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Tassal Group Limited

## Constitution

**This is a copy of the proposed new Constitution of the Company.**

**If Resolution 6 set out in the Company's Notice of Annual General Meeting 2007 dated 26 September 2007 is passed as a special resolution at the Company's Annual General Meeting to be held on 2 November 2007 ("2007 AGM"), this Constitution will be adopted as the Company's new Constitution with effect from the close of the 2007 AGM.**

**This document is signed by the Chairman of the Company for identification purposes and will be tabled at the 2007 AGM.**



**Allan McCallum  
Chairman  
Tassal Group Limited  
26 September 2007**

Corporations Act 2001

A Company limited by Shares

## **CONSTITUTION**

— of —

## **TASSAL GROUP LIMITED**

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# **CONSTITUTION OF TASSAL GROUP LIMITED**

## **1. DEFINITIONS**

1.1 In this Constitution unless the context otherwise requires -

“**Approved CS facility**” has the same meaning given to that term in the Listing Rules;

“**ASTC**” means ASX Settlement and Transfer Corporation Pty Limited ACN 008 504 532;

“**ASTC regulated Transfer**” has the same meaning given to that term in the *Corporations Regulations 2001*;

“**ASTC Settlement Rules**” means the Operating Rules of ASTC or of any relevant organisation which is an alternative or successor to, or replacement of, ASTC or of any applicable CS facility licensee;

“**ASX**” means ASX Limited (ACN 008 624 691) or the Company's Home Branch (as the context requires) and includes, any body corporate succeeding to all or most of the powers, functions and duties of ASX Limited;

“**Board**” means the Board of Directors of the Company from time to time or any committee of the Directors;

“**Business Day**” has the same meaning given to that term in the Listing Rules;

“**Call**” includes an instalment of a call and a premium payable upon a share and “**Called**” has a like meaning;

“**Certificated Shares**” means shares in the capital of the Company which are evidenced by certificates which have been issued and not subsequently cancelled and “**Certificated Holding**” has a like meaning;

“**CHESS**” has the same meaning given to that term in the ASTC Settlement Rules;

“**CHESS approved**” in relation to shares or other securities, means shares or other securities of the Company for which CHESS approval has been given in accordance with the ASTC Settlement Rules;

“**Company**” means Tassal Group Limited ACN 106 067 270;

“**Constitution**” means this Constitution as supplemented, substituted or amended from time to time;

“**CS facility**” has the same meaning given to that term in the Law;

“**CS facility licensee**” means a person who holds a licence under the Law which authorises the person to operate a clearing and settlement facility;

“**Directors**” means the Directors for the time being, or such number of them as have authority to act for the Company acting as a body and includes, a person duly appointed and for the time being acting as an attorney for a Director or as an alternate Director;

“**Dividend**” includes a bonus payment or other distribution of funds;

**"Holding Lock"** has the same meaning given to that term in the ASTC Settlement Rules;

**"Home Branch"** has the same meaning given to that term in the Listing Rules;

**"Law"** means the *Corporations Act 2001* as amended from time to time and includes any exemption or modification to the *Corporations Act 2001* applying to the Company;

**"Listing Rules"** means the Listing Rules of the ASX and any other rules of the ASX which are applicable while the Company is admitted to the Official List, each as amended from time to time, except to the extent of any express written waiver by the ASX;

**"Managing Director"** means a Director appointed to that office pursuant to Clause 26;

**"Marketable Parcel"** has the same meaning given to that term in the Listing Rules;

**"Member"** means any person who qualifies as a member of the Company and includes, any person who is the holder of a share in the capital of the Company;

**"Month"** means calendar month;

**"Office"** or **"Office of the Company"** means its registered office for the time being;

**"Official List"** has the same meaning given to that term in the Listing Rules;

**"Operating Rules"** in relation to a Prescribed CS Facility, has the same meaning given to that term in Chapter 7 of the Law;

**"Ordinary Share"** means an ordinary share in the capital of the Company issued in accordance with the provisions of Clause 4;

**"Paid Up"** includes credited as paid up;

**"Plan"** has the meaning given to that term in Clause 33.11;

**"Preference Share"** means a preference share in the capital of the Company issued in accordance with the provisions of Clause 4;

**"Prescribed CS Facility"** has the same meaning given to that term in Chapter 7 of the Law;

**"Present"** when used of a Member in relation to a meeting, means present in person, or by proxy, or by attorney, or if a corporation, by a representative appointed pursuant to this Constitution or the Law;

**"Proper ASTC Transfer"** has the same meaning given to that term in the *Corporations Regulations 2001*;

**"Register"** means the register of Members required to be maintained pursuant to the Law and includes any other subregister required to be maintained under the Listing Rules or the ASTC Settlement Rules;

**"Restricted Securities"** has the same meaning given to that term in the Listing Rules;

**"Restriction Agreement"** has the same meaning given to that term in Chapter 9 of the Listing Rules;

**"Secretary"** means any person appointed by the Board from time to time in accordance with the provisions of Clause 30;

**"Securities"** has the same meaning given to that term by section 92 of the Law and includes, but is not limited to, Ordinary Shares, Preference Shares and Voting Shares;

**"Tax Act"** means the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* of the Commonwealth of Australia and all acts encompassed thereby (as applicable);

**"Uncertificated Shares"** means shares in the capital of the Company for which no certificates are issued (or in respect of which any certificate previously issued has been cancelled) and for which certificates are not required by the Law, the ASTC Settlement Rules and the Listing Rules to be issued and **"Uncertificated Holding"** has a like meaning;

**"Voting Share"** means an issued share in the capital of the Company which, by the terms of its issue in accordance with Clause 4, confers a right to vote at general meetings of Members or on resolutions to be passed without meetings; and

**"Writing"** or **"Written"** includes any mode of representing or reproducing words, figures, drawings or symbols in a visible form.

## 2. INTERPRETATION

2.1 In this Constitution -

- 2.1.1 references to Clauses are references to Clauses of this Constitution;
- 2.1.2 references to an officer of the Company include any person acting for the time being as an officer;
- 2.1.3 words importing the singular include the plural and vice versa;
- 2.1.4 words importing the masculine gender include the feminine gender and vice versa;
- 2.1.5 words importing persons include partnerships, associations and corporations and vice versa;
- 2.1.6 words, terms or expressions defined in the Law, the Listing Rules or the ASTC Settlement Rules but not defined in this Constitution shall, if not inconsistent with the subject or context, bear the same meaning when used in this Constitution; and
- 2.1.7 references to the Law, the Listing Rules or the ASTC Settlement Rules include any amendment, variation or replacement thereof and any reference to any provision of the Law, the Listing Rules or

the ASTC Settlement Rules is a reference to that provision as amended, varied or replaced (as the case may be) and includes, any regulations proclaimed under the Law.

2.2 The headings to clauses or groups of clauses shall not affect the construction of this Constitution.

2.3 The replaceable rules contained in the Law shall not apply to the Company.

### 3. EXERCISE OF POWERS

The Company may, by resolution or special resolution as the Law requires, exercise from time to time any power which, by the Law, a company limited by shares may exercise if authorised by its constitution.

### 4. SHARE CAPITAL

#### 4.1 Classification of shares

4.1.1 Subject to the Listing Rules, all shares which are issued from time to time shall be called Ordinary Shares and shall be deemed to be of one class with the exception of any shares which, by the terms of issue by the Directors pursuant to Clause 4.2, are classified as Ordinary Shares of any type or class or as Preference Shares of any type or class.

4.1.2 Ordinary Shares are referred to in this Constitution as Voting Shares unless, by the terms of issue, they are declared to be non-voting shares.

#### 4.2 Power to issue shares

Subject to this Constitution, the Listing Rules and to the provisions of the Law with respect to the consent of the Members affected and subject and without prejudice to any special rights attached to any shares for the time being issued, all shares shall be under the absolute control of the Directors who may, from time to time -

4.2.1 issue any Securities;

4.2.2 create any class or new class of Securities including Ordinary Shares or Preference Shares (including a class of Preference Shares which are, or at the option of the Company, to be redeemed, the terms and manner of redemption being (subject to the Law) determined by the Directors upon the issue of the shares);

4.2.3 reclassify or convert any Securities;

4.2.4 issue or grant options in respect of, or otherwise dispose of, any Securities to such persons, on such terms and conditions and at such times and subject or not to the payment of any part of the amount of the Securities in cash, as the Directors may determine;

- 4.2.5 issue any Securities as fully or partly paid Securities as part payment for any property bought by the Company, or for services rendered to the Company;
- 4.2.6 create any new class of Securities with preferred, deferred or other special rights, or subject to rights of compulsory sale, or pre-emption, or subject to rights and restrictions (whether in regard to Dividends, voting, return of share capital or other matters) as the Directors may determine.

#### 4.3 **Power to buy-back shares**

The Company may, in accordance with the Law and the Listing Rules, buy back its own shares.

#### 4.4 **No interference with issue of shares**

The Company shall not prevent, delay or in any way interfere with the issue of Securities in the capital of the Company which are officially quoted by the ASX except as permitted by the Listing Rules and except that the Company may, in accordance with the Listing Rules, issue Securities to a nominee where the issue would result in the contravention of, or failure to observe, the provisions of any law.

### 5. **BROKERAGE AND COMMISSION**

- 5.1 The Company may, at any time, pay brokerage or commission to any person for subscribing or agreeing to subscribe (whether absolutely or conditionally) for any Securities of the Company, or procuring, or agreeing to procure subscriptions (whether absolute or conditional) for any Securities of the Company and so that -
  - 5.1.1 the statutory conditions and requirements for the time being in force (if any) shall be observed and complied with;
  - 5.1.2 the amount shall not exceed 10% of the price at which the Securities are issued unless otherwise determined by the Directors;
  - 5.1.3 the amount may be paid either in cash, or in fully paid Securities of the Company of any class, or in such other manner as the Directors may determine; and
  - 5.1.4 the Company may grant to any person subscribing, or agreeing to subscribe, or procuring, or agreeing to procure subscriptions for Securities, an option to require the Company to issue to that person, or a nominee of that person, any further Securities of the Company.
- 5.2 The powers conferred by Clause 5.1 upon the Company may be exercised on its behalf by the Directors.



## 6. OWNERSHIP OF SECURITIES

- 6.1 Except as required by law, no person shall (unless the Directors in any case otherwise determine) be recognised by the Company as holding any Securities on any trust.
- 6.2 The Company shall not be bound by, or be compelled in any way to recognise (even when the Company has received notice of the matter) any equitable, contingent, future, or partial interest in any share or unit of a share, or (except only as by this Constitution or by law otherwise provided) any other rights in respect of any share, except an absolute right in the registered holder.

## 7. VARIATION OF CLASS RIGHTS

### 7.1 Procedure

If at any time the issued share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with either –

- 7.1.1 the written consent of the holders of not less than 75% of the issued shares of that class; or
- 7.1.2 the sanction of a special resolution passed at a separate general meeting of the holders of the shares of that class.

### 7.2 Effect of further or new issue

The rights conferred on the holders of shares of any class issued with preferred or other rights, shall be deemed to be varied by the issue of further shares that rank equally with the existing shares of that class unless otherwise provided by the terms of issue of the existing shares of that class.

## 8. CERTIFICATES

### 8.1 Company to issue certificates

Subject to Clause 8.2 every person whose name is entered as a Member in the Register shall, without payment, be entitled to a certificate.

### 8.2 Participation in computerised or electronic system

- 8.2.1 The Company shall participate in, or seek admission to, any computerised or electronic system or scheme approved by the Law. If shares are officially quoted by the ASX, or deemed to be quoted by the ASTC Settlement Rules and the ASX allows, or otherwise requires, trading of Uncertificated Shares and the Company shall comply with the Listing Rules, the ASTC Settlement Rules and any other rules of an Approved CS facility and the Law regulating the system or scheme applicable to Uncertificated Shares.
- 8.2.2 Without limiting the generality of Clause 8.2.1 a Member may, subject to the provisions of the Listing Rules and, if applicable, the ASTC Settlement Rules, request that all or any of the Certificated

Shares held by that Member in the capital of the Company be converted to Uncertificated Shares or vice versa and on receipt by the Company of any such request, the Company shall comply with the Listing Rules, the ASTC Settlement Rules and the Law regulating the system or scheme applicable to Certificated Shares and Uncertificated Shares.

8.2.3 In the case of shares or other securities which are CHES approved the Company shall at all times, as applicable, comply with the provisions of the Listing Rules and/or the ASTC Settlement Rules.

### 8.3 **Joint holders**

In respect of a share or shares held jointly by several persons, the Company shall not be bound to issue more than one certificate or statement (as the case may be) and delivery of a certificate or statement for a share to one of several joint holders is deemed to be sufficient delivery to all.

### 8.4 **Issue of replacement certificate**

The Company must, subject to Clause 8.2, the Law, the Listing Rules and the ASTC Settlement Rules, issue a replacement certificate for shares if -

8.4.1 the certificate to be replaced is received by the Company for cancellation and is cancelled; or

8.4.2 satisfactory evidence has been received by the Company that the certificate previously issued has been lost or destroyed and has not been disposed of and the Member undertakes to return the certificate to the Company if it is found or received by the Member.

### 8.5 **Issue and despatch**

Every certificate, statement or notice (as applicable) in respect of a Member's shareholding must be issued and despatched in accordance with the requirements of the Law, the Listing Rules and/or the ASTC Settlement Rules.

## 9. **CALLS ON SHARES**

### 9.1 **Directors may make Calls**

9.1.1 The Directors may, subject to the terms and conditions of issue of any shares and to the requirements of the Listing Rules and the Law, make Calls upon the Members in respect of any money unpaid on their shares and not by the conditions of issue of those shares made payable at fixed times but so that -

9.1.1.1 no Call shall be payable earlier than 30 Business Days from the date fixed for the payment of the last preceding Call; and

9.1.1.2 each Member shall (subject to the provisions of Clause 9.1.2 and receiving at least 10 Business Days' notice or, if the Company is a participant in any

computerised or electronic system or scheme relating to shares which are officially quoted by the ASX, subject to receiving such period of notice before the due date for payment as is required by the Listing Rules) pay to the Company, at the time and place so specified, the amount Called on that Member's shares.

- 9.1.2 In the event that a person becomes registered as a new Member of the Company or a Member's shareholding changes after the date of despatch of any notice referred to in Clause 9.1.1, the Directors shall despatch notices to that new Member and those Members whose shareholdings have changed since despatch of any notice referred to in Clause 9.1.1 at least four Business Days prior to and inclusive of the due date of payment of the sum Called, or such other period as is required under the Listing Rules.
- 9.1.3 Subject to the requirements of the Listing Rules, a Call may be revoked or postponed before the due date for payment.
- 9.1.4 A Call shall be deemed to have been made at the time when the resolution of the Directors authorising the Call was passed and may be required to be paid by instalments.

## 9.2 **Liability for Calls**

- 9.2.1 The joint holders of a share shall be jointly and severally liable to pay all Calls in respect of that share.
- 9.2.2 If a sum Called in respect of a share is not paid before or on the day appointed for payment, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment to the time of actual payment at such rate as the Directors may determine.
- 9.2.3 Any sum which by the terms of issue of a share becomes payable on issue or at any fixed date shall, for the purposes of this Constitution, be deemed to be a Call duly made and payable on the date on which by the terms of issue the sum becomes payable and in the event of non-payment of interest and expenses, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a Call duly made and notified.

## 9.3 **Differentiation of Calls**

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

## 9.4 **Directors may waive payment**

The Directors may, to the extent permissible by law, waive or compromise all or any part of any payment due to the Company under this Clause 9.

## 9.5 **Directors to protect rights of the Company**

The Directors shall do all such things as may be necessary, or appropriate, under the ASTC Settlement Rules to protect any rights to which the Company may be entitled under any law or under this Constitution.

## 9.6 **Payment in advance**

The Directors may, at their discretion, receive from any Member willing to advance the same, all or any part of the money uncalled and unpaid upon any shares held by the Member and upon all or any part of the money so advanced may (until the same would but for the advance become payable) pay interest at such rate as may be agreed upon between the Directors and the Member paying the sum in advance.

## 9.7 **Proof of Call**

On the trial or hearing of any action for the recovery of any money due for any Call, it shall be sufficient to prove that -

- 9.7.1 the name of the Member sued is entered in the Register as the holder or one of the holders of the shares in respect of which such debt accrued;
- 9.7.2 the resolution making the Call is duly recorded in the minute book; and
- 9.7.3 notice of such Call was duly given to the Member sued in pursuance of this Constitution

and it shall not be necessary to prove the appointment of the Directors who made such Call or that a quorum of Directors was present at the meeting at which such Call was made nor any other matters whatsoever and the proof of the matters referred to in Clauses 9.7.1, 9.7.2 and 9.7.3 shall be conclusive evidence of the debt.

## 10. **FORFEITURE OF SHARES**

### 10.1 **Notice for payment**

- 10.1.1 If a Member fails to pay any Call or instalment of a Call on the day appointed for payment the Directors may, at any time after that day, during such time as any part of the Call or instalment remains unpaid serve a notice on that Member requiring payment of so much of the Call or instalment as is unpaid, together with any interest which may have accrued and all expenses which may have been incurred by the Company by reason of non-payment.
- 10.1.2 The notice shall name a day (not earlier than 14 days from the date of the notice) and a place at which the Call and interest and expenses are to be paid. The notice shall also state that in the event of non-payment at or before the time and at the place appointed the shares in respect of which the Call is payable will be liable to be forfeited.

### 10.2 **Forfeiture on failure to comply with notice**

- 10.2.1 If the requirements of any such notice are not complied with, any shares in respect of which the notice has been given may, at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect. Such forfeiture shall include all Dividends declared in

respect of the forfeited shares and not actually paid before the forfeiture.

10.2.2 When any share has been forfeited pursuant to Clause 10.2.1, notice of the resolution shall be given to the Member in whose name it stood immediately prior to the forfeiture and an entry of the forfeiture with the date shall promptly be recorded in the Register.

10.2.3 The forfeiture of a share shall involve the extinction of all interest in and all claims and demands against the Company in respect of the share and all other rights incidental to the share except only such of those rights as by this Constitution are expressly waived.

### 10.3 **Disposal of shares**

10.3.1 Subject to the Law and the Listing Rules, a forfeited share shall be cancelled, sold or otherwise disposed of on such terms and in such manner as the Directors think fit and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Directors think fit.

10.3.2 Any residue remaining after satisfaction of all moneys payable in respect of the forfeited shares including expenses, shall be held in trust and dealt with in accordance with the requirements of the Listing Rules and the Law.

### 10.4 **Cessation of membership**

A person whose shares have been forfeited shall cease to be a Member in respect of the forfeited shares but shall nevertheless remain liable to pay and shall immediately pay to the Company all money which at the date of forfeiture was payable by that Member in respect of the shares as set out in the notice referred to in Clause 10.1 (together with interest from the date of forfeiture on the money for the time being unpaid at such rate as the Directors may determine until the actual date of payment) but that Member's liability shall cease if and when the Company receives payment in full of all such money in respect of the shares.

## 11. **LIEN**

### 11.1 **Right to a lien**

11.1.1 The Company shall subject to this Constitution, the Listing Rules, the ASTC Settlement Rules and the Law have a first and paramount lien on every share registered in the name of each Member (whether solely or jointly with others) for –

11.1.1.1 all Calls payable at a fixed time in respect of that share and due but unpaid or presently payable by the Member or the Member's estate to the Company;

11.1.1.2 such amounts (if any) as the Company may be required by law to pay and has paid in respect of that share; and

- 11.1.1.3 all moneys due and remaining outstanding to the Company pursuant to loans made by the Company to any Member under any employee incentive scheme in respect of that share

but the Directors may, at any time, declare any share to be wholly or in part exempt from the provisions of this Clause.

- 11.1.2 The Company's lien on a share shall extend to all Dividends payable in respect of that share and all reasonable interest and expenses incurred because of moneys remaining outstanding.

## 11.2 **Waiver on registration of transfer**

Unless otherwise agreed the registration of a transfer of shares shall operate as a waiver of the Company's lien (if any) on such shares.

## 11.3 **Sale on exercise of lien**

- 11.3.1 The Company may sell in such manner as the Directors think fit any shares on which the Company has a lien but no sale shall be made -

11.3.1.1 unless a sum in respect of which the lien exists is presently payable; and

11.3.1.2 until the expiration of 14 days after a notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable has been given to the registered holder for the time being of the share or the person entitled thereto by reason of his death or bankruptcy.

- 11.3.2 To give effect to any sale pursuant to Clause 11.3.1, the Directors may authorise some person to effect on behalf of the holders of the relevant shares an instrument of transfer in order to transfer the shares sold to the purchaser of those shares. The purchaser shall be registered as the holder of the shares comprised in any such transfer and shall not be bound to see to the application of the purchase money nor shall the purchaser's title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

## 11.4 **Application of proceeds of sale**

The proceeds of the sale under Clause 11.3.1 shall be received by the Company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable and the residue if any shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

## 11.5 **Directors to protect lien**

The Directors shall do all such things as may be necessary or appropriate under the ASTC Settlement Rules or any other Operating Rules to protect any lien, charge or other right to which the Company may be entitled under any law or under this Constitution.

## 12. TAXATION LIEN

- 12.1 Whenever in respect of, or in connection with, any shares registered in the name of a Member (whether solely or jointly with others) or with any Dividends or bonus in respect of those shares and whether in consequence of the Member's death or for any reason any law of the Commonwealth of Australia or of any Australian State or Territory or of any other country or place imposes or purports to impose any immediate or future or possible liability upon the Company to make any payments to any Government or taxing authority -
- 12.1.1 the Company shall, in respect of any such liability, be fully indemnified by the Member and the Member's executors or administrators wherever constituted or situated;
- 12.1.2 any moneys paid by the Company in respect of any such liability imposed or purported to be imposed on the Company may be recovered by action against the Member or the Member's executors or administrators wherever constituted as a debt due by the Member or the Member's estate to the Company with interest at such rate as the Directors may determine from the date when the moneys were paid until repayment;
- 12.1.3 any such moneys and interest may be deducted by the Company from any Dividend or other moneys payable by it to the Member or the Member's executors or administrators;
- 12.1.4 the provisions of Clause 11 with respect to the Company's lien for debts of a Member and the Company's power of sale to enforce any such lien shall apply with respect to moneys paid by the Company in respect of any liability to which this Clause relates;
- 12.1.5 nothing in this Clause 12 shall prejudice or affect any right or remedy which, in respect of any such payment by the Company, any law may confer or purport to confer upon the Company; and
- 12.1.6 it is hereby expressly declared that as between the Company and the Member or the Member's estate and the Member's executors or administrators wherever constituted, any such right or remedy shall be enforceable by the Company and every Member as between each Member and the Company shall be deemed to agree and bind the Member's executors, administrators and estate to submit to the legislative power and jurisdiction of the State Territory country or place imposing such liability upon the Company.
- 12.2 If under the Tax Act or any other enactment the Company becomes liable to pay additional tax with respect to any undistributed amount of its profits then, notwithstanding any other provisions of this Constitution, the Company in making any subsequent distribution of its profits whether out of that undistributed amount or out of other profits may, if the Directors think fit but not so as to affect any priority to which under this Constitution the holders of any class of shares are entitled, declare Dividends at different rates with respect to the shares of the same class held by different Members in such a way as to ensure, as nearly as may be, that each Member bears their proper share of the additional tax which the Company has become liable to pay.

## 13. TRANSFER OF SHARES

### 13.1 Instrument of transfer

Subject to the Law, the Listing Rules, the ASTC Settlement Rules and this Constitution, shares may be transferred by -

- 13.1.1 a Proper ASTC Transfer;
- 13.1.2 a transfer document in writing in any usual or common form executed by or on behalf of the transferor or stamped by the transferor's broker and executed by or on behalf of the transferee or stamped by the transferee's broker; or
- 13.1.3 any other form approved by the Directors.

### 13.2 Quoted shares or Securities

- 13.2.1 The provisions of Clause 13.1 shall not apply while the Company is a participant in any computerised or electronic system or scheme relating to shares or Securities which are officially quoted by the ASX or deemed to be quoted by the ASTC Settlement Rules and whilst the rules regulating such system or scheme provide that, in any case, a written instrument of transfer is not required.
- 13.2.2 For the purposes of Clause 13.2.1, the Directors shall do everything necessary or appropriate to enable the Company to participate in any computerised or electronic system or scheme for facilitating the transfer of shares or Securities or operation of the Company's registers which may be operated or sponsored by the ASX including (without limitation) the provisions under the Listing Rules and/or the ASTC Settlement Rules.

### 13.3 Fees

No fee shall be charged on the transfer of any shares.

### 13.4 No interference with transfer

- 13.4.1 The Company shall not in any way prevent, delay or interfere with the registration of a transfer document relating to shares or other Securities quoted on the ASX except as provided in Clauses 13.4.2 and 13.4.3.–
- 13.4.2 The Directors may, if permitted by the Listing Rules –
  - 13.4.2.1 request an Approved CS facility to apply a Holding Lock to prevent a transfer of shares or other Securities in the Company from being registered; or
  - 13.4.2.2 refuse to register a paper-based transfer document,
 in any of the circumstances provided in the Listing Rules.
- 13.4.3 The Directors must, if required by the Listing Rules or if a transfer would result in a breach of the Listing Rules or a Restriction Agreement, request an Approved CS facility to apply a Holding



Lock to prevent the transfer of shares or other Securities in the Company from being registered in any circumstances other than as provided in Clauses 13.4.2 and 13.5.

### 13.5 **Reservation of shares**

Notwithstanding the provisions of Clause 13.4 the Company shall in accordance with the Listing Rules, refuse to register a paper-based transfer where some or all of the shares or other Securities the subject of the transfer are reserved for a bidder because the holder of the shares or other Securities in the bid class has accepted an offer under an off-market bid unless -

13.5.1 the off-market bid is not, or ceases to be, subject to a defeating condition; and

13.5.2 the transfer is to the bidder, or is effected at the direction of the bidder.

### 13.6 **No disposal of Restricted Securities**

Notwithstanding the provisions of Clause 13.4, no disposal of Restricted Securities shall be permitted during the escrow period and the Company shall refuse to acknowledge a disposal (including registering a transfer) of any Restricted Securities during the escrow period, except as permitted by the Listing Rules and the ASX.

### 13.7 **Notice of refusal to register a transfer**

In the event that the Company refuses to register a transfer of any shares in accordance with the provisions of Clause 13.4, the Company shall give to the lodging party written notice of the refusal and the precise reasons for the refusal within five Business Days after the date on which the transfer was lodged with the Company.

### 13.8 **Holding Lock**

In the event that the Company requests the ASX or an Approved CS facility to apply a Holding Lock in accordance with the provisions of Clause 13.4, the Company shall give the holder of the shares or Securities written notice of the Holding Lock and the reasons for the Holding Lock within five Business Days after the date on which the Company requested that the Holding Lock be applied.

### 13.9 **Procedures for transfer**

13.9.1 Every transfer document shall -

13.9.1.1 in the case of a transfer of Certificated Shares -

13.9.1.1.1 be left at the Office of the Company or the office of the Company's share registry;

13.9.1.1.2 be accompanied by a certificate for the shares the subject of the instrument of transfer unless the

Directors waive production of the certificate on receiving satisfactory evidence of the loss or destruction of the certificate; and

13.9.1.1.3 be accompanied by such other evidence of the transferor's right to transfer the shares as the Directors may require;

13.9.1.2 in the case of a transfer of shares where a Member has elected to have their holding converted from certificated to uncertificated mode, be left at the Office of the Company or the office of the Company's share registry but need not be accompanied by a certificate; and

13.9.1.3 in the case of a transfer of Uncertificated Shares, be in a form which accords with the rules of the ASX or the ASTC Settlement Rules or any other rules regulating transfer and registration procedures.

13.9.2 All instruments of transfer once registered shall be retained by the Company but any instrument of transfer which the Directors may decline to register shall, except in the case of apparent fraud, be returned on demand to the person depositing the instrument.

#### 13.10 **Register to remain open**

Except as otherwise permitted by the Law, the Listing Rules or the ASTC Settlement Rules, the Register shall remain open every Business Day.

#### 13.11 **Register to be audited**

The Directors must cause the Register to be audited in accordance with the provisions of the Listing Rules, the ASTC Settlement Rules and any other relevant Operating Rules.

#### 13.12 **Waiver of transfer requirements**

The Directors may, to the extent permissible by law, waive all or any of the requirements of this Clause 13 and prescribe such other requirements for the purposes of giving effect to the provisions of Clause 13 or otherwise.

#### 13.13 **Delegation of powers**

The Directors may delegate their authority under this Clause 13 to any person as the Directors may consider to be appropriate or necessary having regard to all the circumstances.

### 14. **TRANSMISSION OF SHARES**

#### 14.1 **Legal personal representatives**

14.1.1 The legal personal representatives of a deceased sole holder of a share shall be the only persons recognised by the Company as having any title to the share.

- 14.1.2 In the case of a share registered in the names of two or more holders, the survivors or survivor, or the legal representatives of the deceased survivor, shall be the only persons recognised by the Company as having any title to the share but nothing contained in this Constitution shall release the estate of a deceased joint holder from any liability in respect of any share which had been held jointly by that person with other persons.

## 14.2 **Registration of transfer on transmission**

- 14.2.1 Any of the following persons -

- 14.2.1.1 either of the parents or the guardian of any infant Member;
- 14.2.1.2 any person becoming entitled to a share in consequence of the bankruptcy of a Member;
- 14.2.1.3 the legal personal representative of a deceased Member;
- 14.2.1.4 the beneficiaries of a deceased Member becoming entitled to a share under the deceased Member's will or the next of kin of the deceased Member entitled on an intestacy;
- 14.2.1.5 any person having authority in law to manage the affairs of a Member who, by reason of mental or physical infirmity, is unable to manage their affairs

shall, on evidence being produced as to his status or authority as is from time to time properly required by the Directors, have the right either to be registered in their own name or to make such transfer of the share as the Member could have made but the Directors shall, in any such case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the Member, if the Member had been alive or capable of transferring the share.

- 14.2.2 Where two or more persons are jointly entitled to be registered pursuant to the provisions of Clause 14.2.1 they shall, for the purposes of this Constitution, be deemed to be joint holders of the share.

## 14.3 **Entitlements on registration**

A person entitled to be registered as a Member in respect of a share pursuant to Clause 14.2.1 shall be entitled to the same Dividends and other advantages to which that person would be entitled if they were the registered holder of the share except that they shall not, before being registered as a Member in respect of the share, be entitled in respect of the share to exercise any right conferred by membership in relation to a general meeting of the Company unless at least 48 hours prior to the time of holding the relevant general meeting at which that person proposes to vote, that person satisfies the Directors of their entitlement to be registered as a Member in respect of a share pursuant to Clause 14.2, or the Directors shall have previously admitted that person's right to vote at an adjourned general meeting.

## 15. CONVERSION AND REDUCTION OF CAPITAL

### 15.1 Conversion by resolution

15.1.1 The Company may (subject to Clause 7, the Listing Rules and the Law) by resolution convert all or any of its shares into a larger or smaller number.

15.1.2 For the purposes of Clause 15.1.1, any amount unpaid on shares to be converted is to be apportioned equally among the replacement shares.

### 15.2 Reduction of capital

Subject to the Listing Rules and the Law, the Company may reduce its share capital in any way which is not otherwise authorised by law.

## 16. GENERAL MEETINGS

### 16.1 Calling and holding general meetings

16.1.1 An annual general meeting of the Company shall be held in accordance with the provisions of this Constitution and the Law. Any reference in this Constitution to general meetings shall (where the context so requires) mean and include annual general meetings.

16.1.2 The Directors may, whenever they think fit, call a general meeting and general meetings shall be called on such requisition or, in default, may be called by such requisitionists as provided by the Law.

16.1.3 If at any time there are not sufficient Directors capable of acting to form a quorum for the purpose of calling a general meeting, any Director or any Members of the Company holding not less than 5% of the votes that may be cast at general meetings may call and arrange to hold a general meeting in the same manner, as nearly as possible, in which meetings may be called by the Directors.

### 16.2 Postponement or change of general meetings

The Directors may, subject to the provisions of the Law, by notice in writing to the ASX postpone, cancel or change the place of any general meeting as the Directors may consider to be necessary or appropriate from time to time.

### 16.3 Notice of general meetings

16.3.1 Notice of a general meeting must be given to each person who at the time of giving the notice is a Member, Director or auditor of the company.

16.3.2 The content of a notice of a general meeting called by the Directors is to be decided by the Directors, but it must state the general nature of the business to be transacted at the meeting and any other matters required by the Law.

- 16.3.3 Unless the Law provides otherwise -
- 16.3.3.1 no business may be transacted at a general meeting unless the general nature of the business is stated in the notice calling the meeting; and
- 16.3.3.2 except with the approval of the Directors or the chairman, no person may move any amendment to a proposed resolution the terms of which are set out in the notice calling the meeting or to a document which relates to such a resolution and a copy of which has been made available to members to inspect or obtain.
- 16.3.4 A person may waive notice of any general meeting by written notice to the Company.
- 16.3.5 Failure to give a member or any other person notice of a general meeting or a proxy form, does not invalidate anything done or any resolution passed at the general meeting if -
- 16.3.5.1 the failure occurred by accident or inadvertent error; or
- 16.3.5.2 before or after the meeting, the person notifies the Company of the person's agreement to that thing or resolution.
- 16.3.6 A person's attendance at a general meeting waives any objection that person may have to -
- 16.3.6.1 a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
- 16.3.6.2 the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

#### 16.4 **Rights of holders of Preference Shares**

The holders of Preference Shares (if any) shall have the same rights as the holders of Ordinary Shares in respect of receiving notices, reports and audited accounts and shall be entitled to attend general meetings of the Company.

#### 16.5 **Business at general meetings**

All business that is transacted at a general meeting shall be deemed special and all business that is transacted at an annual general meeting shall also be deemed special with the exception of –

- 16.5.1 sanctioning a Dividend;

- 16.5.2 the consideration of the annual financial report, Directors' report and auditor's report;
- 16.5.3 the election of Directors;
- 16.5.4 the appointment of the auditor; and
- 16.5.5 the fixing of the auditor's remuneration.

## 16.6 Resolutions without general meetings

- 16.6.1 Subject to the Law, any resolution of the Company determined without any general meeting and evidenced in writing under the hand of each Member of the Company who, for the time being, is entitled to attend and vote, or of their proxy or attorney appointed as provided in this Constitution, or (if the Member is a corporation) of its corporate representative appointed as provided in this Constitution or the Law, shall be as valid and effectual as a resolution duly passed at a general meeting of the Company.
- 16.6.2 Any resolution passed in accordance with the provisions of Clause 16.6.1 may consist of identical copies of the document recording the resolution and accompanying information, each signed by one or more Members or their respective proxies, attorneys or, if any Members are corporations, by their respective representatives.

## 17. PROCEEDINGS AT GENERAL MEETING

### 17.1 Quorum

- 17.1.1 No business shall be transacted at any general meeting unless a quorum of two Members is Present at the time when the meeting proceeds to business.
- 17.1.2 If within 15 minutes from the time appointed for the meeting a quorum is not Present -
  - 17.1.2.1 the meeting, if called on the requisition of Members, shall be dissolved; and
  - 17.1.2.2 in any other case -
    - 17.1.2.2.1 it shall stand adjourned to the same day, in the next week, at the same time and place; and
    - 17.1.2.2.2 if at the adjourned meeting a quorum is not Present within 15 minutes from the time appointed for the meeting, the meeting shall be dissolved.

### 17.2 Chairing general meetings

- 17.2.1 Subject to the provisions of the Law and the Listing Rules, the Chairperson (if any) elected by the Directors shall chair each general meeting of the Company or if there is no such Chairperson, or if at any meeting the Chairperson is not Present

within 15 minutes after the time appointed for holding the meeting, or is unwilling to act, the persons Present and entitled to vote at a meeting shall choose some one of their number to chair the meeting.

- 17.2.2 The Chairperson may, with the consent of any meeting at which a quorum is Present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place but so that -
- 17.2.2.1 no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place;
- 17.2.2.2 when a meeting is adjourned for 10 days or more at any one time, notice of the adjourned meeting shall be given as in the case of an original meeting;
- 17.2.2.3 unless Clause 17.2.2.2 applies, it shall not be necessary to give any notice of an adjourned meeting or of the business to be transacted at an adjourned meeting.

### 17.3 **Decisions at general meetings**

- 17.3.1 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the results of the show of hands) demanded -
- 17.3.1.1 by the Chairperson;
- 17.3.1.2 by at least three Members Present having the right to vote at the meeting; or
- 17.3.1.3 by any Member or Members Present and representing not less than 5% of the votes that may be cast on the resolution on a poll

and unless a poll is so demanded, a declaration by the Chairperson that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

- 17.3.2 The demand for a poll may be withdrawn.
- 17.3.3 If a poll is duly demanded, it shall be taken in such manner and either at once or after an interval or adjournment, or otherwise as the Chairperson directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a Chairperson, or on a question of adjournment, shall be promptly taken.

#### 17.4 **Chairperson not to have casting vote**

In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the meeting at which the show of hands takes place, or at which the poll is demanded, shall not be entitled to a second or casting vote.

### 18. **VOTES OF MEMBERS**

#### 18.1 **Voting at general meetings**

Subject to this Constitution and to any special rights or restrictions imposed on or attaching to any shares or classes of shares by the Directors -

- 18.1.1 on a show of hands, each Member Present who holds one or more Voting Shares is entitled to one vote at meetings of Members; and
- 18.1.2 on a poll, every Member shall have one vote for each fully paid share held and, if at any time there is on issue any share which has not been fully Paid Up, that share shall confer only the proportion of one vote which the sum Paid Up (excluding any amount credited as Paid Up) on that share bears to the total issue price of that share.

#### 18.2 **Rights of holders of Restricted Securities**

In the event of a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement entered into by the Company under the Listing Rules in relation to shares or securities which are classified under the Listing Rules or by the ASX as Restricted Securities, the Member holding those Restricted Securities shall cease to be entitled to vote in respect of those Restricted Securities for so long as the breach subsists.

#### 18.3 **Rights of holders of Preference Shares**

The holders of Preference Shares (if any) shall be entitled to vote at any general meeting called and held for the purpose of -

- 18.3.1 reducing the capital of the Company;
- 18.3.2 sanctioning the terms of a buy-back agreement;
- 18.3.3 winding up the Company and during the winding up of the Company;
- 18.3.4 sanctioning a disposal of the whole of the property, business and undertaking of the Company;
- 18.3.5 where any proposition directly affects the rights and privileges attaching to the Preference Shares; and

the holders of Preference Shares (if any) shall be entitled to vote at any general meeting during a period when any Dividend (or part of a Dividend) payable in respect of those Preference Shares is in arrears.



18.4 **Joint holders**

In the case of joint holders, the vote of the senior Present who tenders a vote shall be accepted to the exclusion of the votes of the other joint holders and for this purpose, seniority shall be determined by the order in which the names stand in the Register.

18.5 **Voting by committee or trustee**

A Member who is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under any relevant law relating to mental health, may vote whether on a show of hands or on a poll by the Member's committee or by the trustee or by such other person as properly has the management of the Member's estate and any such committee, trustee or other person may vote by proxy or attorney.

18.6 **Infant Members**

A Member who is an infant may vote by either of that Member's parents or by their guardian upon such evidence being produced of the relationship or of the appointment of the guardian as the Directors may, from time to time, properly require.

18.7 **Entitlement to vote**

No Member shall be entitled to vote at any general meeting in respect of any particular shares on which Calls due and payable by that Member to the Company in respect of those shares have not been paid or as otherwise provided under the Listing Rules.

18.8 **Objections to right to vote**

Subject to the Listing Rules, no objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any objection made in due time shall be referred to the Chairperson of the meeting whose decision shall be final and conclusive.

18.9 **Direct voting**

The Directors may, subject to law, determine that at any general meeting, a Member who is entitled to attend and vote at that meeting is entitled to give their vote by a valid notice of their voting intention (a "**Direct Vote**"). A Direct Vote includes a vote delivered to the Company by post, fax, electronic or other means approved by the Directors. The Directors may specify the form, method and timing of giving a Direct Vote at a meeting in order for the vote to be valid.

18.10 **Method of voting**

On a show of hands and on a poll votes may be given either personally (including by way of Direct Voting) or by representatives appointed pursuant to this Constitution or by attorney or by proxy.

## 19. PROXIES

### 19.1 Member's entitlement to appoint proxy

- 19.1.1 Each Member of the Company entitled to attend and cast a vote at a general meeting may appoint an individual as their proxy to attend and vote for that Member at the general meeting.
- 19.1.2 If a Member is entitled to cast two or more votes at the meeting, that Member may appoint not more than two proxies.
- 19.1.3 A proxy need not be a Member of the Company.

### 19.2 Instrument of appointment

- 19.2.1 The instrument appointing a proxy shall, subject to Clause 19.2.2, be in any written form –
  - 19.2.1.1 if the appointor is an individual, signed by the appointor; or
  - 19.2.1.2 if the appointor is a corporation, signed in accordance with the constitution of that corporation; or
  - 19.2.1.3 in either case, signed by the duly authorised attorney of the Member.
- 19.2.2 Despite Clause 19.2.1, an appointment of proxy is valid if it is authenticated in a manner prescribed by the Law.
- 19.2.3 The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed, or a notarially certified copy of that power or authority, must be received by the Company not less than 48 hours before the time for holding the general meeting or adjourned general meeting at which the person named in the instrument proposes to vote (unless a shorter period is specified in the notice of general meeting to which the proxy relates) and in default, the instrument of proxy shall not be treated as valid unless otherwise determined by the Chairperson.
- 19.2.4 For the purposes of Clause 19.2.1, an instrument appointing a proxy must be received by the Company in any manner prescribed by the Law or as specified in the notice of meeting for that purpose.

### 19.3 Proportion or number of votes

Where a Member appoints two proxies, the appointment may specify the proportion or number of votes that the proxy may exercise.

### 19.4 Authority to demand poll

Any instrument appointing a proxy confers authority to demand, or join in demanding, a poll.

## 20. BODY CORPORATE REPRESENTATIVES

### 20.1 Member's entitlement to appoint representative

Any body corporate which is a Member of the Company may appoint an individual (whether a Member of the Company or not) whom it thinks fit as its representative to exercise all or any of the powers that the body corporate may exercise by Law.

### 20.2 Rights of corporate representative

The person appointed as corporate representative shall be entitled to exercise the same powers on behalf of the body corporate which that person represents as that body corporate could exercise (including the giving of any consent and the signing of any resolution, appointment or other document) if it were a natural person and also to exercise all the powers mentioned in Clause 20.1 as are conferred by the instrument of appointment.

### 20.3 Certificate of appointment

20.3.1 A certificate executed in accordance with the constitution of the body corporate, accompanied by such other evidence as the Directors may properly require of any appointment of a representative, must be received by the Company before the commencement of the meeting or adjourned meeting at which the person named in the certificate proposes to vote and, in the case of a resolution to be determined on without any general meeting, before the resolution or other document or statement in which the resolution is set out is circulated for signing by the Members of the Company entitled to vote on the resolution.

20.3.2 For the purposes of Clause 20.3.1, a certificate of appointment must be received by the Company in any manner prescribed by Law or as specified in the notice of meeting for that purpose.

## 21. MEETINGS OF CLASSES OF SHAREHOLDERS

At every separate meeting of holders of shares of any class, the provisions of this Constitution relating to general meetings shall, with such modifications as are necessary, apply but so that (subject to Clause 7.1) -

- 21.1 the necessary quorum shall be two Members holding between them a majority of the issued shares of the class; or
- 21.2 where only one Member is the holder of shares of the class - that Member Present shall for all purposes constitute a quorum; and
- 21.3 any holder of shares of the class Present at the meeting may demand a poll.

## 22. DIRECTORS

### 22.1 Number of Directors

The number of the Directors shall, unless otherwise provided by the Law, be not less than three.

## 22.2 **Company may fix number**

The Company may from time to time by resolution passed at a general meeting, fix the number of Directors or increase or reduce the number of Directors (but so that the number shall be not less than the minimum number required by Clause 22.1) and may (subject to the provisions of Clause 24) determine in what rotation the increased or reduced number is to go out of office.

## 22.3 **Auditor not eligible for appointment**

No person shall be eligible for appointment as a Director who is the auditor, or a partner or employer or employee of the auditor, or who is bankrupt, or who has current a composition or arrangement with or an assignment of their estate for the benefit of their creditors, or who is a person whose person or estate is liable to be dealt with in any way under any relevant law relating to mental health.

## 22.4 **Election**

22.4.1 No person other than a retiring Director shall be eligible for election as a Director at any general meeting unless that person or some other Member intending to propose that person has, at least 45 Business Days before the general meeting (unless otherwise required by the Law or such shorter period as is permitted by the Board), left at the Office a notice in writing duly signed by the nominee giving their consent to the nomination and signifying their candidature for the office or the intention of such Member to propose that person.

22.4.2 Notwithstanding the provisions of Clause 22.4.1, in the case of a person recommended by the Directors for election, 10 Business Days' notice only shall be necessary.

22.4.3 Notice of each and every candidate for election to the Board shall be served on the Members at least seven Business Days prior to the date of the general meeting at which the election is to take place.

## 22.5 **Qualification**

No share qualification shall be required of a Director.

## 22.6 **Remuneration**

22.6.1 The Directors are to be paid for their services as Directors.

22.6.2 Each non-executive Director is to be paid or provided remuneration for services, determined by the Directors, at the time and in the manner determined by the Directors, the aggregate amount or value of which in respect of all of the non-executive Directors in any year may not exceed an amount approved by the Company in general meeting from time to time, pursuant to Clause 22.7. The expression "**remuneration**" in this Clause 22.6 does not include any amount which may be paid by the Company under any of Clauses 22.6.5, 22.6.6 and 38.

- 22.6.3 The remuneration to be paid or provided to the non-executive Directors in the aggregate under Clause 22.6.2 is to be divided among the non-executive Directors in the proportions as they may agree or, if they cannot agree, equally among them.
- 22.6.4 The remuneration to which a Director is entitled may be provided to a Director in cash or in any other form as is agreed between the Company and the Director. A Director may elect to forego some or all of the Director's entitlement to cash remuneration in favour of another agreed form of remuneration and vice versa, provided the total cost to the Company of that Director's remuneration is not increased above the maximum for that Director under Clause 22.6.3.
- 22.6.5 The Directors are also entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any meeting of the Directors, committee of the Directors, general meeting of the Company or otherwise in connection with the business or affairs of the Company.
- 22.6.6 If any Director, with the approval of the Directors, performs extra services or makes any special exertions for the benefit of the Company which in the opinion of the Directors are outside the scope of the ordinary duties of a Director, the Directors may approve the payment to that Director of special and additional remuneration as the Directors determine having regard to the value to the Company of the extra services or special exertions. Any special or additional remuneration must not include a commission on or percentage of profits or operating revenue or turnover.
- 22.6.7 An executive Director may be appointed on terms as to remuneration, tenure of office and otherwise as may be agreed by the Directors.
- 22.6.8 Subject to the Law, a Director may be engaged by the Company in any other capacity (other than auditor) and may be appointed on terms as to remuneration, tenure of office and otherwise as may be agreed by the Directors.

## 22.7 **Increase in payments to Directors**

- 22.7.1 The remuneration of the Directors shall not be increased except at a general meeting called by a notice specifying the intention to propose the increase, the amount of the increase and the maximum sum that may be paid to the Directors as a whole.
- 22.7.2 The provisions of Clause 22.7.1 do not apply to the salary of an executive Director.

## 23. **DISQUALIFICATION OF DIRECTORS**

### 23.1 **Vacation of office**

The office of Director shall be vacated if the Director -

- 23.1.1 ceases to be a Director pursuant to any provision of the Law;
- 23.1.2 becomes bankrupt or makes any arrangement or composition with their creditors generally;
- 23.1.3 becomes prohibited from being a Director by reason of any order made under the Law;
- 23.1.4 becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under any relevant law relating to mental health;
- 23.1.5 resigns their office by notice in writing to the Company; or
- 23.1.6 is removed from office pursuant to this Constitution.

## 23.2 **Exclusions and disclosure of certain interests**

Notwithstanding any rule of law or equity to the contrary but subject always to the provisions of the Law and the Listing Rules -

- 23.2.1 a Director shall not be disqualified by reason of their office from contracting with the Company either as vendor, purchaser or otherwise, or from being employed or acting in any capacity professionally or otherwise by or on behalf of the Company;
- 23.2.2 no contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company with any company or partnership of, or in which, any Director is a director, member or otherwise in any way directly or indirectly interested and no contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested shall be liable to be impeached, affected or avoided by reason of the Director holding their office or of the fiduciary relationship thereby established, or by reason of the Director being a party thereto, or otherwise interested therein;
- 23.2.3 no Director so contracting or being such Director, Member or so interested shall be liable to account to the Company for any profit realised by any such contract or arrangement by reason only of such Director holding their office, or of the fiduciary relationship thereby established, or by reason of his interest;
- 23.2.4 subject to the provisions of Clause 23.3 and the Law, a Director (including an alternate Director) may not be present at a meeting of Directors while a matter relating to a contract or arrangement in which the Director has (directly or indirectly) a material personal interest is being considered and may not vote on, or in relation to, the matter;
- 23.2.5 a Director may execute, or attest the affixing of the common seal to, any document relating to a contract or arrangement in which the Director has an interest;
- 23.2.6 a Director may hold any other office or place of profit in the Company in conjunction with their directorship and may be appointed to such office or place of profit upon such terms as to

remuneration, tenure of office and otherwise as may be arranged by the Directors;

- 23.2.7 a Director of the Company may be or become a director of any other companies promoted by the Company and any subsidiary company or company having dealings with the Company and that Director shall not be accountable for any benefits received as a director or member of or holder of any office or place of profit in such company and the Directors may exercise the voting power conferred by the shares in any companies held or owned by the Company in such manner, in all respects, as the Directors think fit (including the exercise of such voting power in favour of any resolution appointing the Directors, or any of them, to be directors of such companies or voting or providing for the payment of remuneration to directors of such companies) and any such Director of the Company may vote in favour of the exercise of such voting rights in the manner aforesaid notwithstanding that he may be, or be about to be, appointed a director of such other company.

### 23.3 **Disclosure not required**

The provisions of Clause 23.2.4 shall not apply to an interest that a Director has –

- 23.3.1 as a Member of the Company; and
- 23.3.2 in common with the other Members of the Company, or
- 23.3.3 in a matter relating to any contract of insurance merely because the contract insures or would insure that Director as an officer of the Company in accordance with the provisions of Clause 38.1, or
- 23.3.4 as otherwise permitted by the Law.

### 23.4 **Notice to the ASX**

The Company shall, in accordance with the provisions of the Listing Rules, advise the ASX without delay (or within such period of time as required by the Listing Rules from time to time) of any information concerning Directors' interests, the affairs of the Company including (without limitation) any contract or arrangement involving Directors' interests, and of any other information or matter required by the Listing Rules, that may be considered to have a material effect on the price or value of the Company's shares.

## 24. **ROTATION OF DIRECTORS**

### 24.1 **Rotation**

- 24.1.1 Subject to Clauses 25.4.2 and 26.1.3 a Director, other than a Managing Director, shall not hold office for more than three years or beyond the third annual general meeting following their appointment (whichever is the longer period) without submitting themselves for re-election.
- 24.1.2 A retiring Director may act until the conclusion of the meeting at which the Director retires and is eligible for re-election.

- 24.1.3 If in any year, there is no Director who is required to submit themselves for re-election pursuant to Clause 24.1.1 but the Listing Rules require that an election of Directors be held, the Director to retire by rotation at that annual general meeting will be the Director who has been longest in office since their last election.
- 24.1.4 As between Directors who have been in office since their last election for an equal length of time, the Director or Directors to retire shall, in default of agreement between them, be determined by drawing lots in any manner determined by the Chairperson of Directors or if the Chairperson is not able and willing to act, by the deputy Chairperson.
- 24.1.5 For the purpose of ascertaining the number and identity of the Directors to retire by rotation, a Director appointed by the Directors shall not be taken into account.
- 24.1.6 The Company may, at a meeting at which the Directors or any of them retire by rotation, fill all or any of the vacant places by electing persons to fill any vacancy.

#### 24.2 **Election each year**

An election of Directors, other than a Managing Director, shall be held each year.

### 25. **TENURE AND REMOVAL OF DIRECTORS**

#### 25.1 **Term of office**

Each Director shall hold office until the Director resigns or is removed or vacates office as provided in this Constitution.

#### 25.2 **Removal by Members**

Subject to the Law, the Company by resolution at a general meeting -

25.2.1 may remove a Director from office; and

25.2.2 may appoint a new Director to replace any Director who is removed from office

and any Director appointed pursuant to Clause 25.2.2 shall hold office for the remainder of the term of office of the Director who is removed from office.

#### 25.3 **Appointment by Members**

Subject to the Law and the Listing Rules, the Company, by resolution at a general meeting -

25.3.1 may appoint a Director to fill a casual vacancy; and

25.3.2 may appoint additional Directors,

and any Director appointed pursuant to this Clause 25.3 shall be subject to retirement by rotation in accordance with Clause 24.



## 25.4 **Casual vacancy or addition to Board**

- 25.4.1 The Directors shall have the power, at any time and from time to time, to appoint any person to be a Director either to fill a casual vacancy (including an appointment to increase the total number of Directors to the minimum number required by the Law) or as an addition to the existing Directors but so that the total number of Directors shall not at any time exceed the number (if any) fixed in accordance with this Constitution.
- 25.4.2 Any Director appointed pursuant to Clause 25.4.1 (other than an exempt Managing Director under Clause 26.1) shall hold office until the next annual general meeting and shall then be eligible for re-election.

## 26. **MANAGING DIRECTOR**

### 26.1 **Appointment**

- 26.1.1 The Directors may, from time to time, appoint one or more of their body to the office of Managing Director for such period and on such terms as they think fit and subject to the terms of any agreement entered into in any particular case, may revoke any such appointment.
- 26.1.2 A Director appointed as Managing Director shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of Directors but such appointment shall be automatically determined if the Managing Director ceases, for any reason, to be a Director.
- 26.1.3 If there is more than one Managing Director appointed then only one of them shall, while holding office as a Managing Director, be entitled to the exceptions under Clauses 24.1 and 25.4.2 and such Managing Director shall not, while such exceptions apply, be taken into account in determining the rotation of retirement of Directors. The Managing Director to whom these exceptions apply shall -
- 26.1.3.1 in the case of Managing Directors appointed on different dates - be the first appointed Managing Director; and
- 26.1.3.2 in the case of Managing Directors appointed on the same date - be such Managing Director as determined and nominated by the Board,

provided that in any case the exception shall apply as long as the person to whom they apply holds office as a Managing Director and that any determination by the Board in accordance with the provisions of Clause 26.1.3.2 shall not be exercised so as to enable any Managing Director to infringe or circumvent the requirement to submit themselves for re-election under Clause 24.1.

## 26.2 Remuneration

The Managing Director shall, subject to the terms of any agreement entered into in any particular case, receive such remuneration (whether by way of salary or participation in profits or partly in one way and partly in another) as the Directors may determine.

## 26.3 Powers

The Directors may entrust to and confer upon the Managing Director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit and either collaterally with, or to the exclusion of, their own powers and may from time to time revoke, withdraw, alter or vary all or any of those powers.

## 27. SALE OF SMALL HOLDINGS

### 27.1 Interpretation

27.1.1 In this Clause unless the context otherwise requires -

“**Divestment Notice**” means a notice in writing stating or to the effect that the Company intends to sell or arrange the sale of the shares of a Member unless within the Specified Period (which must be set out in the notice) -

- (a) the shareholding of the Member increases to at least a Marketable Parcel and the Member notifies the Company in writing of the increase;
- (b) the shares are sold by the Member; or
- (c) the Member gives to the Company a written notice that the Member wishes to retain the shares.

“**Notice Date**” means the date on which the Company sends to a Member a Divestment Notice.

“**Sale Period**” means the period of either seven days following the expiration of the Specified Period or, where Clause 27.2.4 applies, seven days following the date of receipt by the Company of revocation of the notice referred to in Clause 27.2.3.3.

“**Small Holder**” means a Member who holds less than a Marketable Parcel of shares in the Company.

“**Specified Period**” means a period of not less than six weeks after the Notice Date, as determined by the Company.

The terms “**Marketable Parcel**” and “**Takeover**” have the same meaning as they are given in the Listing Rules and the terms “**Holding Adjustment**” and “**Issuer Sponsored Holding**” have the same meaning as they are given in the ASTC Settlement Rules.

- 27.1.2 Where under this Clause 27 powers are conferred on the Secretary the powers may be exercised either by the Secretary or by any person nominated by the Secretary.

## 27.2 **Selling Small Holdings**

- 27.2.1 If the Company determines that a Member is a Small Holder, the Company may send (subject to Clause 27.2.2) a Divestment Notice to the Member.
- 27.2.2 Subject to Clause 27.5, the Company may not give more than one Divestment Notice to a particular Member in any 12 month period.
- 27.2.3 Where the Company has sent to a Member a Divestment Notice then, unless within the Specified Period -
- 27.2.3.1 the shareholding of the Member increases to at least a Marketable Parcel and the Member has notified the Company in writing of the increase;
  - 27.2.3.2 the relevant shares are sold by the Member; or
  - 27.2.3.3 the Member gives to the Company a written notice that the Member wishes to retain the relevant shares,
- the Member is deemed to have irrevocably appointed the Company as the Member's agent to sell the shares the subject of the Divestment Notice during the Sale Period at the price and on the terms determined by the Secretary in the Secretary's sole discretion and to receive the proceeds of sale on behalf of the Member. Nothing in this Clause obliges the Company to sell the shares. For the purposes of the sale, the Company may initiate a Holding Adjustment to move all the shares from a CHES holding to an Issuer Sponsored Holding or a certificated holding or to take any other action the Company considers necessary or desirable to effect the sale.
- 27.2.4 Where a Member has given to the Company notice under Clause 27.2.3.3 the Member may at any time revoke the notice and on revocation the Company is constituted the Member's agent as provided in Clause 27.2.3.
- 27.2.5 The Secretary may execute on behalf of a Member a transfer of the shares in respect of which the Company is appointed agent under Clause 27.2.3 in the manner and form the Secretary considers necessary and to deliver the transfer to the purchaser. The Secretary may take any other action on behalf of the Member as the Secretary considers necessary to effect the sale and transfer of the shares.
- 27.2.6 The Company may register a transfer of shares whether or not any certificate for the shares has been delivered to the Company.
- 27.2.7 If the shares of two or more Members to whom this Clause applies are sold to one purchaser, the transfer may be effected by one transfer.
- 27.2.8 If shares are sold under this Clause, the Company must -

27.2.8.1 within a reasonable time after completion of the sale, inform the former Member of the sale and the total sale proceeds received by the Company; and

27.2.8.2 if any certificate for the shares the subject of the transfer has been received by the Company (or the Company is satisfied that the certificate has been lost or destroyed or that its production is not essential), within 60 days after completion of the sale, cause the proceeds of sale to be sent to the former Member (or, in the case of joint holders, to the holder whose name appeared first in the Register in respect of the joint holding). Payment may be made in any manner and by means as determined by the Directors and is at the risk of the former Member.

27.2.9 The Company bears the costs of sale of the transferor of shares under this Clause (but is not liable for tax on income or capital gains of the former Member).

27.2.10 All money payable to former Members under this Clause which is unclaimed for one year after payment may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed or otherwise disposed of according to law. No money payable under this Clause to former Members bears interest as against the Company.

### 27.3 **Purchaser of Small Holdings**

27.3.1 A certificate signed by the Secretary stating that shares sold under this Clause have been properly sold discharges the purchaser of those shares from all liability in respect of the purchase of those shares.

27.3.2 When a purchaser of shares is registered as the holder of the shares, the purchaser -

27.3.2.1 is not bound to see to the regularity of the actions and proceedings of the Company under this Clause or to the application of the proceeds of sale; and

27.3.2.2 has title to the shares which is not affected by any irregularity or invalidity in the actions and proceedings of the Company.

### 27.4 **Remedies**

Any remedy of any Member to whom this Clause applies in respect of the sale of the Member's shares is limited to a right of action in damages against the Company to the exclusion of any other right, remedy or relief against any other person.

### 27.5 **Suspension during Takeover**

On the date on which there is announced a Takeover, the operation of this Clause is suspended. Despite Clause 27.2.2, on the close of offers under the Takeover the Company may invoke the procedures set out in this Clause.

## 28. POWERS AND DUTIES OF DIRECTORS

### 28.1 Management of Company

Subject to the provisions of this Constitution and the Law, the business of the Company shall be managed by the Directors who may exercise all the powers of the Company that are not by the Law or by this Constitution required to be exercised by the Company in general meeting..

### 28.2 Members approval to significant changes

The Directors shall not make a significant change (either directly or indirectly) to the nature and scale of the Company's activities except after having disclosed full details to the ASX in accordance with the requirements of the Listing Rules and otherwise adhering to the requirements of the ASX under the Listing Rules, and the Directors shall not sell or otherwise dispose of the main undertaking of the Company without the approval of the Company in general meeting in accordance with the requirements of the Listing Rules.

### 28.3 Powers of Directors

Without limiting the generality of Clause 28.1 and the other powers conferred by this Constitution, the Directors may -

- 28.3.1 purchase or otherwise acquire for the Company any property rights or privileges which the Company is authorised to acquire at such price and generally on such terms and conditions as the Directors think fit;
- 28.3.2 secure the fulfilment of any contracts or agreements entered into by the Company by mortgage or charge of all or any of the property of the Company and its uncalled capital for the time being or in such other manner as they may think fit;
- 28.3.3 appoint and at their discretion remove or suspend such managers, secretaries, officers, clerks, agents and servants for permanent, temporary or special services as they may, from time to time, think fit and determine their powers and duties and fix their salaries or emoluments and to require security in such instances and to such amount as they think fit;
- 28.3.4 institute, conduct, defend, compound or abandon any legal proceedings by or against the Company or its officers or otherwise concerning the affairs of the Company and also to compound and allow time for payment or satisfaction of any debts due and of any claims or demands by or against the Company;
- 28.3.5 refer any claims or demands by or against the Company to arbitration and observe and perform the awards;
- 28.3.6 make and give receipts, releases and other discharges for money payable to the Company and for the claims and demands of the Company;
- 28.3.7 determine who shall be entitled to sign on the Company's behalf receipts, acceptances, endorsements, releases, contracts and documents;

- 28.3.8 from time to time, provide for the management of the affairs of the Company in any place or country outside Australia in such manner as the Directors think fit and in particular to appoint any persons to be the attorneys or agents of the Company with such powers (including power to sub-delegate) and upon such terms as the Directors think fit;
- 28.3.9 invest and deal with any of the moneys of the Company not immediately required for its purposes upon such securities (not being shares in the Company) and in such manner as the Directors may think fit and from time to time, vary or realise such investments;
- 28.3.10 give to any person employed by the Company (excluding Directors) a commission on the profits of any particular business or transaction or a share in the general profits of the Company and such commission or share of profits shall be treated as part of the working expenses of the Company;
- 28.3.11 pay out of the moneys of the Company for the time being all expenses involved in the formation and registration of the Company and the vesting in the Company of assets acquired by the Company;
- 28.3.12 enter into all such negotiations and contracts and rescind and vary all such contracts and execute and do all such acts, deeds and things in the name and on behalf of the Company as the Directors may consider expedient for or in relation to any of the matters set out in this Clause 28.3 or otherwise for the purposes of the Company; and
- 28.3.13 lend money to the Company at interest with or without security, or may for a commission or profit, guarantee the repayment of any money borrowed by the Company and underwrite or guarantee the subscription of shares or securities of this or any company in which the Company may be interested without being disqualified in respect of their office and without being liable to account to the Company for any such commission or profit.

#### 28.4 **Additional powers**

- 28.4.1 The Directors may from time to time at their discretion raise or borrow any sum or sums of money for the purpose of the Company.
- 28.4.2 The Directors may raise, borrow or secure the payment or repayment of such moneys or any debts or liabilities arising out of contracts or obligations undertaken or incurred by the Company and/or interest payable in respect of any of them in such manner, by such means and upon such terms and conditions in all respects as they think fit and in particular and without prejudice to the generality of the foregoing by the issue or re-issue of bonds, debentures or debenture stock, notes or unsecured notes or any mortgage charge or other security charged upon all or any part of the property of the Company (both present and future) including its uncalled and unpaid capital for the time being and may give or accept guarantees or indemnities.

- 28.4.3 The Directors may, for the purpose of securing the payment or repayment of any debentures bonds or other securities or any money borrowed or payable under any contract, guarantee or indemnity or otherwise and/or interest payable in respect of any of them, make and carry into effect any arrangement which they may deem expedient by assigning or conveying any property of the Company (including uncalled capital) to trustees.
- 28.4.4 Any bond, debenture stock or other security created by the Company may so be framed that the same shall be assignable free from all equities between the Company and the original or any intermediate holders.
- 28.4.5 Any bonds, debentures or other securities may be issued at a discount, premium or otherwise and with any special privileges as to redemption, issue of shares, attending and voting at general meetings, appointment of Directors and otherwise and generally with such rights and upon such conditions and with such options in all respects as the Directors think fit.
- 28.4.6 If any uncalled capital of the Company is included in or charged by any debenture, mortgage or other security the Directors may by instrument authorise the person in whose favour such debenture, mortgage or security is executed or any other person in trust for him to make Calls on the Members in respect of such uncalled capital and to sue in the name of the Company or otherwise for the recovery of moneys becoming due in respect of Calls so made and to give valid receipts for such moneys and such authority shall subsist during the continuance of the debenture, mortgage or security notwithstanding any change in the Directors and shall be assignable if so expressed.
- 28.4.7 The Directors shall cause a proper register to be kept, in accordance with the Law, of all mortgages and charges affecting specific property of the Company and of all floating charges on the undertaking or any property of the Company and with regard thereto shall duly comply with the requirements of the Law in respect to registration and other matters specified therein.
- 28.4.8 If the Directors, or any of them, or any other person shall become personally liable for the payment of any sum primarily due from the Company, the Directors may execute or cause to be executed any mortgage, charge or security over or affecting the whole or any part of the assets of the Company to indemnify the Directors or person so becoming liable as aforesaid against any loss in respect of such liability.

## 29. PROCEEDINGS OF DIRECTORS

### 29.1 Directors' Meetings

The Directors may meet together to adjourn and otherwise regulate their meetings as they think fit using any technology consented to from time to time by all the Directors.

## 29.2 **Decisions at Directors' Meetings**

- 29.2.1 Questions arising at any meeting shall be decided by a majority of votes cast by Directors entitled to vote.
- 29.2.2 In the case of an equality of votes, the Chairperson shall not have a second or casting vote.

## 29.3 **Calling Directors' Meetings**

A Director may, and the Secretary at the request of a Director shall, at any time call a meeting of the Directors.

## 29.4 **Quorum**

Subject to Clause 29.9, the quorum necessary for the transaction of the business of the Directors may be fixed by the Directors and unless fixed shall be two, being Directors who are entitled to attend and vote.

## 29.5 **Notice of Meetings**

- 29.5.1 Notice of a meeting of Directors shall be given to each Director in such manner as the Directors may, pursuant to Clause 29.1, determine from time to time.
- 29.5.2 Unless the Directors in any case otherwise determine, the provisions contained in Clauses 29.10 or 36 (as the case may be) shall apply to the giving of notice pursuant to the provisions of this Clause 29.5.

## 29.6 **Chairperson**

The Directors may elect a Chairperson of their meetings and determine the period for which the Chairperson is to hold office but if no Chairperson is elected or, if at any meeting the Chairperson is not present within 15 minutes after the time appointed for holding the meeting or declines to act, the Directors present may choose one of their number to chair the meeting.

## 29.7 **Delegation of powers**

- 29.7.1 The Directors may delegate any of their powers to a committee of the Directors. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that are imposed on that committee by the Directors.
- 29.7.2 A committee may elect a chairperson of its meetings but if no chairperson is elected or, if at any meeting the chairperson is not present within 15 minutes after the time appointed for holding the meeting or declines to act, the members of that committee present may choose one of their number to chair the meeting.
- 29.7.3 A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members of such committee present and the chairperson shall have a deliberative but not a second or casting vote.
- 29.7.4 The Directors may delegate any of their powers to one of their number who shall in the exercise of the powers so delegated,



conform to any regulations which may be imposed upon him by the Directors and receive such remuneration as the Directors may determine.

## 29.8 **Validity of actions**

All acts done by any meeting of the Directors, or of a committee of Directors, or by any person acting as a Director shall be valid as if every Director or other person had been duly appointed and was qualified to be a Director, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any Director or person so acting, or that they or any of them were disqualified.

## 29.9 **Resolutions without meetings**

29.9.1 A resolution in writing signed by all the Directors for the time being entitled to receive notice of a meeting of the Directors and to attend and vote at meetings of Directors shall be as valid and effectual as if it had been passed at a meeting of the Directors duly convened and held.

29.9.2 Any resolution passed in accordance with the provisions of Clause 29.9.1 may consist of identical copies of the document recording the resolution and accompanying information, each signed by one or more Directors.

## 29.10 **Telephone and audio visual communications**

29.10.1 For the purpose of this Constitution, the contemporaneous linking together by telephone or by such other method of audio or audio visual communication system, of a number of the Directors not less than the quorum specified in Clause 29.4 of this Constitution whether or not any one or more of the Directors is out of Australia shall constitute a meeting of the Directors and all the provisions in this Constitution as to meetings of the Directors shall apply to such meetings subject to the following conditions namely -

29.10.1.1 all the Directors for the time being entitled to receive notice of a meeting of the Directors shall be entitled to notice of a meeting by telephone or by such other method of audio or audio visual communication system and to be linked by telephone or such other audio or audio visual communication system for the purposes of such meeting;

29.10.1.2 each of the Directors taking part in the meeting by telephone must be able to hear each of the other Directors taking part at the commencement of the meeting; and

29.10.1.3 at the commencement of the meeting each Director must acknowledge their presence for the purpose of a meeting of the Directors of the Company to all other Directors taking part.

29.10.2 A notice of a meeting of Directors may be given by telephone or such other method of audio or audio visual communication system

as the Directors may from time to time determine or as provided in Clause 36.

- 29.10.3 A Director may not leave the meeting by disconnecting their telephone or such other audio or audio visual communication system unless they have previously obtained the express consent of the Chairperson of the meeting and, in the absence of obtaining such consent, a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting.
- 29.10.4 A minute of the proceedings at such meeting by telephone or such other method of audio or audio visual communication system shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified to be a correct minute by the Chairperson of the meeting.

### 30. **SECRETARY**

One or more persons shall, in accordance with the Law, be appointed by the Directors for such term at such remuneration and upon such conditions as they may think fit and any Secretary so appointed may be removed by them.

### 31. **MINUTES**

- 31.1 The Directors shall cause minutes to be made -
- 31.1.1 of all appointments of officers;
  - 31.1.2 of the names of the Directors present at each meeting of the Directors and of any committee of the Directors;
  - 31.1.3 of all resolutions and proceedings at all meetings of Members of the Company and of the Directors and of committees of Directors and of all resolutions determined on without meetings; and
  - 31.1.4 of all other matters required by the Law.
- 31.2 Except in the case of documents deemed to constitute minutes in accordance with the provisions of the Law and resolutions signed in accordance with the provisions of Clauses 16.6 and 29.9, all minutes shall be signed by the Chairperson of the meeting at which the proceedings were held or by the Chairperson of any succeeding meeting.

### 32. **SEAL AND EXECUTION OF DOCUMENTS**

- 32.1 **Common seal**
- 32.1.1 The Company may have a common seal.
  - 32.1.2 If the Company has a common seal, the Directors shall provide for the safe custody of the common seal of the Company (and if they think fit of a share seal which is hereby authorised in accordance with the Law) which shall only be used with the authority of the Directors and every instrument to which the common seal is

affixed shall be signed by at least one Director and shall be countersigned by the Secretary or another Director or by some other person or persons appointed by the Directors to attest the affixing of the common seal.

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

All documents which of legal necessity need not be under common seal and which the Company is capable in law of entering into shall be legally binding on the Company if signed in the same manner as is prescribed in Clause 32.1.2 or as otherwise provided by the Law.

### 32.3 **Duplicate**

The Company may have a duplicate common seal which shall be a copy of the common seal with the addition on its face of the words "duplicate seal" or "share seal" or "certificate seal" and a certificate for shares issued under such seal if affixed in the same manner as is prescribed in Clause 32.1 shall be deemed for all purposes to be sealed with the common seal.

### 32.4 **Requirements for common seal or duplicate -**

- 32.4.1 The Directors may, by resolution, determine either generally or in any particular case where the common seal or duplicate common seal is to be affixed to any instrument, that the signature of any Director or the Secretary or any other person may be affixed by some mechanical or other means (other than autographic) specified in such resolution.
- 32.4.2 The Company may have for use in any place outside the State or Territory where the common seal is kept one or more duplicate common seals each of which shall be a copy of the common seal with the addition on its face of the name of every place where it is to be used.
- 32.4.3 The Company may by writing, whether under common seal or not, authorise any person appointed for the purpose in any such place to affix the duplicate common seal to any deed or other instrument to which the Company is a party in that place.
- 32.4.4 The authority of any such person shall, as between the Company and any person dealing with that person, continue during the period (if any) mentioned in the instrument conferring the authority or if no period is mentioned in such instrument, then until notice of the revocation or determination of the authority has been given to any person dealing with that person.
- 32.4.5 The person affixing the duplicate common seal shall by writing under his hand certify on the deed or other instrument to which the duplicate common seal is affixed the date on which and the place at which it is affixed.
- 32.4.6 A deed or other instrument to which the duplicate seal is duly affixed shall bind the Company as if it had been sealed with the common seal and any share certificate so sealed shall be deemed to have been sealed with the common seal.

### 32.5 **Negotiable instruments**

All cheques, bills of exchange, promissory notes or other negotiable instruments shall be signed, drawn, made, accepted or endorsed (as the case may be) for and on behalf of the Company in such manner and by such person or persons as the Directors may from time to time determine.

### 32.6 **Signatures**

The Directors shall have power to determine whether or not printed or facsimile signatures may be used on instruments referred to in Clause 32.5.

## 33. **DIVIDENDS**

### 33.1 **Dividend rights**

33.1.1 Subject to the provisions of Clauses 33.2 and 33.3 and to the rights attaching to shares issued on special terms and conditions, the profits of the Company shall be divisible among the Members in proportion to the number of shares held by them but, in the case of partly paid shares, all Dividends shall be apportioned and paid in the proportion that the amount Paid Up on those shares bears to the total issue price. Any amount Paid Up on a partly paid share during the period in respect of which a Dividend is declared shall only entitle the holder of that share to an apportioned amount of such Dividend as from the date of payment and any amount credited as Paid Up on a share shall not be taken into account for the purposes of this Clause. Where capital is Paid Up on any shares in advance of Calls, such capital shall not be taken as paid for the purposes of this Clause.

33.1.2 The Directors may declare that a Dividend be paid to the Members according to the Members' rights and interests in the profits and the Directors may fix the amount, the time for payment and the method of payment.

### 33.2 **Dividends payable out of profits**

No Dividend shall be payable except out of the profits of the Company and no Dividend shall carry interest as against the Company.

### 33.3 **Restricted Securities – breach of Listing Rules**

In the event of a breach of the Listing Rules relating to Restricted Securities or a breach of a Restriction Agreement entered into by the Company under the Listing Rules in relation to shares or securities which are classified under the Listing Rules or by the ASX as Restricted Securities, the Member holding those Restricted Securities shall cease to be entitled to any Dividends in respect of those Restricted Securities for so long as the breach subsists.

### 33.4 **Directors to retain Dividends**

The Directors may retain the Dividends payable upon shares in respect of which any person is under Clause 14.2 entitled to be registered as a Member of which any person under that Clause is entitled to transfer, until any such person shall become a Member in respect of such shares or shall duly transfer the same.

### 33.5 **Limitation on transfer unless registered**

Subject to the provisions of the Listing Rules, or the ASTC Settlement Rules, a transfer of shares shall not pass the right to any Dividend declared on such shares unless the transfer is lodged for registration on or before the date fixed by the Directors as the record date in respect of the Dividend or if a date is not so fixed, the date the Dividend is declared.

### 33.6 **Receipts**

Any one of the several persons who are registered as the joint holders of any share may give effectual receipts for all Dividends and payments on account of Dividends in respect of that share.

### 33.7 **Unclaimed Dividends**

Subject to law, all Dividends unclaimed for one year after having been declared may, until claimed or otherwise disposed of according to law, be -

33.7.1 invested on behalf of the relevant Member in shares in the Company or otherwise as the Directors determine in their discretion; or

33.7.2 invested or otherwise used by the Directors for the benefit of the Company.

### 33.8 **Method of payment**

33.8.1 The Directors may decide the method of payment of any dividend or other amount in respect of a share. Different methods of payment may apply to different Members or groups of Members (such as overseas Members). Without limiting any other method of payment which the Company may adopt, payment in respect of a share may be made -

33.8.1.1 by such electronic or other means approved by the Directors directly to an account (of a type approved by the Directors) nominated in writing by the Member or the joint holders; or

33.8.1.2 by cheque sent to the address of the Members shown in the Register or, in the case of joint holders, to the address of the Member whose name stands first in the Register in respect of the joint holding.

33.8.2 A cheque sent under Clause 33.8.1 -

33.8.2.1 may be made payable to the bearer who will be the Member shown in the Register or, in the case of joint holders, to the joint holder Member whose name stands first in the Register in respect of the joint holding in which case payment will be deemed to have been made to the joint holder Members in full; and

33.8.2.2 is sent at the Member's risk.

- 33.8.3 If the Directors decide that payments will be made by electronic transfer into an account (of a type approved by the Directors) nominated by a Member, but no such account is nominated by the Member or an electronic transfer into a nominated account is rejected or refunded, the Company may credit the amount payable to an account of the Company to be held until the Member nominates a valid account.
- 33.8.4 Where a Member does not have a registered address or the Company believes that a Member is not known at the Member's registered address, the Company may credit an amount payable in respect of the Member's shares to an account of the Company to be held until the Member claims the amount payable or nominates an account into which a payment may be made.
- 33.8.5 An amount credited to an account under Clause 33.8.3 or 33.8.4 is to be treated as having been paid to the Member at the time it is credited to that account. The Company will not be a trustee of the money and no interest will accrue on the money.
- 33.8.6 The Company shall not be liable for any loss arising from any mode of payment referred to in this Clause 33.8.

### 33.9 **Declaration of Dividend by Members and Calls**

- 33.9.1 Any general meeting declaring a Dividend may make a Call on the Members of such amount as the meeting fixes but so that the Call on each Member shall not exceed the Dividend payable to each Member and so that the Call be made payable at the same time as the Dividend and that the Dividend may be set off against the Call.
- 33.9.2 The making of a Call under Clause 33.9.1 shall be deemed ordinary business of an annual general meeting which declares a Dividend.

### 33.10 **Dividends and distribution rights**

- 33.10.1 The Directors may, from time to time, in respect of any Dividend or any part of a Dividend direct that the payment be effected wholly or in part by the distribution to the persons entitled of specific assets or documents of title and, without limiting the generality of this Clause -

33.10.1.1 Paid Up Ordinary Shares, debentures or debenture stock in or of the Company; or

33.10.1.2 Paid Up Ordinary Shares, debentures or debenture stock in or of any other company; or

33.10.1.3 any combination of the above

and any disputes or other difficulties which may arise in relation to such distribution shall be settled in such manner as the Directors may determine and (without limiting the rights granted to the Directors in respect of such disputes or differences) the Directors may make such determinations as may be necessary in order to adjust the rights for Members and to make provision for the case

of fractions and shall be entitled to fix the value for distribution of any such specific assets aforesaid or of any part thereof and shall, likewise, be entitled to determine that cash payments shall be made to any Member or Members and shall be entitled to vest any specific assets of the Company in trustees upon trust for all or some of the Members entitled to the Dividend (as the case may be).

### 33.11 **Dividend Reinvestment, Employee and Bonus Share Plans**

- 33.11.1 The Directors may, subject to the Law and the Listing Rules, establish and maintain one or more plans (each "**a Plan**") whereby -
- 33.11.1.1 some or all of the Members may elect in terms of one or more of the following for a period or periods as provided in the Plan -
- 33.11.1.1.1 that Dividends paid in respect of some or all of the shares from time to time held by the Member shall be satisfied by the issue of fully paid shares of the same class as such shares so held; or
- 33.11.1.1.2 that Dividends shall not, to the extent provided in the Plan, be declared or paid in respect of some or all of the shares from time to time held by the Members but that the Member will receive an issue of fully paid shares of the same class as the shares so held in accordance with the Plan; or
- 33.11.1.1.3 if elections in terms of Clauses 33.11.1.1.1 and 33.11.1.1.2 are available under the Plans, in terms of Clause 33.11.1.1 as to some of the shares from time to time held by the Member and in terms of Clause 33.11.1.1.2 as to the others of them; or
- 33.11.1.2 certain Directors and employees of the Company or its related bodies corporate or associated companies or entity may acquire shares or options to acquire shares.
- 33.11.2 For the purposes of Clause 33.11.1, the Directors may, subject to the Listing Rules, in their absolute discretion -
- 33.11.2.1 prescribe the terms and conditions of the Plan, including any rules in relation to the Plan;
- 33.11.2.2 from time to time vary the terms and conditions of the Plan and any agreement between the Company and a Member relating to the Plan;

33.11.2.3 determine whether a Member shall be permitted to participate in the Plan or shall cease to participate in the Plan; and

33.11.2.4 terminate or suspend the Plan,

and a Member who participates in the Plan shall be bound by the terms and conditions of the Plan as prescribed and as varied from time to time.

33.11.3 Any Plan established and maintained under the provisions of Clauses 33.11.1 and 33.11.2 shall have effect in accordance with its terms and the Directors will do (and will have authority under Clauses 33.11.1 and 33.11.2 to do) all things necessary and convenient for the purposes of implementing the Plan, including (but without limitation) the issue of shares and of necessary appropriation, capitalisation, application, payment and distribution of funds which may lawfully be appropriated, capitalised, applied, paid or distributed for the purposes of the issue.

## 34. RESERVES AND PROVISIONS

### 34.1 Reserves

34.1.1 The Directors may set aside out of the profits of the Company such sums as they think proper as reserves which shall at the discretion of the Directors be applicable for any purpose to which the profits of the Company may be properly applied and pending any such application may at the like discretion either be employed in the business of the Company or be invested in such investments (other than shares of the Company) as the Directors may from time to time think fit.

34.1.2 The Directors may, without placing the same to reserve, carry forward any profits which they may think prudent not to divide.

### 34.2 Capitalisation of profits

34.2.1 Subject to the Listing Rules and the Law, the Directors may from time to time pass a resolution to the effect that any money, investments or other assets available for distribution as Dividend but not required for the payment or provision of any fixed preferential Dividend, whether standing to the credit of any reserve or provision or not, and -

34.2.1.1 forming part of the undivided profits of the business of the Company; or

34.2.1.2 representing profits arising from an ascertained accretion to capital or from a revaluation of the assets of the Company; or

34.2.1.3 arising from the realisation of any capital assets of the Company or any investments representing the same -



shall be capitalised and, subject to the terms on which the shares in the Company are issued, shall be distributed amongst the holders of all of the shares or of such one or more classes of shares as the Directors think fit without making a distribution among the holders of other classes of shares or shall be distributed in different proportions among the holders of different classes of shares.

34.2.2 For the purposes of Clause 34.2.1 –

34.2.2.1 the resolution may declare that all or any part of the capitalised fund shall be applied in paying up in part or in full shares or debentures of the Company and that such application shall be accepted by the Members entitled to share in the distribution in part or in full satisfaction of their interests in the capitalised sum;

34.2.2.2 when any such resolution has been passed the Directors may issue a sufficient number of shares or may issue a sufficient amount of debentures to the Members entitled to share in the distribution in satisfaction of their respective interests in the capitalised sum and as nearly as may be in proportion to the amounts Paid Up on the shares of the relevant class or classes held by them; and

34.2.2.3 prior to such issue the Directors may authorise any person on behalf of the holders of the shares to whom a distribution is to be made to enter into any agreement with the Company for the issue to them of shares to be credited as fully Paid Up or partly Paid Up and in satisfaction of the bonus or for the issue to them of debentures in satisfaction of the bonus and any agreement made under such authority shall be effective.

### 34.3 **Settlement of capitalisation and distribution**

For the purposes of giving effect to any resolution for capitalisation and distribution of undivided profits or other moneys or for satisfaction of a Dividend by distribution of shares or other assets of the Company the Directors may -

34.3.1 settle as they think expedient any difficulty that may arise in making the distribution and, in particular, they may determine that fractions of less value than \$1 may be disregarded in order to adjust the rights of all parties;

34.3.2 fix the value for distribution of any specific assets;

34.3.3 determine the amount of any cash payments to be made to any Members upon the footing of the value so fixed;

34.3.4 vest any cash or specific assets in trustees upon such trusts for the persons entitled to the capitalised fund or Dividend (as the case may be) as may seem expedient to the Directors; and

34.3.5 where necessary, file a proper contract in accordance with any statutory requirements and appoint any person to sign the contract on behalf of the persons entitled to the capitalised fund or Dividend (as the case may be) and such appointment shall be effective.

34.4 **Payment in foreign currency**

For the purpose of Clause 33 and this Clause 34 the Directors may, with the approval of the Member concerned or pursuant to the terms of issue of any shares held by that Member, determine to pay any amount payable to that Member in the currency of another country and the Directors may fix a date for payment at which date the relevant exchange rate will be determined.

35. **ACCOUNTS**

35.1 **Company to keep accounts**

The Directors shall keep or cause to be kept proper books of account and shall distribute copies of financial reports as required by the Law and the Listing Rules and shall, from time to time, determine whether and to what extent and at what times and places and under what conditions or regulations the records, accounts and books of the Company, or any of them, shall be open to the inspection of Members not being Directors and no Member (not being a Director) shall have any right of inspecting any record, account, book or paper of the Company except as conferred by statute or authorised by the Directors or by the Company in general meeting.

35.2 **Accounts to be audited**

The Directors must cause the accounts of the Company to be audited in accordance with the requirements of the Law and the Listing Rules.

36. **NOTICES**

36.1 **Method of giving notice**

A notice may be given by the Company to any Member –

- 36.1.1 personally; or
- 36.1.2 by sending it by post to him at his registered address or to the address (if any) supplied by him to the Company for the giving of notices to him; or
- 36.1.3 by sending it to the fax number or electronic address (if any) nominated by the Member; or
- 36.1.4 in the case of an overseas Member, by air mail or to the fax number nominated by that Member or such other manner as will ensure prompt receipt by that Member;
- 36.1.5 by making a copy of the notice readily accessible on a web site and directly notifying the Member, in writing through one of the delivery methods specified in Clauses 36.1.1 to 36.1.4, that the

copy is accessible on the web site, and specifying the direct address on the web site where the notice may be accessed; or

- 36.1.6 by any other means determined by the Directors in accordance with the provisions of Clause 36.2.3.

## 36.2 **Service of notice**

36.2.1 Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing prepaying and posting a letter containing the notice and to have been effected, in the case of a notice of a meeting, on the day after the date of its posting and in any other case, at the time at which the letter would be delivered in the ordinary course of post.

36.2.2 A notice of meeting sent by fax or other electronic means is taken to be given on the Business Day after it is sent.

36.2.3 Notwithstanding the provisions of Clause 36.1, if the Directors determine, a notice may be given by any other means as shall ensure prompt receipt of the notice and service of the notice shall be deemed to be effected if the mode of service of the notice is properly addressed and paid for and lodged for delivery or transmission with a competent authority or body and to have been effected at the time at which in the ordinary course that mode of service of the notice would be delivered.

## 36.3 **Notice to joint holders**

A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the Register in respect of the share.

## 36.4 **Notice to legal personal representatives and trustees**

A notice may be given by the Company to the persons entitled to a share in consequence of the death or bankruptcy of a Member by sending it through the post in a prepaid letter addressed to them by name or by the title of representatives of the deceased or assignee of the bankrupt or by any like description at the address if any supplied for the purpose by the persons claiming to be so entitled or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or bankruptcy had not occurred.

## 36.5 **Persons entitled to notice**

36.5.1 Notice of every general meeting shall be given in any manner authorised by this Constitution to —

36.5.1.1 every Member except those Members who have not supplied to the Company an address for the giving of notices to them;

36.5.1.2 every person entitled to a share in consequence of the death or bankruptcy of a Member who but for such death or bankruptcy would be entitled to receive notice of the meeting;

- 36.5.1.3 the auditor for the time being of the Company;
- 36.5.1.4 the ASX; and
- 36.5.1.5 such other persons as required by the Law.

36.5.2 No person other than as referred to in Clause 36.5.1 shall be entitled to receive notices of general meetings.

## 37. WINDING UP

### 37.1 Distribution

37.1.1 If the Company is wound up and the assets available for distribution among the Members are insufficient to repay the whole of the Paid Up capital the assets shall be distributed so that, as nearly as may be, the losses shall be borne by the Members in proportion to the capital Paid Up or which ought to have been Paid Up at the commencement of the winding up on the shares held by them respectively.

37.1.2 If in a winding up, the assets available for distribution among the Members are sufficient to repay the whole of the capital Paid Up at the commencement of the winding up, the excess shall be distributed amongst the Members in proportion to the capital at the commencement of the winding up Paid Up or which ought to have been Paid Up on the shares held by them respectively.

37.1.3 The provisions of Clauses 37.1.1 and 37.1.2 shall not add to or detract from the rights of the holders of shares issued on special terms and conditions.

### 37.2 Members to approve payment of fee or commission

37.2.1 On the sale of the Company's main undertaking or on the voluntary liquidation of the Company, no fee or commission shall be paid to any Director or liquidator unless it has been ratified by the Members in general meeting.

37.2.2 Written notification of the amount of the proposed payment shall be given to all Members at least 14 days prior to the meeting at which the payment is to be considered.

### 37.3 Distribution in specie

37.3.1 If the Company is wound up, whether voluntarily or otherwise, the liquidator may with the sanction of a special resolution divide among the contributories in specie or in kind any part of the assets of the Company and may with the like sanction vest any part of the assets of the Company in trustees upon such trusts for the benefit of the contributories or any of them as the liquidator with the like sanction thinks fit.

37.3.2 If thought expedient, any division may be otherwise than in accordance with the legal rights of the contributories and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part but in the event of a

determination otherwise than in accordance with the legal rights of the contributories, any contributory who would be prejudiced the division shall have a right to dissent and ancillary rights as if such determination were a special resolution passed pursuant to section 507 of the Law.

- 37.3.3 In case any shares to be divided among the contributories involve a liability to Calls or otherwise, any person entitled under the division to any of the shares may within 10 days after the passing of the special resolution, by notice in writing, direct the liquidator to sell their proportion and pay that person the net proceeds and, if practicable, the liquidator shall act in accordance with that direction.

## 38. INDEMNITY AND INSURANCE

### 38.1 Indemnification of officers

- 38.1.1 The Company may indemnify a person who is, or has been, an officer of the Company, to the full extent permissible by law, out of the property of the Company, against –

38.1.1.1 any liability incurred by that person as an officer of the Company; and

38.1.1.2 legal costs incurred in defending an action for a liability incurred by that person as an officer of the Company,

except in respect of a liability or legal costs for which the Company is prohibited from indemnifying the officer pursuant to the law.

- 38.1.2 For the avoidance of doubt, Clause 38.1.1 will not apply so as to enable the Company to indemnify a person who is, or has been, an officer of the Company to the extent that the law precludes the giving of such an indemnity.

- 38.1.3 Where the Directors consider it appropriate, the Company may execute a documentary indemnity in any form in favour of any officer of the Company or a subsidiary

### 38.2 Insurance premium

- 38.2.1 The Company may pay a premium for a contract insuring a person who is, or has been, an officer of the Company against –

38.2.1.1 any liability incurred by that person as an officer of the Company; and

38.2.1.2 any liability for costs and expenses incurred by that person in defending proceedings relating to that person acting as an officer of the Company, whether civil or criminal, and whatever their outcome,

except any liabilities in respect of which the Company is prohibited from doing so pursuant to the law.

- 38.2.2 Where the Directors consider it appropriate, the Company may bind itself in any contract or deed with any officer of the Company or a subsidiary to make the payments.

### 38.3 **Access to documents**

Where the Directors consider it appropriate, the Company may -

- 38.3.1 give a former Director access to certain papers, including documents provided or available to the Directors and other papers referred to in those documents; and
- 38.3.2 bind itself in any contract or deed with a Director or former Director to give the access.

## 39. **DEADLOCK**

In the event of an equality of votes for and against any resolution proposed or submitted at any meeting of the Directors that resolution shall be put to a meeting of the Company called and held for that purpose.

## 40. **AUSTRALIAN STOCK EXCHANGE LIMITED**

- 40.1 Notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done.
- 40.2 Nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done.
- 40.3 If the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
- 40.4 If the Listing Rules require this Constitution to contain a provision and it does not contain such provision, this Constitution is deemed to contain that provision.
- 40.5 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.
- 40.6 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.