 Forfeiture of partly paid shares

- (a) If a member fails to pay the whole of a call or instalment of a call by the time appointed for payment, then the directors may serve a notice on that member requiring payment of:
 - (i) the amount which is unpaid;
 - (ii) any interest that has accrued; and
 - (iii) all costs, expenses or damages that the Company has incurred because of the non-payment or late payment of the call or instalment.
- (b) In the notice, the directors may:
 - (i) name a further day and a place at which the member must pay the amount payable; and
 - (ii) state, that if the member does not pay the whole of the amount as required, then the member is liable to forfeit the shares for which the Company made the call.
- (c) The directors must give a member at least 14 days after the date of service to pay.

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- (d) If the member does not comply with the notice, then the directors may resolve to forfeit any share for which the notice was given:
 - (i) at any time after the day named in the notice; but
 - (ii) before the member pays.
 - (e) If a member forfeits a share, then the forfeiture includes all dividends, interest and other money payable by the Company for the forfeited share which is not paid before the forfeiture.
 - (f) If the Company forfeits a share, then it must:
 - (i) give notice of the resolution to the member in whose name the share stood immediately before the forfeiture; and
 - (ii) enter the forfeiture and the date of forfeiture in the register of members.
 - (g) The forfeiture is valid even if the Company fails to:
 - (i) give the notice; or
 - (ii) make the entry,under rule 3.4(f).
 - (h) A forfeited share becomes the property of the Company.
 - (i) The directors may sell, reissue or otherwise dispose of the forfeited share as they think fit.
 - (j) The directors may reissue or dispose of the forfeited share, with or without any money paid on the share by any former holder being credited as paid up.
 - (k) A person whose share is forfeited:
 - (i) ceases to be a member for the forfeited share; but
 - (ii) remains liable to pay and must immediately pay, to the Company:
 - (A) all calls, instalments, interest, costs, expenses and damages owing for the share at the time of the forfeiture; and
 - (B) interest on any amount payable which is unpaid from and including the date of the forfeiture, to the date of actual payment.
 - (l) The Company must determine the interest rate under rule 3.9.
 - (m) Subject to an express provision in this Constitution, the forfeiture of a share extinguishes for that share all:
 - (i) interest in the Company;

- (ii) claims and demands against the Company; and
- (iii) other rights attached to the share.
- (n) The directors may, before a forfeited share has been sold, reissued or otherwise disposed of, annul the forfeiture upon the conditions they think fit.

3.5 Indemnity for payments by the Company

- (a) Rules 3.5(b)-(d) inclusive apply if the Company becomes liable under any law to make any payment:
 - (i) for a share held solely or jointly by a member;
 - (ii) for a transfer or transmission of a share by a member;
 - (iii) for dividends, bonuses or other money due or payable or which may become due and payable to a member; or
 - (iv) otherwise for or on account of a member, whether as a consequence of:
 - (A) the death of that member;
 - (B) the non-payment of any tax liability of that member or the legal personal representative of that member;
 - (C) the non-payment of any estate, probate, succession, death, stamp or other duty by that member or the legal personal representative of that member; or
 - (D) any other act or thing.
- (b) In addition to any right or remedy that a law may confer on the Company, the member or the member's legal personal representative must:
 - (i) fully indemnify the Company against any liability arising under rule 3.5(a);
 - (ii) reimburse the Company for any payment made under or as a consequence of that liability immediately on demand by the Company; and
 - (iii) pay interest on so much of the amount payable to the Company under rule 3.5(b)(2) as is unpaid from and including the date the Company makes a payment under that law until the date the Company is reimbursed in full for that payment.
- (c) The Company has a lien upon all dividends, interest and other money payable for a share held solely or jointly by that member or that member's legal personal representative for all money payable to the Company under this rule 3.5.

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

3.6 **Lien on shares**

- (a) The Company has a first and paramount lien on:
 - (i) each partly paid share for all money, whether presently payable, called or otherwise due under this Constitution for that share;
 - (ii) each share registered in the name of a holder, whether individually or jointly, for all money presently payable by the holder, or the holder's estate, to the Company, including but not limited to any money payable under rule 3.5.
- (b) The Company's lien on a share extends to all dividends payable for the share and to the proceeds of sale of the share.
- (c) The directors as they think fit may sell any share on which the Company has a lien if:
 - (i) an amount for which a lien exists is presently payable; and
 - (ii) not less than 14 days before the date of the sale, the Company has given to the registered holder of the share a notice in writing:
 - (A) setting out each amount for which the lien exists which is presently payable; and
 - (B) demanding the payment before the date of the sale of that amount.
- (d) If the Company registers a transfer of shares on which the Company has a lien without giving to the transferee notice of its claim then the Company releases its lien in so far as it relates to sums owing by the transferor or any predecessor in title.
- (e) The directors may:
 - (i) exempt a share from all or any part of this rule 3.6; and
 - (ii) waive or compromise all or any part of any payment due to the Company under this rule 3.6.

3.7 **Surrender of shares**

- (a) The directors may accept a surrender of a share by way of compromise:
 - (i) of any claim about whether or not that share has been validly issued; or
 - (ii) in any other case, if the surrender is within the powers of the Company.

- (b) The directors may sell, reissue or otherwise dispose of a surrendered share in the same manner as they may for a forfeited share.

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

- (a) A reference in this rule 3.8 to a disposal of shares is a reference to:
 - (i) any sale, reissue or other disposal of a forfeited share under rule 3.4(i) or a surrendered share under rule 3.7; and
 - (ii) any sale of a share on which the Company has a lien under rule 3.6(c).
- (b) If a share is disposed of under this Constitution, then the directors may:
 - (i) receive the purchase money or consideration given for the shares on the disposal;
 - (ii) effect a transfer of the shares;
 - (iii) execute, or appoint a person to execute, on behalf of the former holder an instrument of transfer of the shares or any other instrument to give effect to the disposal; and
 - (iv) register the person to whom they have transferred the shares as the holder of the shares.
- (c) A person to whom the directors transfer a share is not bound to consider:
 - (i) the regularity or validity of purchase money or consideration; or
 - (ii) how the Company applies the purchase money or consideration.
- (d) A person's title to a share is not affected by any irregularity or invalidity in:
 - (i) the forfeiture or surrender of a share; or
 - (ii) the exercise of the Company's lien on a share.
- (e) The remedy of a person aggrieved by a disposal of shares under this Constitution:
 - (i) is limited to damages only; and
 - (ii) is exclusively against the Company.
- (f) The Company must apply the proceeds of a disposal of a share in the payment of:
 - (i) the expenses of the disposal;
 - (ii) all money presently payable by the former holder whose share has been disposed of; and
 - (iii) the former holder, subject to any lien that exists for money not presently payable.

- (g) If the holder is an uncertificated holder, then the Company must pay as soon as practicable after the disposal.
- (h) If the holder is a certificated holder, then the Company must pay the amounts referred to in rule 3.8(f), when the former holder delivers to the Company the certificate for the share that has been disposed of or another proof of title which the directors accept.
- (i) A director or secretary of the Company may sign a statutory declaration declaring that as at the date of that statutory declaration a share was duly:
 - (i) forfeited; or
 - (ii) sold or reissued or otherwise disposed of.
- (j) The statutory declaration referred to in rule 3.8(i) is conclusive evidence of the:
 - (i) facts stated in that statutory declaration as against all persons claiming to be entitled to the share; and
 - (ii) right of the Company to forfeit, sell, reissue or otherwise dispose of the share.

3.9 Interest payable by member

- (a) Under rules 3.1(k), 3.4(l) and 3.5(b)(3), the rate of interest payable to the Company is:
 - (i) the rate the directors fix; or
 - (ii) if no rate is fixed by the directors, 8% per annum.
- (b) Interest payable:
 - (i) accrues daily; and
 - (ii) may be capitalised monthly or at other intervals which the directors determine.

4. DISTRIBUTION OF PROFITS

4.1 Dividends

- (a) The directors may pay any interim and final dividend as the financial position of the Company justifies.
- (b) The directors may pay any dividend payable under the terms of issue of a share.
- (c) The payment of a dividend does not require any confirmation by a general meeting.
- (d) Subject to any rights or restrictions attached to a share or class of shares or to the terms of any Dividend Selection Plan established by the directors, all dividends on

shares are to be paid in proportion to the number of shares issued by the Company except that:

- (i) a partly paid share will only entitle the holder to a fraction of the dividend payable on a fully paid share equal to the proportion of the total amount paid, credited and payable on the share which has been paid or credited as paid on the share; and
 - (ii) if dividends are declared by the directors to be paid in respect of a specified period and if the directors also declare that the dividends on any shares shall be further apportioned according to when amounts are paid or credited as paid on those shares during the specified period, an amount which is paid or credited as paid on a relevant share during the specified period will only entitle the holder of the share to a fraction of the dividend that would otherwise be payable in respect of that amount equal to the proportion of the specified period that has expired as at the date of payment of that amount.
- (e) For the purposes of paying a dividend, the directors must ignore an amount a member pays or has credited as paid on a share in advance of a call or has credited as paid on a share otherwise than for value.
 - (f) The Company will not pay interest on any dividend.
 - (g) The directors may fix a record date for a dividend.
 - (h) The directors must pay a dividend to the person who is registered as the holder of the share on the record date or, if one has not been fixed, on the date payment of the dividend is to be sent to members.
 - (i) The directors must pay the dividend on the date fixed for payment of the dividend (if any).
 - (j) The directors when determining a dividend is payable may:
 - (i) direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up shares or other securities of the Company or of another body corporate, either generally or to specific shareholders; and
 - (ii) direct that the dividend be paid:
 - (A) to particular shareholders wholly or partly out of any particular fund or reserve or out of profits derived from any particular source; and
 - (B) to the remaining shareholders wholly or partly out of any other particular fund or reserve or out of profits derived from any other particular source or generally.
 - (k) The directors may deduct from any dividend payable to a member:
 - (i) all sums of money presently payable by the member to the Company; and
 - (ii) apply the amount deducted in or towards satisfaction of the money owing.

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- (l) If a person is entitled to a share as a result of a Transmission Event, then the directors may retain any dividend payable for that share until that person becomes registered as the holder of the share or transfers it.
 - (m) The directors are not obliged to retain any dividend payable for a share under rule 4.1(l) until that person becomes registered as the holder of the share or transfers that share.
 - (n) Without prejudice to any other method of payment the directors may adopt, the directors may pay any dividend payable in cash for shares by:
 - (i) cheque; or
 - (ii) electronic funds transfer or other electronic means to an account with a bank, building society, credit union or other financial institution nominated by the member, or any of the joint holders, and acceptable to the Company in its discretion or, where no account has been nominated, to a separate account of the Company under rule 4.1(r).
 - (o) The directors may send a cheque by post:
 - (i) to the address in the Register of the holder;
 - (ii) in the case of joint holders, to the address in the Register of the joint holder first named in that register; or
 - (iii) to another address that a holder directs in writing.
 - (p) A cheque may be made payable to:
 - (i) bearer;
 - (ii) the order of the member to whom it is sent; or
 - (iii) a person that the member may direct.
 - (q) A cheque is sent at the member's risk.
 - (r) Without limitation to rule 4.1(m), if the directors decide to pay any dividend or other money payable in respect of shares by electronic funds transfer or other electronic means under this rule 4.1 and an account is not nominated by the member or a joint holder for that purpose, the Company may hold the amount payable in a separate account of the Company, without any obligation to pay interest, until the member or a joint holder nominates an account and the amount so held is to be treated as having been paid to the member or joint holders at the time it is credited to the separate account of the Company.
 - (s) Any joint holder may give an effectual receipt for any dividend or other money paid in respect of shares held by holders jointly.

- (t) The directors may, in their absolute discretion, elect to pay in the local currency of the country, any dividend or other money payable to a member or members whose address shown in the register is in a foreign country.
- (u) The directors may determine the exchange rate to be used to convert a dividend or other money into a foreign currency under rule 4.1(t).

4.2 Capitalisation of profits

- (a) Subject to any rights or restrictions attached to a share or class of shares, the directors may capitalise and distribute among the members entitled to receive a dividend, any amount:
 - (i) forming part of the undivided profits of the Company;
 - (ii) representing profits arising from an ascertained accretion to capital or from a revaluation of the assets of the Company;
 - (iii) arising from the realisation of any assets of the Company; or
 - (iv) otherwise available for distribution as a dividend.
- (b) The directors must calculate this amount using the same proportions as they use to calculate a dividend.
- (c) The directors may resolve that all or part of the capitalised amount is to be applied:
 - (i) to pay in full a share or security that the Company intends to issue to its members;
 - (ii) to pay an amount unpaid on a share or security of the Company which a member holds; or
 - (iii) by a combination of the these.
- (d) A member entitled to a share in the distribution must accept this application in full satisfaction of that person's interests in the capitalised amount.
- (e) Rules 4.1(h)-(j) apply to the payment of a capitalised amount as if it were a dividend.

4.3 Ancillary powers

- (a) To give effect to a resolution which determines how the directors will pay a dividend or that the directors will capitalise any amount, the directors may:
 - (i) settle any difficulty that may arise in making the distribution or capitalisation;
 - (ii) fix the value for distribution of a specific asset;
 - (iii) pay cash or issue a share or other security to a member to adjust the rights of all parties;

- (iv) vest a specific asset, cash, share or other security in any trustee upon trust for a person entitled to a dividend or capitalised amount; and
 - (v) authorise a person to make, on behalf of all the members entitled to any further share or security following the distribution or capitalisation, an agreement with the Company or another body corporate.
- (b) The authorised person may agree to:
 - (i) the issue of further shares or securities credited as fully paid up; or
 - (ii) the Company paying on behalf of the members an amount remaining unpaid on their existing shares or security by the application of their respective proportions of the sum distributed or capitalised.
- (c) Any agreement made between the directors and an authorised person is effective and binding on all members concerned.
- (d) If the Company distributes securities in the Company or in another body corporate or trust each member receiving a distribution, appoints the Company as that person's agent to do anything needed to give effect to that distribution, including but not limited to becoming a member of that other body corporate.
- (e) Rule 4.3(c) applies whether the distribution is:
 - (i) generally to members or to specific members;
 - (ii) as a dividend or otherwise; and
 - (iii) for value or not.

4.4 Reserves

- (a) Subject to this Constitution, the directors may set aside, out of the profits of the Company, any reserves or provisions for any purpose.
- (b) The directors may appropriate to the profits of the Company an amount previously set aside as a reserve or provision.
- (c) If the directors set aside an amount as a reserve or provision, they may:
 - (i) keep the amount together with other assets of the Company;
 - (ii) use the amount in the business of the Company; and
 - (iii) invest the amount in any investment.

4.5 Carry forward of profits

- (a) The directors may carry forward profits which they do not distribute to members.
- (b) The directors are not required to transfer those profits to a reserve or provision.

4.6 **Alteration of capital**

The Company may, by ordinary resolution:

- (a) increase the Company's share capital by the creation of new shares;
- (b) consolidate or divide some or all of the Company's share capital into shares of a greater amount than the Company's existing shares;
- (c) subdivide some or all of the Company's share capital into shares of smaller amounts;
- (d) cancel shares that have not been taken or agreed to be taken by any person or have been forfeited and reduce the amount of the Company's share capital by the amount of those shares;
- (e) convert all or any of paid up shares into stock and reconvert such stock into paid up shares of any denomination.

4.7 **Restrictions on partly-paid shares**

In the case of any alteration of capital in accordance with rule 4.6, any partly-paid shares:

- (a) must be re-organised in the same proportion as the other classes of shares; and
- (b) must not be dealt with so as to cancel or reduce the total amount paid and total amount unpaid by the holder of the partly paid shares.

4.8 **Additional rights**

If the Company passes an ordinary resolution under rule 4.6(b) or (c), it may also, by special resolution, determine that, as between the shares resulting from the consolidation, division or subdivision, 1 or more of those shares has some preference or special advantage as regards dividends, capital, voting or otherwise.

4.9 **Reduction of capital and share buy-backs**

There are no restrictions, other than those imposed by the Corporations Act, on:

- (a) reducing the Company's share capital; or
- (b) share buy-backs.

4.10 **Variation of rights**

If the issued shares are divided into different classes, the rights attaching to a class of shares (unless the terms of issue of that class otherwise provide) may be varied or abrogated only with:

- (a) the written consent of the holders of at least 75% of the issued shares of that class; or

- (b) the sanction of a special resolution passed at a separate meeting of the holders of shares of that class.

For the purposes of this rule 4.10 the:

- (c) provisions of this Constitution that relate to general meetings apply, as far as they can, and changed as necessary, to a separate meeting of the holders of shares in a class, except that a holder of shares of that class present in person or by proxy, attorney or Representative may demand a poll; and
- (d) rights attached to a class of shares are not taken to be varied if further shares of that class are issued on identical terms unless the terms of issue of that class of shares otherwise provide.

4.11 Adjustments

The directors may do anything they consider desirable to give effect to a resolution or other action authorising or effecting an alteration of the Company's share capital, varying or abrogating rights attaching to a class of shares or adjusting rights of all parties. In particular, the directors may:

- (a) round or disregard fractions of shares or fractional entitlements; and
- (b) determine that, as between the holders of shares or other entitlements, one or more of them has a preference or special advantage as regards dividend, capital, voting or otherwise.

5. TRANSFER AND TRANSMISSION OF SHARES

5.1 Forms of instrument of transfer

Subject to this Constitution, a member may transfer all or any of the member's shares:

- (a) in the case of CHESS approved securities, in accordance with the CHESS Rules;
- (b) by instrument in writing in any usual or common form or in any other form that the directors approve; or
- (c) by any other method of transfer of marketable securities which may be recognised by the Corporations Act, SCH and ASX and is approved by the directors.

5.2 Registration procedure

- (a) If CHESS approved securities are to be transferred then the procedure set down by the CHESS Rules is to be observed.
- (b) If an instrument of transfer is to be used to transfer shares in accordance with rule 5.1(b):

- (i) the instrument of transfer must be 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
- (ii) a proper instrument of transfer duly stamped (if necessary) must be 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,

then the Company must, subject to the powers vested in the directors by this Constitution, register the transferee as holder of the shares.

- (c) Except as provided by the CHES Rules, a transferor of a share 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 a share does not pass the right to any dividends declared on the share until registration.
- (d) 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.

5.3 **Directors' powers to apply a holding lock and to decline to register**

- (a) If permitted to do so by the Listing Rules, the directors may:
 - (i) request SCH to apply a holding lock to prevent a transfer of CHES approved securities; or
 - (ii) decline to register any transfer of other shares.
- (b) The directors must:
 - (i) request SCH to apply a holding lock to prevent a transfer of CHES approved securities registered on CHES; or
 - (ii) decline to register any transfer of other shares,

if:

- (iii) the Listing Rules require the Company to do so; or
- (iv) the transfer is in breach of the Listing Rules or a Restriction Agreement.
- (c) If in the exercise of their rights under rule 5.3(a) and rule 5.3(b) the directors request application of a holding lock to prevent a transfer of CHES approved securities or refuse to register a transfer of other shares they must give written notice to the holder of the securities of the refusal and to the broker lodging the transfer, if any. Failure to give such notice does not invalidate the decision of the directors.

5.4 **Company to retain instrument of transfer**

- (a) The Company must retain every instrument of transfer which is registered for such period as the directors determine.
- (b) 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 transactions to which it relates.

5.5 **Certification of transfer**

If any holder produces to the Company an instrument of transfer of shares signed by that holder as a transferor and deposits with the Company the certificate of title of that holder to the relevant shares the Company may pursuant to section 1095 of the Corporations Act endorse upon that instrument of transfer a statement to the effect that the certificate of title to the relevant shares is deposited with the Company and is held by the Company for the limited period specified in that statement.

5.6 **Transmission of shares**

- (a) If a member dies, the only persons the Company recognises as having any title to the member's shares or any benefits accruing for those shares are:
 - (i) the legal personal representative of the deceased, if the deceased was a sole holder; and
 - (ii) the survivor or survivors, if the deceased was a joint holder.
- (b) Nothing in rule 5.6(a) releases the estate of a deceased member from liability for a share, whether the deceased member held that share solely or jointly.
- (c) A person who becomes entitled to a share because of a Transmission Event may:
 - (i) sign a written notice stating that the person wishes to register as a shareholder and serve it on the Company; or
 - (ii) execute a transfer of the share to another person.
- (d) Before making the election under rule 5.6(c), the person must prove that person's entitlement by producing any evidence that the directors require.
- (e) The rules about the right to transfer and register a share apply with the necessary changes to a transfer under rule 5.2(b) as if:
 - (i) the relevant Transmission Event had not occurred; and
 - (ii) the registered holder of the share signed the transfer.

- (f) If 2 or more persons are jointly entitled to a share because of a Transmission Event, then upon being registered, they:
 - (i) hold the share as joint tenants; and
 - (ii) rule 2.4 applies.
- (g) Despite rule 5.6(a), the directors may register a transfer of shares which a member signs prior to a Transmission Event, even though the Company has notice of the Transmission Event.

6. GENERAL MEETINGS

6.1 Calling general meetings

- (a) A director may at any time call and arrange to hold a general meeting.

A general meeting may be called and arranged only as provided under this Constitution or the Corporations Act.
- (b) Subject to the Corporations Act, the directors may change the venue for, postpone or cancel a general meeting.

6.2 Notice of general meetings

- (a) Subject to this Constitution and to the rights or restrictions attached to a share or class of shares, the Company must give notice of a general meeting:
 - (i) within the time limits prescribed by the Corporations Act;
 - (ii) in compliance with the provisions of the Listing Rules;
 - (iii) in the manner authorised by rule 13.1; and
 - (iv) include a proxy form or proxy forms that enable any member to exercise its voting rights under this Constitution and in accordance with the provisions of that proxy form or proxy forms, in respect of each motion that is proposed to be voted upon at that general meeting,

providing that such general meeting will, notwithstanding that it is called by shorter notice than is required in this Constitution or the Corporations Act, be deemed to have been duly called if:

- (i) in the case of the annual general meeting, it is approved by all of the members entitled to attend and vote at that annual general meeting; or
- (ii) in the case of any other general meeting, it is approved by a majority in number of the members entitled to attend and vote at such other general meeting, being a majority holding not less than 95% in nominal value of the shares giving that right or 95% of the total voting rights at that other general meeting.

- (b) The Company must give a notice of the general meeting to each person, who is at the date of the notice a member, a director or an auditor of the Company.
- (c) A notice of a general meeting must:
 - (i) specify the date, time and place of the meeting; and
 - (ii) state the general nature of the business to be transacted at the meeting.
- (d) A valid action and a valid resolution remain valid, even if a person entitled to receive a notice or proxy for a general meeting does not receive or is not sent one or both of them, and
 - (i) the failure occurred by accident or error; or
 - (ii) before or after the meeting, the person:
 - (A) waives notice of that meeting; or
 - (B) gives written notice of the person's agreement to that action or resolution.
- (e) Subject to rule 6.2(f), a person's attendance at a general meeting waives any objection that person may have to:
 - (i) a failure to give notice or to a defective notice; and
 - (ii) the consideration of a matter which is not stated in the notice of the meeting.
- (f) Rule 6.2(e)(1) does not apply if the person at the beginning of the meeting objects to the holding of the meeting.
- (g) Rule 6.2(e)(2) does not apply if the person objects to considering the matter when it is presented.
- (h) Without limitation to rule 6.2(a)(ii), all documents sent to members must also be sent to the ASX in accordance with the provisions of the Listing Rules.

6.3 Admission to general meetings

The chairperson of a general meeting may expel or refuse admission to a person who:

- (a) has a pictorial-recording or sound-recording device;
- (b) has a placard or banner;
- (c) has an article considered by the chairperson to be dangerous, offensive or liable to cause disruption;
- (d) refuses to produce or to permit examination of any article or the contents of any article, in the person's possession;
- (e) behaves or threatens to behave in a dangerous, offensive or disruptive manner; or

- (f) is not:
 - (i) a member or proxy, attorney or Representative of a member; or
 - (ii) a director or an auditor of the Company.

6.4 Quorum at general meetings

- (a) Subject to rule 6.4(b) business may only be transacted at any general meeting, if a quorum of members is present when the meeting proceeds to business.
- (b) Even if there is no quorum, the meeting may elect a chairperson and adjourn a meeting.
- (c) A quorum consists of:
 - (i) if the number of members entitled to vote is 2 or more - 2 of those members; or
 - (ii) if only 1 member is entitled to vote - that member,
 present at the meeting in person or by proxy, attorney or Representative.
- (d) If a quorum is not present within 30 minutes after the time appointed for a general meeting and the meeting was convened upon the requisition of members, then the meeting is dissolved.
- (e) If a quorum is not present within 30 minutes after the time appointed for a general meeting in any other case, then the meeting stands adjourned:
 - (i) to the day, the time and place, that the directors determine; or
 - (ii) if no determination is made by the directors, to the same day in the next week and at the same time and place.
- (f) If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, then the meeting is dissolved.

6.5 Chairperson of general meetings

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

- (iii) the chairperson of directors is present within that time but is not willing to act as chairperson.
- (c) The deputy chairperson must chair a general meeting if the person is:
 - (i) present within 15 minutes after the time appointed for the meeting; and
 - (ii) willing to act.
- (d) Subject to rule 6.5(a), the meeting must elect a person under rule 6.5(e) if at a general meeting:
 - (i) there is no deputy chairperson of directors;
 - (ii) the deputy chairperson of directors is not present within 15 minutes after the time appointed for the meeting; or
 - (iii) the deputy chairperson of directors is present within that time but is not willing to act as chairperson.
- (e) The members present must elect as chairperson:
 - (i) another director, who is present and willing to act; or
 - (ii) if no other director is present and willing to act, a member who is present and willing to act.

6.6 Conduct of general meetings

- (a) A person must refer any question arising at a general meeting about the order of business, procedure or conduct of the meeting to the chairperson.
- (b) The chairperson's decision is final.
- (c) The chairperson may adjourn the meeting from time to time and from place to place.
- (d) The meeting may direct the chairperson to adjourn a meeting.
- (e) An adjourned meeting may only transact business unfinished at the meeting from which the adjournment took place.
- (f) If a meeting is adjourned for 30 days or more, then the Company must give notice of the adjourned meeting as if it is an original meeting.
- (g) Subject to rule 6.6(f), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

6.7 Decisions at general meetings

- (a) Subject to a resolution which as a matter of law requires a special majority:
 - (i) a question arising at a general meeting is decided by a majority of votes cast by the members present; and
 - (ii) a majority vote is for all purposes, a decision of the members.
- (b) In the case of an equality of votes upon any proposed resolution the chairperson of the meeting has a second or casting vote.
- (c) Subject to 6.7(d), a resolution put to the vote of a general meeting must be decided on a show of hands.
- (d) Either the chairperson or at least 5 members who can vote on the resolution or a member or members with at least 5% of the votes that may be cast on the resolutions on a poll, may demand a poll:
 - (i) before the vote is taken; or
 - (ii) before or immediately after the declaration of the result of the show of hands.
- (e) A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll has been demanded.
- (f) The chairperson may declare the result of a vote decided on a show of hands.
- (g) Unless a poll is duly demanded:
 - (i) the chairperson's declaration of the result of a vote and an entry to that effect into the minute book is conclusive evidence of the result; and
 - (ii) further proof of the number or proportion of the votes recorded in favour of or against the resolution is not required.
- (h) If a poll is duly demanded at a general meeting, the meeting must conduct the poll as the chairperson directs.
- (i) Subject to rule 6.7(j), the chairperson may direct that the poll be taken in any manner and either at once or after an interval or adjournment.
- (j) A poll demanded at a general meeting on the election of a chairperson or on a question of adjournment must be taken immediately.
- (k) The result of the poll is a resolution of the meeting at which the poll was demanded.
- (l) The demand for a poll may be withdrawn.

6.8 Voting rights

- (a) Subject to this Constitution and to any rights or restrictions attached to a share or class of shares, at a general meeting on a:
 - (i) show of hands, every person present who is a member or a proxy, attorney or Representative of a member has 1 vote; and
 - (ii) poll, every person present who is a member or a proxy, attorney or Representative of a member has 1 vote for each share the member holds and which entitles the member to vote, except for partly paid shares, each of which confers on a poll only a fraction of one vote equal to the proportion of the total amount paid, credited and payable on the share which has been paid or credited as paid on the share.

For the purposes of determining voting rights, an amount a member pays or has credited as paid on a share in advance of a call or has credited as paid on a share otherwise than for value, must be ignored.

- (b) If a person present at a general meeting represents more than 1 member:
 - (i) on a show of hands, the person is entitled to 1 vote only despite the number of members the person represents;
 - (ii) that vote is cast for all the members the person represents; and
 - (iii) the person must not exercise that vote in a way, which would contravene any directions given to the person in accordance with rule 6.9(f) in any instrument appointing the person as a proxy or attorney.
- (c) A joint holder may vote at any meeting in person or by proxy, attorney or Representative as if that person was the sole holder.
- (d) If more than 1 joint holder tenders a vote, then the vote of the holder named first in the register is accepted to the exclusion of any other.
- (e) The parent or guardian of an infant member may vote at any general meeting upon producing evidence of the relationship or of the appointment as the directors may require.
- (f) A vote by a parent or guardian of an infant member is accepted to the exclusion of the vote of the infant member.
- (g) A person entitled to a share as a result of a Transmission Event may vote at a general meeting as if that person were the registered holder of the share if, before the meeting, the directors:

- (i) admit that person's right to vote at that meeting for the share; or
 - (ii) are satisfied that person has a right to be registered as the holder of, or to transfer, the share under rule 5.6(c).
- (h) A vote tendered by a person under rule 6.8(g) is accepted to the exclusion of the vote of the registered holder of the share.
- (i) A member is entitled to vote at a general meeting only if all calls and other sums of money, presently payable by that member for shares in the Company, are paid.
- (j) A person must raise an objection to the qualification of a person to vote at a general meeting:
 - (i) before or at the meeting at which the vote is given; and
 - (ii) by referring it to the chairperson of the meeting.
- (k) The chairperson's decision about a person's qualification to vote is final.
- (l) A vote the chairperson allows under rule 6.8(g) is valid for all purposes.

6.9 Representation at general meeting

- (a) Subject to this Constitution, each member entitled to vote at a meeting of members may vote:
 - (i) in person or if a member is a body corporate by its Representative;
 - (ii) by not more than 2 proxies; or
 - (iii) by not more than 2 attorneys.
- (b) A proxy, attorney or Representative may be a member.
- (c) A proxy, attorney or Representative is not required to be a member.
- (d) A proxy, attorney or Representative may be appointed for:
 - (i) all or any number of general meetings; or
 - (ii) a particular general meeting.
- (e) Subject to the Corporations Act and to the terms of an appointment, an appointment confers authority on a proxy, attorney or Representative to:
 - (i) agree to a meeting being convened by shorter notice than is required by the Corporations Act or by this Constitution;
 - (ii) speak at a meeting regarding any proposed resolution on which the person may vote; and

- (iii) demand or join in demanding a poll on any resolution on which the person may vote.
- (f) Subject to the Corporations Act and to the terms of appointment, if the instrument refers to specific resolutions and directs the proxy, attorney or Representative on how to vote on those resolutions, then the appointment confers authority to:
 - (i) vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (ii) vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
 - (iii) act generally at the meeting.
- (g) Subject to the Corporations Act and to the terms of appointment, if the instrument refers to a specific meeting to be held at a specified time or venue and the meeting is rescheduled or adjourned or changed to another venue, then the appointment confers authority:
 - (i) to attend and vote at the rescheduled or adjourned meeting; or
 - (ii) at the new venue.
- (h) If a member appoints 2 proxies or attorneys:
 - (i) a proxy or attorney may vote only if each person is appointed to represent a specified proportion of the member's voting rights;
 - (ii) neither person may vote on a show of hands; and
 - (iii) on a poll, each person may only exercise the voting rights for the portion of votes the person holds.
- (i) An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote for a particular resolution.
- (j) If an instrument directs the proxy or attorney, then the person must vote as directed.
- (k) Subject to rule 6.9(n), an instrument appointing a proxy or attorney:
 - (i) must be in writing, legally valid and signed by the appointer or the appointer's attorney; and
 - (ii) is not required to be in a particular format.
- (l) Subject to rule 6.9(n), a proxy or attorney may vote only if the instrument appointing the person and any authority under which the instrument is signed are:
 - (i) received in the office before the meeting;
 - (ii) tabled at the meeting at which the person proposes to vote; or

- (iii) in the case of a poll, produced when the poll is taken.
- (m) The instrument and the authority may be delivered either to the office of the Company or to an address stated on the notice of meeting by:
 - (i) hand delivery;
 - (ii) fax using the number on the notice; or
 - (iii) any electronic means using the electronic address stated in the notice.
- (n) The directors may waive any of the requirements of rules 6.9(k)-(l).
- (o) The directors may accept upon the production of other evidence:
 - (i) an oral appointment of a proxy or attorney;
 - (ii) an appointment of a proxy or attorney which is not signed in the manner required by rule 6.9(k); and
 - (iii) a copy of any document, including a copy sent by fax.
- (p) If one of the following events occurs and the Company does not receive written notice before a meeting commences, then a vote by a proxy or attorney is valid:
 - (i) a Transmission Event has occurred to the appointer;
 - (ii) the appointer revokes the instrument or the authority under which the instrument was executed; or
 - (iii) the transfer of the share for which the instrument was given is not registered.
- (q) The appointment of a proxy or attorney is not revoked by the appointer attending and taking part in the general meeting.
- (r) The proxy or attorney must not vote, as the appointer's proxy or attorney, if the appointor votes on a resolution.

7. DIRECTORS

7.1 Appointment and removal of directors

- (a) Subject to rule 7.1(c), the Company must have:
 - (i) at least 3 directors and at least 2 of them must ordinarily reside in Australia; and
 - (ii) not more than 12 directors.
- (b) Directors in office on the date that the Company adopted this Constitution continue in office on the terms and conditions set out in this Constitution.
- (c) The Company may by resolution:

- (i) subject to the Corporations Act, increase or reduce the minimum or maximum number of directors; and
 - (ii) appoint or remove a director.
- (d) The directors may appoint any natural person to be a director, either to fill a casual vacancy or as an addition to the existing directors. Any director so appointed, other than the managing director, only holds office until the next general meeting and must then retire from office.
- (e) The total number of directors must not at any time exceed the maximum number allowed under this Constitution.
- (f) At each annual general meeting one third of the directors, or, if their number is not 3 or a multiple of 3, then the number nearest one third, and any other director not in such one third who has held office for 3 years or more, must retire from office. The directors to retire at the annual general meeting under this rule 7.1(f) must be those who have been longest in office since their last election, but, as between persons who were elected as directors on the same day, those to retire must be determined by lot, unless they otherwise agree between themselves.
- (g) In determining the number of directors to retire at an annual general meeting, no account is to be taken of:
 - (i) a director appointed by the directors to fill a casual vacancy or as an addition to the existing directors and who only holds office until the meeting; or
 - (ii) the managing director who is exempted from retirement by rotation.
- (h) The Company must hold an election of directors at each annual general meeting.
- (i) A retiring director is eligible for re-election.
- (j) The Company may, at a general meeting at which a director retires, by resolution fill the vacated office by electing a person to that office.
- (k) No person not being a retiring director is eligible for election as a director at any general meeting of the Company unless a consent to nomination signed by the person has been lodged at the registered office at least in:
 - (i) the case of a person recommended for election by the directors, 15 Business Days before the general meeting; and
 - (ii) any other case, 30 Business Days before the general meeting.

7.2 Vacation of office

The office of a director becomes vacant:

- (a) in the circumstances prescribed by the Corporations Act;
- (b) if the director is of unsound mind;

- (c) if the director is a person who, or whose estate is, liable to be dealt with in any way under the law about mental health;
- (d) if the director resigns by notice in writing to the Company; or
- (e) if the director is removed from his or her office as director by resolution.

7.3 Remuneration of directors

- (a) Each director is entitled to the remuneration out of the funds of the Company as the directors determine.
- (b) The aggregate remuneration of the directors must not exceed \$250,000 per annum or such other sum as the Company in general meeting may approve. This limitation only applies to the ordinary remuneration of the directors and, in particular, does not apply to:
 - (i) any special remuneration payable to a director under rule 7.3(g);
 - (ii) the remuneration to which a director may be entitled as an employee of the Company or in a capacity other than as a director of the Company; or
 - (iii) any pension, lump sum or other benefit payable to a director or a legal personal representative, spouse, relative or dependent of the director, consequent upon the death, retirement or other cessation of office of the director.
- (c) The remuneration of a director may be a:
 - (i) stated salary, a fixed sum for attendance at each meeting of directors or both; or
 - (ii) share of the fixed sum under rule 7.3(b).
- (d) The directors must divide an aggregate remuneration:
 - (i) in the proportions agreed between them; or
 - (ii) failing agreement, equally.
- (e) A stated salary or a share of a fixed sum accrues from day to day.
- (f) In addition to a director's remuneration, a director is entitled to be paid all travelling and other expenses properly incurred by that director for the Company.
- (g) If a director performs an extra service or makes special exertion for the Company, the directors may arrange for a special remuneration.
- (h) The directors may:
 - (i) at any time after a director dies or otherwise ceases to hold office as a director, pay to the director or a legal personal representative, spouse, relative

or dependant of the director a pension or lump sum payment for past services rendered by that director; and

- (ii) cause the Company to enter into a contract with the director to provide the payment.
- (i) The directors may establish or support a fund to provide pension, retirement, superannuation or similar benefits to or for a director or former director.

7.4 **Director need not be a member**

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

7.5 **Interested directors**

- (a) A director:
 - (i) subject to rule 7.5(b), may hold any other office or place of profit in the Company or any related body corporate in conjunction with the directorship; and
 - (ii) holds that office or place upon the terms that the director and the other directors agree upon.
- (b) A director must not be the auditor of the Company.
- (c) A director of the Company:
 - (i) may hold a position or an interest in any related body corporate or any body corporate the Company promotes or holds an interest in; and
 - (ii) is not accountable to the Company for any remuneration or other benefit the director receives for that office or interest.
- (d) The directors may exercise the voting rights conferred by shares in any body corporate that the Company holds or owns in any manner, including but not limited to voting for a resolution:
 - (i) appointing a person as a director or officer of that body corporate; and
 - (ii) remunerating a director or officer of that body corporate.
- (e) A director, if permitted by law, may vote in favour of the exercise of those voting rights even if that person is:
 - (i) or may be appointed, a director or other officer of that other body corporate; and

- (ii) interested in the exercise of those voting rights.
- (f) A director is not disqualified, merely because that person is a director, from contracting with the Company for any reason including, but not limited to:
 - (i) selling or purchasing property to or from the Company;
 - (ii) lending or borrowing money to or from, the Company:
 - (A) with or without interest; and
 - (B) with or without security;
 - (iii) guaranteeing for a commission or profit money that the Company borrows;
 - (iv) underwriting or guaranteeing for a commission or profit the subscription for securities in:
 - (A) the Company;
 - (B) a related body corporate;
 - (C) a body corporate promoted by the Company;
 - (D) a body corporate in which the Company may hold an interest;
 - (v) being employed by the Company; or
 - (vi) acting in a professional capacity on behalf of the Company.
- (g) No contract made by a director with the Company is void or voidable merely because the director is a director or because of the fiduciary obligations arising out of that office.
- (h) No contract or arrangement entered into by or on behalf of the Company in which any director may be in any way interested is voidable because the director is a director or because of the fiduciary obligations arising out of that office.
- (i) No director is liable to account to the Company for any profit realised by or under a contract or arrangement involving the Company, merely because the director is a director or because of the fiduciary obligations arising out of that office.
- (j) Subject to the Corporations Act, a director who is interested in a contract or arrangement or proposed contract or arrangement may:
 - (i) be counted in a quorum at a meeting of directors considering that contract or arrangement or proposed contract or arrangement;
 - (ii) vote for any matter arising out of, the contract or arrangement or proposed contract or arrangement; and
 - (iii) sign any document for that contract or arrangement or proposed contract or arrangement that the Company may execute.

7.6 Powers and duties of directors

- (a) The directors are responsible for managing the business of the Company.
- (b) The directors may exercise to the exclusion of the Company in general meeting all the powers of the Company which are not required, by the Corporations Act or by this Constitution, to be exercised by the Company in general meeting.
- (c) Without limiting the generality of rule 7.6(b), the directors may exercise all the powers of the Company to:
 - (i) borrow or otherwise raise money;
 - (ii) charge any property or business of the Company or all or any of its uncalled capital;
 - (iii) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
 - (iv) devise and establish any one or more of a Dividend Reinvestment Plan, Dividend Selection Plan, Employee Share Plan and Employee Option Plan not being inconsistent with this Constitution with full power to prescribe the terms of those plans, implement them and settle any difficulty which may arise either generally or in a particular case and to amend, suspend and terminate the plans in such manner as the directors think fit.
- (d) The directors must determine how negotiable instruments, including but not limited to cheques, must be executed by or on behalf of the Company.
- (e) The directors may pay out of the Company's funds all expenses of the:
 - (i) promotion, formation and registration of the Company; and
 - (ii) vesting in it of the assets it requires.
- (f) The directors may appoint or employ any person to be an officer, agent or attorney of the Company:
 - (i) for any purpose and for any period;
 - (ii) with any powers, discretions and duties, including but not limited to those vested in the directors; and
 - (iii) upon any conditions.
- (g) The directors may authorise an officer, agent or attorney to delegate any power, discretion and duties vested in that person.
- (h) Subject to any contract between the Company and the relevant officer, agent or attorney, the directors may remove or dismiss that person at any time, with or without cause.

- (i) A power of attorney may contain any provision for the protection and convenience of the attorney or a person dealing with the attorney.

7.7 Proceedings of directors

- (a) The directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) The contemporaneous linking together by telephone or other electronic means of a number of the directors sufficient to constitute a quorum, constitutes a meeting of the directors.
- (c) The rules relating to meetings of the directors apply with the necessary changes, to meetings of the directors by telephone or other electronic means.
- (d) A director participating in a meeting by telephone or other electronic means is considered present in person at the meeting.
- (e) A meeting by telephone or other electronic means is held at the place determined by the chairperson of the meeting.
- (f) At least 1 of the directors involved in a telephone or electronic meeting must have been at the place the chairperson determines as the meeting place, for the duration of the meeting.

7.8 Convening of meetings of directors

- (a) A director may convene a meeting of the directors at any time.
- (b) On the requisition of a director, a secretary must convene a meeting of the directors.

7.9 Notice of meetings of directors

- (a) Subject to this Constitution, the secretary must give notice of a meeting of directors to each person, who is at the time of giving the notice:
 - (i) a director, other than a director on leave of absence approved by the directors; or
 - (ii) an alternate director appointed under rule 7.14 by a director on leave of absence approved by the directors.
- (b) A notice of a meeting of directors:
 - (i) must specify the time and place of the meeting;
 - (ii) need not state the nature of the business to be transacted at the meeting;
 - (iii) may be given immediately before the meeting;
 - (iv) may be given in person or by post, telephone, fax or other electronic means; and

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- (v) is given to an alternate director, if it is given to the director who appointed that alternate director.
 - (c) A director or alternate director may waive notice of any meeting of directors by written notice to the Company:
 - (i) in person; or
 - (ii) by post, telephone, fax or other electronic means.
 - (d) A valid action and a valid resolution remain valid even if a director does not receive or is not given a notice of the directors' meeting and:
 - (i) the failure occurred by accident or error;
 - (ii) the director or an alternate director appointed by the director attended the meeting; or
 - (iii) before or after the meeting, the director or an alternate director appointed by the director:
 - (A) waives notice of that meeting under rule 7.9(c); or
 - (B) gives notice personally or by post, telephone, fax or other electronic means of the person's agreement to that action or resolution.
 - (e) A valid action and a valid resolution remain valid even if an alternate director of a director on approved leave of absence, does not receive or is not given a notice of the directors' meeting and:
 - (i) the failure occurred by accident or error;
 - (ii) the director who appointed the alternate director or an alternate director appointed by that director attended the meeting; or
 - (iii) before or after the meeting, the director or an alternate director appointed by the director:
 - (A) waives notice of that meeting under rule 7.9(c); or
 - (B) gives notice personally or by post, telephone, fax or other electronic means of the person's agreement to that action or resolution.
 - (f) Attendance by a director at a meeting of directors waives any objection that either that director, or any alternate director appointed by that person, may have to a failure to give notice.
 - (g) Attendance by an alternate director at a meeting of directors waives any objection that either that alternate director, or the director, who appointed that person as alternate director and any other alternate director appointed by that director, may have to a failure to give notice.

7.10 Quorum at meetings of directors

- (a) The directors may transact business at a meeting of directors only if a quorum of directors is present at the time the business is dealt with.
- (b) A quorum of directors consists of:
 - (i) if the directors have fixed a number for the quorum, that number of directors; and
 - (ii) in any other case 2 directors.
- (c) If the number of directors in office at any time is not sufficient to constitute a quorum at a meeting of directors or is less than the minimum number of directors fixed under this Constitution, then the remaining director or directors may act:
 - (i) to increase the number of directors to a number sufficient to constitute a quorum and to satisfy the minimum number of directors required under this Constitution; or
 - (ii) to convene a general meeting of the Company for that purpose.
- (d) Until the directors have complied with rule 7.10(c), they must only act if and to the extent that there is an emergency requiring them to act.

7.11 Chairperson and deputy chairperson of directors

- (a) The directors may:
 - (i) elect 1 of the directors as chairperson of directors; and
 - (ii) determine the period for which that director is to be chairperson of directors.
- (b) The directors may:
 - (i) elect 1 of the directors as deputy chairperson of directors; and
 - (ii) determine the period for which that director is to be deputy chairperson of directors.
- (c) The directors may resolve that the office of chairperson or deputy chairperson of directors is an extra service or special exertion performed by the director holding that office for the purposes of rule 7.3(g).
- (d) The chairperson of directors, if present within 10 minutes after the time appointed for the holding of the meeting and willing to act, must preside as chairperson at each meeting of directors.
- (e) If the directors have elected a deputy chairperson of directors, then the deputy chairperson of directors, if present within 10 minutes after the time appointed for the holding of the meeting and willing to act, must preside as the chairperson of the meeting, if:

- (i) there is no chairperson of directors;
 - (ii) the chairperson of directors is not present within 10 minutes after the time appointed for the holding of the meeting; or
 - (iii) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting.
- (f) The directors present must elect 1 of themselves to be chairperson of the meeting if at a meeting of directors:
- (i) there is no chairperson or deputy chairperson of directors;
 - (ii) neither the chairperson nor deputy chairperson of directors is present within 10 minutes after the time appointed for the holding of the meeting; or
 - (iii) the chairperson or deputy chairperson of directors or both are present within that time but neither is willing to act as chairperson of the meeting.

7.12 Decisions of directors

- (a) A meeting of directors, at which a quorum is present, is competent to exercise each authority, power and discretion vested in or exercisable by the directors under this Constitution.
- (b) The directors must decide questions arising at a meeting of directors by a majority of votes cast by the directors present.
- (c) A decision under rule 7.12(b) is for all purposes a determination of the directors.
- (d) In the case of an equality of votes upon any proposed resolution the chairperson of the meeting has a second or casting vote unless only 2 directors competent to vote on the proposed resolution are present at the meeting.

7.13 Written resolutions

- (a) A thing is done and a resolution is passed as if a meeting of the directors was duly held if:
 - (i) subject to rule 7.13(b), each director assents to a document containing a statement that a thing has been done or a resolution has been passed; and
 - (ii) the directors, who assent to the document, would have constituted a quorum at a meeting of directors held to consider that thing or resolution.
- (b) A reference to each director does not include:
 - (i) a director on leave of absence approved by the directors;
 - (ii) a director, who if that director considered the thing or resolution would have a conflict of interest or would breach a law; and

- (iii) a director, who the directors reasonably believe is not entitled at law to do the thing or to vote on the resolution in question.
- (c) If the directors assented to the document on the same day, then the resolution is passed:
 - (i) on the day on which the document was assented to; and
 - (ii) at the time at which the last director assented to the document.
- (d) If the directors assented to the document on different days, then the resolution is passed:
 - (i) on the day on which the last director assented to the document; and
 - (ii) at the time at which the last director assented to the document.
- (e) Two or more separate documents in identical terms, each of which is assented to by 1 or more directors, constitute 1 document.
- (f) A director may assent to a document by signing the document or by notifying the Company of the director's assent in person or by post, telephone, fax or other electronic means.
- (g) If a director assents to a document otherwise than by signing the document, then the director must confirm the assent by signing the document at the next meeting of the directors which that director attends.
- (h) The thing or resolution to which the document relates is valid, even if the director fails to sign the document.

7.14 Alternate directors

- (a) A director may appoint, with approval of a majority of the other directors:
 - (i) a person to be the director's alternate director for any period; and
 - (ii) another person to be the director's alternate director in the absence of an alternate director appointed under rule 7.14(a)(1).
- (b) An alternate director may be a member or a director of the Company.
- (c) An alternate director is not required to be a member or a director of the Company.
- (d) A person may act as alternate director to more than 1 director.
- (e) If the appointer does not attend a meeting of directors, an alternate director is entitled to attend and vote in place of and on behalf of the appointer.
- (f) An alternate director is entitled to a separate vote for each director the alternate director represents, in addition to any vote the alternate director may have as a director in that person's own right.

- (g) In the absence of the appointer, an alternate director may exercise any power that the appointer may exercise.
- (h) The exercise of a power by the alternate director is considered the exercise of the power by the appointer.
- (i) The office of an alternate director is vacated if and when the appointer vacates the office as a director.
- (j) The appointer may terminate the appointment of an alternate director at any time, even if the period of the appointment of the alternate director has not expired.
- (k) The appointer must appoint and terminate an appointment of an alternate director by a written, signed statement.
- (l) An appointment and termination are only effective after the Company receives the appointor's written, signed statement.
- (m) An alternate director is not to be taken into account in determining the minimum or maximum number of directors allowed under this Constitution.
- (n) In determining whether a quorum is present at a meeting of directors, an alternate director, who attends the meeting is counted as a director for each director on whose behalf the alternate director is attending.
- (o) An alternate director is entitled to be paid the remuneration that the directors think fit.
- (p) The directors may pay the alternate director's remuneration either in addition to or in reduction of the remuneration payable to the director for whom the alternate director acts as alternate.
- (q) An alternate director is only entitled to be remunerated by the Company for that person's services as an alternate director under rule 7.14(p).
- (r) An alternate director, while acting as a director is:
 - (i) responsible to the Company for that person's own acts and defaults; and
 - (ii) not the agent of the director who appointed the alternate director.

7.15 Committees of directors

- (a) The directors may delegate any of their powers to a committee or committees of directors.
- (b) A committee to which a power is delegated, when exercising the powers, must comply with any directions of the directors.
- (c) The rules applying to meetings and resolutions of directors with the necessary changes, apply to meetings and resolutions of a committee of directors.

- (d) The directors may resolve that membership of a committee of directors is an extra service or special exertion performed by the members for the purposes of rule 7.3(g).

7.16 Delegation to individual directors

- (a) The directors may delegate any of their powers to 1 director.
- (b) A director to whom any powers are delegated, must exercise the powers delegated in accordance with any directions of the directors.
- (c) The directors may resolve to treat the acceptance of a delegation as an extra service or special exertion performed by the delegate for rule 7.3(g).

7.17 Validity of acts

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

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

8. EXECUTIVE OFFICERS

8.1 Managing directors

- (a) The directors may appoint 1 or more of the directors as managing director.
- (b) Appointment of the managing director automatically terminates if the managing director ceases to be a director.

8.2 Deputy managing directors

- (a) The directors may appoint 1 or more of the directors as a deputy managing director.
- (b) Appointment of the deputy managing director automatically terminates if the deputy managing director ceases to be a director.

8.3 Executive directors

- (a) A reference in this rule 8.3 to an executive director, is a reference to a director, who is also an officer of the Company or of a related body corporate, in a capacity other than director, managing director or deputy managing director.
- (b) The directors may confer on an executive director any title.
- (c) An executive director may be appointed on the basis that the executive director's appointment as:

- (i) a director automatically terminates if the executive director ceases to be an officer of the Company or of a related body corporate in a capacity other than director; or
- (ii) an officer of the Company or of a related body corporate in a capacity other than director automatically terminates if the executive director ceases to be a director.

8.4 Associate directors

- (a) The directors may appoint 1 or more associate directors.
- (b) The directors may confer on an associate director any title.
- (c) Even though the word “director” may appear in an associate director’s title an associate director is not a director of the Company.
- (d) An associate director:
 - (i) can attend a meeting of directors only by the invitation and only with the consent of the directors; and
 - (ii) is not entitled to vote at any meeting of directors.

8.5 Secretaries

The directors:

- (a) must appoint at least 1 secretary;
- (b) may appoint additional secretaries; and
- (c) may appoint 1 or more assistant secretaries.

8.6 Provisions applicable to all executive officers

- (a) A reference in this rule 8.6 to an executive officer is a reference to a managing director, deputy managing director, executive director, associate director, secretary or assistant secretary appointed under this rule 8.
- (b) The directors may appoint an executive officer for the period, at the remuneration and upon the conditions that the directors think fit provided that if the executive officer is also a director of the Company his or her remuneration must not include a commission on, a percentage of, operating revenue.
- (c) Subject to any contract between the Company and the executive officer, the directors may remove or dismiss an executive officer at any time, with or without cause.
- (d) The directors may:

- (i) confer on an executive officer any power, discretion and duty, including but not limited to any power, discretion and duty vested in or exercisable by the directors;
 - (ii) withdraw, suspend or vary any power, discretion and duty conferred on an executive officer; and
 - (iii) authorise the executive officer to delegate any power, discretion and duty conferred on the executive officer.
- (e) An executive officer is not required to hold any shares to qualify for appointment.
- (f) An act done by a person acting as an executive officer is not invalidated by reason only of:
- (i) a defect in the person's appointment as an executive officer; or
 - (ii) the person being disqualified to be an executive officer, if that circumstance was not known by the person when the act was done.

9. INDEMNITY AND INSURANCE

9.1 Persons to whom rules 9.2 and 9.4 apply

Rules 9.2 and 9.4 apply:

- (a) to each person, who is or has been a director, alternate director or executive director, within the meaning of rule 8.6(a) of the Company;
- (b) to any other officer or former officer of the Company or of its related bodies corporate as the directors determine; and
- (c) if the directors so determine, to any auditor or former auditor of the Company or of its related bodies corporate.

9.2 Indemnity

- (a) The Company must on a full indemnity basis and to the extent that the Company is not precluded by law from doing so, indemnify each person to whom this rule 9.2 applies against all losses and liabilities incurred by the person as an officer or auditor of the Company or of a related body corporate, including but not limited to a liability for:
 - (i) negligence; and
 - (ii) reasonable costs and expenses incurred:
 - (A) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or

- (B) for an application, for the proceedings, in which the Court grants relief to the person under the Corporations Act.

- (b) If requested by a person to whom this rule 9.2 applies, the Company must enter into a deed indemnifying that person to the full extent set out in this rule 9.2.

9.3 **Extent of indemnity**

The indemnity in rule 9.2:

- (a) is a continuing obligation and is enforceable by a person to whom rule 9.2 applies even though that person may have ceased to be an officer or auditor of the Company or of a related body corporate;
- (b) applies to losses and liabilities incurred both before and after the date of adoption of that rule; and
- (c) operates only to the extent that the loss or liability in question is not covered by insurance.

9.4 **Insurance**

- (a) To the extent that the Company is not precluded by law from doing so, the Company may purchase and maintain insurance or pay or agree to pay a premium for insurance for any person to whom this rule 9.4 applies.
- (b) The insurance may be against any liability incurred by the person as an officer or auditor of the Company or of a related body corporate, including but not limited to a liability for:
 - (i) negligence; or
 - (ii) reasonable costs and expenses incurred in defending proceedings whether civil or criminal and whatever their outcome.

9.5 **Savings**

Nothing in rule 9.2 or 9.4:

- (a) affects any other right or remedy that a person, to whom those rules apply, may have for any loss or liability referred to in those rules; or
- (b) limits the capacity of the Company to indemnify or provide or pay for insurance for any person to whom those rules do not apply.

10. **WINDING-UP**

10.1 **Distribution of surplus**

Subject to this Constitution and to the rights or restrictions attached to any share or class of shares:

- (a) rule 10.1(b) applies if the Company is wound up and the property of the Company is more than sufficient to pay all of the:
 - (i) debts and liabilities of the Company; and
 - (ii) costs, charges and expenses of the winding up;
- (b) the excess must be divided among the members in proportion to the number of shares held by each of them, irrespective of the amounts paid or credited as paid on the shares;
- (c) to calculate the excess, any amount unpaid on a share is to be treated as property of the Company;
- (d) the amount of the excess that would otherwise be distributed to the holder of a partly paid share must be reduced by the amount unpaid on that share at the date of the distribution; and
- (e) if the effect of the reduction under rule 10.1(d) would be to reduce the distribution to the holder of a partly paid share to a negative amount, then the holder must contribute that amount to the Company.

10.2 **Division of property**

- (a) If the Company is wound up, the liquidator may, with the sanction of a special resolution:
 - (i) divide among the members the whole or any part of the property of the Company; and
 - (ii) determine how the division is to be carried out as between the members or different classes of members.
- (b) A division may be otherwise than in accordance with the legal rights of the members.
- (c) In a division, any class may be:
 - (i) given preferential or special rights; or
 - (ii) excluded altogether or in part.
- (d) If a division is not in accordance with the legal rights of the members, a member is entitled to dissent and to exercise the same rights as if the special resolution sanctioning that division were a special resolution passed under section 507 of the Corporations Act.
- (e) If any of the property to be divided includes a security with a liability to calls, a person entitled under the division to a security may by notice in writing direct the liquidator to:
 - (i) sell the person's proportion of the security; and

- (ii) account for the net proceeds.
- (f) The liquidator if practicable, must act accordingly.
- (g) The person must act within 10 days after the passing of the special resolution referred to in rule 10.2(a).
- (h) Nothing in this rule 10.2 derogates from or affects any right to exercise any statutory or other power, which would have existed if this rule was omitted.
- (i) Rule 4.3 applies with the necessary changes, to a division by a liquidator under rule 10.2(a) as if the references in rule 4.3 to the directors and to a distribution or capitalisation were references to the liquidator and to the division under rule 10.2(a).

11. MINUTES AND RECORDS

11.1 Minutes of meetings

The directors must ensure that minutes of proceedings and resolutions of general meetings and of meetings of directors, including committees of directors, are recorded in books kept for the purpose.

11.2 Minutes of resolutions passed without a meeting

The directors must ensure that minutes of resolutions passed by members and resolutions passed and declarations made by directors and committees of directors without a meeting are recorded in books kept for the purpose.

11.3 Signing of minutes

- (a) The chairperson of the meeting or the chairperson of the next meeting must sign the minutes of a meeting within a reasonable time.
- (b) A director must sign the minutes of the passing of a resolution or the making of a declaration without a meeting, within a reasonable time after the resolution is passed or the declaration is made.

11.4 Minutes as evidence

Subject to proof to the contrary, a minute that is recorded and signed under rules 11.1 and 11.2 is evidence of the proceeding, resolution or declaration to which it relates.

11.5 Inspection of records

- (a) The directors must ensure the minute books for general meetings are open for inspection by members free of charge.
- (b) Subject to rule 11.5(a), the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the Company or any of them are open to the inspection of members, who are not directors.

- (c) Subject to the law and authorisation by the directors, a member, who is not a director, has no right to inspect any books, records or documents of the Company.

12. EXECUTION OF DOCUMENTS

12.1 Manner of execution

The Company may execute a document if the document is signed by:

- (a) 2 directors; or
- (b) a director and a secretary.

12.2 Seal

- (a) The Company may have a Seal.
- (b) If the Company has a Seal, rules 12.3 to 12.8 apply.

12.3 Safe custody of Seal

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

12.4 Use of Seal

- (a) The Seal must be used only by the authority of the directors or of a committee of the directors authorised by the directors to authorise the use of the Seal.
- (b) The directors may give the authority to use the Seal before or after the Seal is used.
- (c) Subject to rule 12.8, until the directors otherwise determine, every document to which the Seal is affixed must be signed by:
 - (i) 2 directors;
 - (ii) a director and a secretary; ora director and another person appointed by the directors to countersign that document or a class of documents in which that document is included.

12.5 Seal register

- (a) The Company may keep a Seal register.
- (b) If the Company does keep a Seal register, then it must enter in the register particulars of each document on which the Seal is affixed giving in each case:
 - (i) the date of the document;
 - (ii) the names of the parties to the document;
 - (iii) a short description of the document; and

- (iv) the names of the persons signing the document under rule 12.4(c).
- (c) The register must be produced at meetings of directors for confirmation of the use of the Seal since confirmation was last given under this rule 12.5.
- (d) Failure to comply with rule 12.5(a) or (b) does not invalidate any document to which the Seal is properly affixed.
- (e) Rule 12.5(a) does not apply to a certificate for securities of the Company.

12.6 Duplicate Seal

- (a) The Company may have for use in place of its common Seal outside the state or territory where its common Seal is kept, 1 or more duplicate Seals.
- (b) A duplicate Seal must be a facsimile of the common Seal of the Company with the addition on its face:
 - (i) of the words “duplicate seal”; and
 - (ii) the name of the place where it is to be used.
- (c) A document sealed with a duplicate Seal is considered to be sealed with the common Seal of the Company.

12.7 Share Seal or certificate Seal

- (a) The Company may have for use on certificates for securities of the Company in place of its common Seal, 1 or more share Seals or certificate Seals.
- (b) A share Seal or certificate Seal must be a facsimile of the common Seal of the Company with the addition on its face of the words “share seal” or “certificate seal”.
- (c) A certificate for securities of the Company sealed with a share Seal or certificate Seal is considered to be sealed with the common Seal of the Company.

12.8 Sealing and signing of certificates

The directors may determine either generally or in a particular case that the Seal and the signature of any director, secretary or other person is to be printed on or affixed to any certificates for securities in the Company by some mechanical or other means.

13. NOTICES

13.1 Notices by the Company to members

- (a) The Company may give a notice to a member by:
 - (i) serving it personally at, or by sending it by post in a prepaid envelope to, the member’s address as shown in the register of members or another address the member has supplied; or

- (ii) sending it to the fax number or electronic address the member has supplied to the Company for the giving of notices.
- (b) The Company must give a notice about a resolution under rule 6.8 to each joint holder.
- (c) For all other purposes, the Company must send a notice to the joint holder first named in the register of members for the shares in the manner authorised by rule 13.1(a).
- (d) The Company may give a notice to a person entitled to a share as a result of a Transmission Event by serving it or sending it in the manner authorised by rule 13.1(a) and:
 - (i) addressed to the name or title of the person, at or to the address, fax number or electronic address supplied to the Company for the giving of notices to that person; or
 - (ii) if no address, fax number or electronic address has been supplied, then at or to the address, fax number or electronic address to which the notice would have been sent if the relevant Transmission Event had not occurred.
- (e) The fact that a person has supplied a fax number or an electronic address for the giving of notice does not require the Company to give any notice to that person by fax or electronic means.
- (f) Despite the occurrence of a Transmission Event and whether or not the Company has notice of that occurrence, a notice given to a member under this rule 13.1 is:
 - (i) duly given for any share registered in that person's name, whether solely or jointly with another person; and
 - (ii) sufficient service on any person entitled to a share as a result of the Transmission Event.
- (g) A notice given to a person, who is entitled to a share as a result of a Transmission Event, is sufficient service on the member in whose name the share is registered.
- (h) A person, who because of a transfer of shares, becomes entitled to a share registered in the name of a member, is bound by every notice, which before that person's name and address is entered in the register of members for those shares, is given to the member under rule 13.1(a).
- (i) The Company may sign any notice given to a member under rule 13.1(a) in writing or as a facsimile printed or affixed by some mechanical or other means.
- (j) A certificate signed by a director or secretary of the Company stating that the Company has given notice under this Constitution is conclusive evidence of that fact.

13.2 Notices by the Company to the directors

- (a) Subject to this Constitution, the Company may give a notice to a director or alternate director either by:
 - (i) serving it personally at, or by sending it by post in a prepaid envelope to, the director's or alternate director's usual residential or business address or to another address the director or alternate director has supplied to the Company for the giving of notices; or
 - (ii) sending it to the fax number or electronic address which the director or alternate director has supplied to the Company for the giving of notices.

13.3 Notices posted to addresses outside the Commonwealth

A notice sent by post to an address outside the Commonwealth must be sent by facsimile or airmail.

13.4 Time of service

- (a) If a notice is sent by post, then it is served if a prepaid envelope containing the notice is properly addressed and placed in the post:
 - (i) in the case of a notice of a general meeting, on the day after the date of its posting; or
 - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (b) If a notice is sent by fax or electronic means, then it is served on the day after the date it is sent.

13.5 Other communications and documents

Rules 13.1-13.4 apply, with the necessary changes, to the service by the Company of any communication or document.

13.6 Notices in writing

A reference in this Constitution to a notice in writing includes a notice given by fax or electronic means.

14. UNMARKETABLE PARCELS OF SHARES

14.1 Right of Sale

The directors may sell the shares in an Unmarketable Parcel of Shares, but only in accordance with this clause 14.

14.2 **Restrictions on sale power**

Shares may not be sold under rule 14.1 between the making or announcement of a takeover offer and the close of the offers made.

14.3 **First notice**

Before the sale, the directors must give the member a written notice stating:

- (a) that the Company intends to sell the member's shares under rule 14.1 as an Unmarketable Parcel of Shares; and
- (b) when it is intended to sell them (the date must be at least 45 days after the notice is given); and
- (c) the shares will not be sold if the member gives the Company, before they are sold, a written notice that the member wants to keep the shares.

14.4 **Only 1 notice a year**

The directors must not give a member more than 1 notice under rule 14.3 in any 12 month period.

14.5 **Public notice of intention to sell**

Before the sale, the directors must publish a notice in a newspaper circulating generally in the area in which the member's address in the Register is, that states:

- (a) the Company intends to sell the shares under rule 14.1 as an Unmarketable Parcel of Shares; and
- (b) the name of the member; and
- (c) the number of the shares.

14.6 **Second notice**

Before the sale but after the 45 days mentioned in rule 14.3, the directors must give the member a second written notice stating:

- (a) that the Company intends to sell the member's shares under rule 14.1 as an Unmarketable Parcel of Shares; and
- (b) when it is intended to sell them (the date must be at least 25 days after the notice is given); and
- (c) the shares will not be sold if the member gives the Company, before they are sold, a written notice that the member wants to keep the shares.

14.7 **Notice to 2 or more holders**

For shares held by 2 or more members, a notice under this rule 14.3 must be given to each of them.

14.8 No sale where member gives notice

Shares may not be sold under rule 14.1 if the Company receives a written notice that the member wants to keep the shares.

A notice by 1 of 2 or more holders of shares affects only the shares held by those 2 or more holders together, and not shares held by any of those holders (alone or with other persons).

14.9 Terms of sale

A sale under rule 14.1 is with all rights attaching to the shares, including dividends declared but unpaid. Otherwise, the sale is on terms, and as and when, the directors determine.

14.10 Attorney

For the purpose of the giving effect to rule 14.1:

- (a) the member appoints the Company as its agent; and
- (b) the member appoints the Company, and each director and secretary, jointly and severally as its attorney to execute, in its name and on its behalf, any instrument of transfer of the shares, or to effect a SCH regulated transfer of the shares.

14.11 Company to bear costs

The Company must bear all costs and expenses in connection with a sale of shares under rule 14.1.

14.12 Protections for transferee

- (a) The transferee of shares sold under rule 14.1 is not required to see to the regularity of the sale, the directors' actions under this rule 14.1 or the application of the purchase money.
- (b) The transferee of shares sold under rule 14.1 is not required to see to the regularity of the sale, the directors' actions under this rule 14.1 or the application of the purchase money.
- (c) The Company's receipt for consideration for a sale of shares under rule 14.1 is a good discharge to the transferee and those claiming through the transferee.
- (d) After the transferee's name has been entered in the Register in respect of the shares, the validity of the sale or of the directors' actions under rule 14.1 to the transferee may not be impeached by anyone. The only remedy a person has in respect of those matters is in damages and only against the Company.

14.13 Application of proceeds

The Company must deal with the proceeds of a sale of shares under rule 14.1 as follows:

- (a) The Company must deduct any money due in respect of the shares and pay the balance into a separate bank account it opens and maintains for that purpose only.

- (b) The Company holds the balance in trust for the person whose shares they were (the “Divested Member”).
- (c) As soon as practicable after paying the balance into the account, the Company must give written notice to the Divested Member stating:
 - (i) that it has paid the balance into the account; and
 - (ii) what the balance is; and
 - (iii) that it is holding the balance for the member pending the Divested Member’s instructions.
- (d) The Company must deal with the amount in the account as the Divested Member instructs, but only if it:
 - (i) receives any certificate for the shares; or
 - (ii) is satisfied that any such certificate has been lost or destroyed.
- (e) The Company may deal with a balance it has held for more than 2 years according to any applicable law relating to unclaimed money.

14.14 Evidence

A written statement that the person making the statement is a director or secretary of the Company and that a:

- (a) resolution of the directors required by this rule 14 to be made was made; or
- (b) notice required by this rule 14 to be given or published in relation to shares in an Unmarketable Parcel of Shares was or was not given or published,

is, against anyone claiming to be entitled to shares to which the certificate relates, admissible as evidence of those facts and of the right of the Company to sell the shares under rule 14.1 and, in the absence of evidence to the contrary, is conclusive.

Appendix A

Preference shares

A1. Interpretation

In this Appendix A, unless the context otherwise requires:

“Dividend Date” means a date specified in the Issue Resolution as the date on which a dividend on the preference share is payable;

“Dividend Rate” means the rate for working out the amount of a dividend on a preference share on a Dividend Date, as specified in the Issue Resolution;

“Franked Dividend” means the same as in section 160APA of the Tax Act;

“Issue Resolution” means the resolution authorising the issue of the preference shares;

“Redeemable Preference Share” means a preference share that the Issue Resolution specifies is, or is at the Company’s option, liable to be redeemed;

“Redemption Amount” means the amount specified to be paid on redemption of the Redeemable Preference Share;

“Redemption Date” means the date specified in the Issue Resolution for the redemption of the preference share;

“Tax Act” means the Income Tax Assessment Act 1936 (Cth).

A2. Voting rights of preference shareholders

The holder of a preference share has a right to vote in respect of the share only in the following circumstances:

- (a) if a dividend or part of a dividend on the shares is in arrears;
- (b) on a proposal to reduce the Company’s capital;
- (c) on a resolution to approve a buy-back agreement;
- (d) on a proposal that affects a right attached to the share;
- (e) on a proposal to wind up the Company;
- (f) on a proposal for the disposal of the whole of the Company’s property, business and undertaking;
- (g) while the Company is being wound up.

A3. Dividend and distribution rights of preference shareholders

The holder of a preference share has a right to a cumulative preferential dividend, payable on each Dividend Date, in relation to the share. The dividend is to be worked out calculated in accordance with the Dividend Rate in relation to that preference share.

There is no right to a non-cumulative dividend.

The holder of a preference share has a right, in a winding up, to payment in cash of the capital then paid up on the share, and any arrears of dividend on the share.

These rights are in priority to any like payments to the holders of any other class of shares.

These rights are the only rights attaching to the share to participate in surplus assets or profits of the Company, whether in a winding up or otherwise.

A4. Further rights attaching to preference shares

The holder of a preference share has the same rights as the holders of ordinary shares to receive notices, reports, and audited accounts of the Company, and to attend general meetings.

A5. Requirements for Issue Resolution

The Company must not allot a preference share unless the Issue Resolution specifies:

- (a) the Dividend Date;
- (b) the Dividend Rate, which may be:
 - (i) fixed; or
 - (ii) expressed to vary according to specified factors or in accordance with specified formulas;
- (c) if the share is a Redeemable Preference Share – the Redemption Amount and Redemption Date for that Redeemable Preference Share; and
- (d) the other terms and conditions to apply to the share.

A6. Franked Dividends

The Issue Resolution may:

- (a) specify that the dividend is to be a Franked Dividend or not a Franked Dividend; and
- (b) if it specifies a dividend is to be franked – may also specify the:

- (i) extent to which it is to be franked within the meaning of the Tax Act; and
- (ii) consequences of a dividend paid not being franked, which may include a provision for an increase in the amount of the dividend as specified in the resolution.

A7. Redemption of Redeemable Preference Shares

Subject to the Corporations Act, the Company must redeem a Redeemable Preference Share on issue:

- (a) if the Company has given at least 15 Business Days written notice to the member stating that the share will be redeemed on the specified date – on that date; and
- (b) unless earlier redeemed – on the Redemption Date.

However, a Redeemable Preference Share may not be redeemed, and no notice of redemption may be given, for 2 years after the date on which it was issued.

A8. Preference share certificates

The certificate issued by the Company in relation to a preference share must specify:

- (a) the date of issue of the share;
- (b) the Dividend Rate and Dividend Dates;
- (c) whether the preference share is a Redeemable Preference Share and, if it is the:
 - (i) Redemption Amount and Redemption Date; and
 - (ii) conditions of redemption (if any); and
- (d) the conditions of participation (if any) mentioned in rule A3.

A9. Payments to holders of Redeemable Preference Shares

On redemption of a Redeemable Preference Share, the Company must pay the holder the Redemption Amount but only if the:

- (a) Company is satisfied on reasonable grounds that the certificate has been lost or destroyed; or
- (b) certificate has been surrendered to the Company.

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