

**CORPORATIONS ACT, 2001
A COMPANY LIMITED BY SHARES**

CONSTITUTION

of

MILTON CORPORATION LIMITED (ABN 18 000 041 421)

(adopted 5 October 2006)

(and as amended on 8 October 2009)

CHURCH & GRACE

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1. GENERAL

1.1 Definitions

(a) In this Constitution:

“**Act**” means the Corporations Act, 2001 (Cth) or any other statutory modification, amendment or re-enactment thereof for the time being in force and applicable to the Company and any reference to any provision thereof is to that provision so modified, amended or re-enacted.

“**ASTC**” means ASX Settlement and Transfer Corporation Pty Ltd (ABN 49 008 504 532).

“**ASX**” means Australian Stock Exchange Limited (ABN 98 008 624 691).

“**board**” means the board of directors.

“**business day**” means a business day as defined in the Listing Rules.

“**CHESS**” means the Clearing House Electronic Subregister System established and operated by ASTC for the purpose of settling transactions in approved financial products, transferring financial products and registering transfers.

“**CHESS approved security**” means a security approved by ASTC in accordance with the Settlement Rules.

“**Company**” means Milton Corporation Limited (ABN 18 000 041 421), or as it may otherwise be named from time to time.

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

“**director**” means a director of the Company from time to time.

“**holder**”, in relation to a share, means a person registered as the holder of that share and “**held**” has an equivalent meaning.

“**listed**”, in relation to the Company, means listed on ASX.

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

“**member**” means a person who is a member of the Company in accordance with the Act.

“**person entitled**”, in relation to a share, means a person who is entitled to that share in consequence of the death, bankruptcy or mental incapacity of its holder.

“**prescribed rate**” means:

- (i) if the directors have fixed a rate for this purpose, that rate; or
- (ii) otherwise, 8% per annum.

“**register**” means the register of members kept under the Act and includes any sub-register.

“**seal**” means the common seal of the Company and includes any duplicate common seal, official seal and share seal.

“**secretary**” means any person appointed to perform the duties of a secretary of the Company and includes an assistant secretary and any person appointed temporarily to perform the duties of secretary or assistant secretary.

“**Settlement Rules**” means the settlement rules of the ASTC as amended or replaced from time to time.

“**share**” means a share in the capital of the Company.

“**Transfer System**” means any system operated under the Act or the Listing Rules which regulates the transfer or registration of, or the settlement of transfers affecting, securities of the Company.

- (b) Except so far as the contrary intention appears, an expression, in a provision of this Constitution that deals with a matter dealt with by:
 - (i) a particular provision of the Act, has the same meaning as in that provision of the Act; and
 - (ii) a particular provision of the Listing Rules, has the same meaning as in that provision of the Listing Rules.

1.2 Interpretation

In the interpretation of this Constitution, unless the context otherwise requires:

- (a) a reference to a clause, sub-clause, paragraph or schedule is to a clause, sub-clause, paragraph or schedule of this Constitution;
- (b) words importing any gender include all other genders;
- (c) words importing the singular include the plural and vice versa;
- (d) a reference to a law or any section, regulation or schedule of a law is a reference to that law (or section, regulation or schedule) as amended, consolidated, supplemented or replaced;
- (e) a reference to any person includes a reference to any individual, company, body corporate, association, partnership, firm, joint venture, trust or government agency;
- (f) a reference to a person includes the person’s successors and legal personal representatives;
- (g) a reference to a body (including an institute, association, authority, company or government agency) whether statutory or not:
 - (i) which ceases to exist; or

- (ii) whose powers are transferred to another body,
is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (h) where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the directors;
- (i) a reference to “writing” or “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise; and
- (j) headings are for convenience only and do not affect interpretation.

1.3 Section 46(1) Instrument

Section 46(1) of the Acts Interpretation Act, 1901 (Cth) applies in relation to this Constitution as if it were an instrument made under the Act as in force on the day when this Constitution become binding on the Company.

1.4 Exclusion of Replaceable Rules

The replaceable rules contained in the Act do not apply to the Company.

1.5 Constitution subject to the Act

This Constitution is subject to the Act. Where there is any inconsistency between a clause of this Constitution and the Act, the Act prevails to the extent of the inconsistency.

1.6 Listing Rules

- (a) A reference in this Constitution to the Listing Rules or Settlement Rules has effect only if, at the relevant time, the Company is admitted to the official list of ASX and otherwise is to be disregarded.
- (b) If the Company is admitted to the official list of ASX, the following clauses apply:
 - (i) Notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done.
 - (ii) Nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done.
 - (iii) 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).
 - (iv) If the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision.

- (v) 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.
- (vi) 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.

1.7 Limited liability of members

The Company is a company limited by shares.

2. SHARE CAPITAL

2.1 Power of directors to issue shares and options

- (a) Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Act, the Listing Rules and this Constitution, shares in the Company for the time being unissued are under the control of the board which may issue, allot or otherwise dispose of the same to such persons on such terms and conditions and for such consideration and at such times and with such preferred, deferred or other special rights or subject to such restrictions, whether with regard to dividends, voting, return of capital, payment of calls or otherwise, as the board determines.
- (b) Without limiting the generality of paragraph (a), issued shares may include fully paid ordinary shares and partly paid ordinary shares.
- (c) The board has the power to grant to any person options or other securities with rights of conversion to shares for any consideration and for any period.
- (d) Subject to the Act, the Company may issue preference shares including preference shares which are, or which at the option of the Company or holder may be, liable to be redeemed or converted into ordinary shares.

2.2 Class rights

- (a) Paragraphs (b), (c) and (d) apply if at any time the shares are divided into classes (unless otherwise provided by the terms of issue of the shares of a class), and for the purposes of this clause, shares which are partly paid shall be considered a different class.
- (b) Regardless of whether the Company is being wound up at the relevant time, the rights of the shares in a class may only be varied or cancelled, including by converting or reclassifying shares from one class to another, with the:
 - (i) consent in writing of the holders of three-quarters of the shares of that class; or
 - (ii) sanction of a special resolution passed at a separate general meeting of the holders of the shares of that class.

- (c) The provisions of this Constitution relating to general meetings apply so far as they are capable of application and *mutatis mutandis* to a general meeting of holders of a class of shares except that:
 - (i) a quorum is constituted by 2 persons who, between them, hold or represent by proxy, attorney or representative one-third of the issued shares of the class (unless only 1 person holds all of the shares of the class, in which case that person constitutes a quorum); and
 - (ii) any holder of shares of the class, present in person or by proxy, attorney or representative, may demand a poll.
- (d) The rights conferred on the holders of the shares of any class will not, unless otherwise provided by the terms of issue of those shares, be deemed to be varied by the creation or issue of further shares of that class or equally ranking shares.

2.3 Recognition of third party interests

- (a) Paragraphs (b) and (c) apply subject to the requirements of the law and the other provisions of this Constitution.
- (b) The Company is entitled to treat the holder of a share as the absolute owner of that share and, except as required by law, shall not recognise a person as holding a share upon any trust.
- (c) The Company is not bound by or compelled in any way to recognise any equitable, contingent, future or partial interest in any share or unit of a share or (except as otherwise provided by this Constitution or by law) any other right in respect of a share except an absolute right of ownership in the registered holder even if it has notice of that interest or right.

2.4 Joint holders of shares

- (a) The Company is not bound to register more than 3 persons as the holders of any share.
- (b) Where 2 or more persons are registered as holders of a share:
 - (i) they hold that share as joint tenants with rights of survivorship;
 - (ii) they (and their respective legal personal representatives) are jointly and severally liable for all amounts (including calls and instalments) due in respect of that share;
 - (iii) if one of those persons dies, the survivor or survivors are the only person or persons recognised by the Company as having any title to the share, but the board may require evidence of death; and
 - (iv) any one of them may give an effective receipt for any amount payable by the Company in respect of that share.

2.5 Brokerage or commission

- (a) Subject to any provisions and restrictions contained in the Act and the Listing

Rules, the Company may pay brokerage or commission to any person in consideration of that person or another person agreeing to take up shares in the Company.

- (b) Any brokerage or commission may be paid or satisfied in cash, shares (whether fully or partly paid), partly by the payment of cash and partly by shares (whether fully or partly paid) or otherwise as the board determines.

2.6 Certificates

- (a) The provisions of this **clause 2.6** apply only to the extent that the Company is required by the Act, the Listing Rules or the Settlement Rules to issue certificates for shares or other marketable securities of the Company, and then only in respect of those shares or other marketable securities for which certificates are required to be issued.
- (b) Subject to this Constitution, where the Company is required by the Act, the Listing Rules or the Settlement Rules to issue certificates for shares or other marketable securities of the Company, the certificates must be issued in accordance with the Act, the Listing Rules and the Settlement Rules (as applicable) and must include all information required by the Act, the Listing Rules and the Settlement Rules (as applicable).
- (c) Subject to this Constitution, every member shall be entitled without payment to one certificate for each class of shares or other marketable securities registered in its name or, upon its request, to several certificates each issued for a reasonable proportion of those shares or other marketable securities.
- (d) If shares or other marketable securities are registered in the names of 2 or more persons, the Company is only required to issue the same number of certificates as if those shares or marketable securities were held by one person and delivery of a certificate so issued to any of those persons is sufficient delivery to them all.
- (e)
 - (i) Subject to this Constitution, on every application to register the transfer of any shares or other marketable securities or to register any person as a member in respect of any shares or other marketable securities which may have been transmitted to that person by operation of law, the certificate for those shares or other marketable securities must be delivered up to the Company for cancellation.
 - (ii) The Company must issue a new certificate in similar form specifying the shares or other marketable securities transferred or transmitted and deliver it to the transferee or transmittee within 5 business days after the registrable transfer or transmission notice is lodged with the Company.
 - (iii) If registration is required for some only of the shares or other marketable securities specified on the certificate delivered up to the Company, a new certificate specifying the shares or other marketable securities remaining untransferred or untransmitted must be delivered to the transferor.
- (f) The Company must issue a replacement certificate:
 - (i) if the certificate is worn out or defaced, on production of the certificate to the Company to be replaced and cancelled; or

- (ii) if the certificate is lost or destroyed, on the Company being furnished with:
 - (A) evidence that the certificate has been lost or destroyed, and has not been pledged, sold or otherwise disposed of, as is required by the Act;
 - (B) if the certificate has been lost, a statement in writing that proper searches have been made, as required by the Act;
 - (C) an undertaking to return the certificate to the Company, if found or received, as required by the Act; and
 - (D) if the board considers it necessary, a bond or indemnity as the Act authorises the directors to require.
- (g) The Company must issue all replacement certificates within 5 business days after receiving the original certificate or evidence of loss or destruction.

2.7 Restricted Securities

If a security issued by the Company is classified by ASX or under the Listing Rules as a “*restricted security*”, despite any other provision of this Constitution:

- (a) except as permitted by ASX or the Listing Rules:
 - (i) that security cannot be disposed of (as that term is defined in the Listing Rules) during its escrow period; and
 - (ii) the Company must refuse to acknowledge a disposal (including registering a transfer) of it during the escrow period; and
- (b) its holder is not entitled to any dividend or distribution or to any voting rights in relation to it during a breach of the Listing Rules relating to it, or a breach of a restriction agreement.

3. LIEN, CALLS AND FORFEITURE

3.1 Lien

- (a) The Company has a first and paramount lien on every share for all amounts (in each case extending to reasonable interest and expenses incurred because the amount is not paid):
 - (i) unpaid in respect of that share;
 - (ii) which are owing to the Company for acquiring that share, where it was acquired under an employee incentive scheme; and
 - (iii) which it is required by law to pay (and has paid) in respect of that share of a holder or deceased former holder,

but the board may exempt any share from the operation of this **clause 3.1**.

- (b) The Company's lien (if any) on a share extends to:
 - (i) all dividends and other distributions payable in respect of that share; and
 - (ii) the proceeds of its sale.
- (c) The Company may sell any share over which it has a lien in any manner the board considers fit if:
 - (i) an amount in respect of which the lien exists is presently payable; and
 - (ii) the Company has given at least 14 days' prior notice to its holder stating and demanding payment of such amount as is presently payable in respect of the lien.

3.2 Calls

- (a) Subject to the terms of issue of any share, the board may make calls on its holder in respect of any money unpaid on it and not made payable at a fixed future time pursuant to the terms of its issue.
- (b) A call shall be deemed to have been made at the time when the resolution of the board authorising its making was passed.
- (c) The board may revoke or postpone a call.
- (d) A call may be made payable by instalments.
- (e) Upon receipt of at least 30 business days' notice specifying the time and place for payment, the holder of a share in respect of which a call is made must pay the amount of the call to the Company at that time and place.
- (f) If a sum called is not paid by the due date, the person from whom the sum is due must also pay:
 - (i) any costs or expenses incurred by the Company in relation to the non-payment or its recovery; and
 - (ii) (unless the board waives interest wholly or in part) interest on the amount unpaid for the period for which it remains unpaid,

and the call shall be deemed to have also been made in relation to such amounts.
- (g) Interest payable pursuant to paragraph (f) is payable at the prescribed rate plus 2% per annum, accrues daily and is to be capitalised at such intervals as the board determines (or monthly in default of a determination).
- (h) The non-receipt of notice by, or accidental omission to give notice to, the holder of a share does not invalidate the call.
- (i) Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed time shall for the purposes of this clause be deemed to be payable under a call and must be paid on the due date for payment.

3.3 Prepayments of calls

- (a) Subject to the terms of issue of any share, the board may (but is not obliged to) accept from the holder of a share the whole or a part of any amount unpaid on that share although no part of that amount has been called up.
- (b) The board may authorise payment by the Company of interest on the whole or any part of an amount accepted in advance of its due date until the amount becomes payable at such rate, not exceeding the prescribed rate, as is agreed with the holder paying the sum.

3.4 Forfeiture

- (a) If a call or instalment of a call is not paid by the due date, the board may serve a notice on the holder of the share in respect of which the call was made:
 - (i) requiring payment of the amount unpaid;
 - (ii) stating that, in the event of non-payment by the time and at the place specified, that share will be liable to be forfeited; and
 - (iii) specifying a further date (not being earlier than the expiration of 10 business days from the date of service of the notice) by which, and a place at which, that amount is required to be paid.
- (b) If a notice served under paragraph (a) is not complied with, the share in respect of which the notice has been given may be forfeited by the board at any time before the payment required by the notice is received by the Company.
- (c) A forfeiture of a share shall include all dividends declared in respect of the share and not actually paid before the forfeiture.
- (d) A forfeited share becomes the property of the Company and may be sold or otherwise disposed of by it on the terms and in such manner as the board thinks fit, subject to any applicable provisions of the Act or the Listing Rules.
- (e) The holder of a share which has been forfeited:
 - (i) ceases to be the holder of that share; and
 - (ii) remains liable for payment of all amounts that, at the date of forfeiture, were payable to the Company in respect of that share together with interest accruing after the date of the forfeiture at the rate (not exceeding the prescribed rate) determined by the board.
- (f) Forfeiture of a share extinguishes all interest in and other rights incidental to, and claims against the Company in respect of, that share.
- (g) A forfeiture may be cancelled on such terms as the board thinks fit, subject to any applicable provisions of the Act or the Listing Rules.

3.5 Sale by Company

Where a share which has been forfeited or is subject to a lien is sold by the Company:

- (a) the Company may receive the proceeds of its sale which it must apply:
 - (i) firstly, in payment of the expenses of the sale;
 - (ii) secondly, in satisfaction of all amounts presently payable to the Company by its former holder in respect of that share;
 - (iii) thirdly, subject to:
 - (A) any lien which exists for an amount that is due in relation to that share but not presently payable and that existed before its sale; and
 - (B) the former holder of the share taking any action as the Company requires to relinquish that person's claim on the share (including the surrender of any share certificate or other evidence of such claim),

in payment to the former holder of that share;
- (b) the Company may appoint a person to take any action (including the execution of an instrument of transfer) necessary or expedient for the purpose of giving effect to the sale;
- (c) the Company must register the purchaser of that share as its holder;
- (d) the purchaser of the share is not bound to see to the regularity or validity of the sale or the Company's application of the purchase price;
- (e) the purchaser's title to the share is not affected by any irregularity or invalidity in the procedure; and
- (f) any person who is aggrieved by the sale shall not have any remedy other than a claim for damages against the Company.

3.6 Dividends

- (a) The board may deduct from any dividend to which the Company's lien extends all amounts payable in respect of which the lien exists as are presently payable.
- (b) An amount deducted pursuant to paragraph (a) shall be applied to the amount payable in respect of which the lien exists.

3.7 Evidence

- (a) In proceedings against a person for the recovery of the amount of an unpaid call or in which the amount of an unpaid call is alleged against a person by the Company by way of set off or counter claim, proof of the following matters is conclusive evidence that the amount is a debt due from that person:
 - (i) the person was a holder of a share in respect of which a call was made;
 - (ii) the resolution of the board authorising the call, in respect of which the minutes of the meeting at which the resolution was made shall be sufficient proof; and
 - (iii) notice of the call was given to the person.

- (b) A statement in writing declaring that:
 - (i) the person making the statement is a director or a secretary of the Company; and
 - (ii) a share has been duly forfeited on a stated date,

is conclusive evidence of those facts as against all persons claiming an entitlement to the share that arose prior to the forfeiture.

4. TRANSFER OF SHARES

4.1 Transfer document

- (a) Subject to this Constitution, the Act, the Listing Rules and the Settlement Rules, a member may transfer all or any shares by a transfer document duly stamped (if necessary) and delivered to the Company or the Company's share registrar.
- (b) The transfer document must in writing in the usual or common form or in any other form as the directors may from time to time prescribe or, in particular circumstances, agree to accept and must be signed by or on behalf of the transferor or as otherwise permitted by the Act.

4.2 Registration procedure

- (a) Subject to this Constitution, the Act, the Listing Rules and the Settlement Rules, every transfer document must be delivered to the Company (or its share registrar) accompanied by the certificate (if any) for the shares to be transferred and any other evidence the directors may require to prove the title of the transferor or its right to transfer the shares.
- (b) The Company must retain all transfer documents registered but any transfer document which the directors refuse to register must (except in the case of fraud or suspected fraud) be returned on demand to the person who deposited that document.

4.3 Registration of transfers

- (a) Subject to paragraphs (b), (c) and (e) and where permitted by the Act to decline to register a transfer of a share, the Company must immediately register a valid transfer of a share.
- (b) Where a share is not a CHESSE approved security, the Company:
 - (i) may decline to register a transfer of that security in circumstances where the Listing Rules permit it to do so; and
 - (ii) must decline to register a transfer where the Listing Rules require it to do so.
- (c) Where a share is a CHESSE approved security:
 - (i) subject to subparagraphs (ii) to (iv), the Company must not prevent, delay

- or interfere with the registration of a proper ASTC transfer;
- (ii) the Company may apply, or ask ASTC to apply, a holding lock to that share where the Listing Rules permit it to do so;
 - (iii) the Company may refuse to register a transfer of that share where permitted to do so by the Listing Rules and must refuse to register a transfer if required to do so by the Listing Rules; and
 - (iv) the Company may refuse to register a transfer where the transfer is not in registrable form.
- (d) If the Company refuses to register a transfer or applies a holding lock to a share in accordance with paragraphs (b) or (c), it must provide notification of this position (as applicable) if required under (and then in accordance with) the Listing Rules.
 - (e) A failure to give notice of the reasons for refusal to register a transfer of a share does not invalidate the decision to decline registration.
 - (f) Subject to the Listing Rules, the registration of transfers may be suspended at such times and for such periods as the board from time to time determines not exceeding an aggregate of 30 days in any calendar year.
 - (g) The Company must not charge a fee for registration of the transfer of a share.
 - (h) A transferor of a share remains the holder of that share until the transfer:
 - (i) is registered and the name of the transferee is entered in the register in respect of that share; or
 - (ii) is effected in accordance with the Listing Rules and/or Settlement Rules (as applicable).
 - (i) Without limiting the previous paragraphs of this clause, while dealings in shares in the Company may take place under a Transfer System, shares may be transferred in any manner permitted by that system.

5. TRANSMISSION OF SHARES

5.1 Entitlement to shares on death

- (a) On the death of the holder of a share:
 - (i) where the deceased was a joint holder, the surviving holder; and
 - (ii) where the deceased was a sole holder, the deceased's legal personal representative,

shall be the only person recognised by the Company as having any title to the deceased's interest in the share.
- (b) Where 2 or more persons are jointly entitled to any share in consequence of the death or bankruptcy of the holder of a share, they shall be deemed to be joint

holders of the share.

- (c) The estate of a deceased joint holder is not released from any liability in respect of a share jointly held by the deceased with other persons.

5.2 Registration of persons entitled

- (a) Subject to the Act, a person entitled to a share may, on producing such evidence of entitlement as is reasonably required by the board and:
 - (i) giving a written notice signed by him to the Company, elect to be registered as the holder of that share; or
 - (ii) executing a transfer of the share in favour of another nominated person, elect to have that person registered as the holder of that share.
- (b) All the limitations, restrictions and provisions of this Constitution relating to the right to transfer, the form of transfer and the registration of transfers of a share are applicable to a notice of election and a transfer given in accordance with paragraph (a) as if the death, bankruptcy or mental incapacity of the holder of the share had not occurred and that holder had signed the notice or transfer.
- (c) Two or more persons who are jointly persons entitled to a share shall be deemed to be joint holders of that share.

5.3 Dividends and other rights

A person entitled to a share is, upon the production of such information as is required by the board, entitled to all dividends and rights to which the holder of the share would have been entitled but for their death, bankruptcy or mental incapacity.

6. GENERAL MEETINGS

6.1 Convening of general meetings

- (a) A general meeting may be convened by the board whenever it thinks fit. While the Company is listed, a general meeting may also be convened by any director whenever he thinks fit.
- (b) A general meeting may only be convened by a member or members if the Act entitles that member or those members to do so.
- (c) The directors must convene a general meeting on the requisition of members as provided by the Act.
- (d) A general meeting may be held at 2 or more venues using any technology that gives the persons participating in the meeting as a whole a reasonable opportunity to participate.
- (e) Subject to the Act, a general meeting may only be held after the amount of notice required by the Act has been given.
- (f) (i) Where a general meeting (including an annual general meeting but not including a general meeting convened at the request of members) is

convened by the board, the board may, whenever it thinks fit, and at any time prior to the day of the meeting, cancel the meeting or postpone the holding of the meeting to a date and time determined by it.

- (ii) Notice of cancellation or postponement of a general meeting must:
 - (A) be given as if it were a notice of meeting, and the provisions of this Constitution and of the Act which apply with respect to the giving of notices of meeting (except as to the time for provision of such notices) shall apply to such a notice; and
 - (B) state the reason for cancellation or postponement.
- (iii) Without limiting the generality of subparagraph (ii):
 - (A) a notice postponing the holding of a general meeting must specify:
 - (I) the postponed date and time for the holding of the meeting; and
 - (II) a place for the holding of the meeting, which may be either the same as or different from the place specified in the notice convening the meeting; and
 - (B) the period of notice given of the date and time of a meeting shall be not less than the period of notice required to be given to convene the postponed meeting.
- (iv) The only business that may be transacted at a general meeting postponed in accordance with subparagraph (i) is the business specified in the notice originally convening that meeting.
- (v) If:
 - (A) a proxy, attorney or representative is appointed by reference to a general meeting to be held on or before a specified date; and
 - (B) the date for holding the meeting is postponed to a date later than the date so specified,

the proxy, attorney or representative shall, by force of this clause, be authorised to attend and vote at the postponed meeting unless the holder appointing the proxy, attorney or representative gives to the Company notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

6.2 Annual general meetings

- (a) Annual general meetings will be held in accordance with the Act.
- (b) The business of an annual general meeting shall be any or all of the following:
 - (i) the consideration of the annual financial report, directors' report and auditor's report;

- (ii) the election of directors;
- (iii) the appointment of the auditor;
- (iv) the fixing of the auditor's remuneration;
- (v) (mandatory while the Company is listed) the adoption of the remuneration report as required by s.250R(2) of the Act; and
- (vi) the transaction of any other business which under the Act or the Listing Rules ought to be or may be transacted at an annual general meeting.

6.3 Notices of meeting

- (a) A notice of a general meeting must:
 - (i) specify the place, the date and the time of meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
 - (ii) state the general nature of the meeting's business;
 - (iii) if a special resolution is to be proposed, state the resolution and the intention to propose it as a special resolution;
 - (iv) state that a member has a right to appoint a proxy;
 - (v) state that a proxy does not need to be a member;
 - (vi) state that a member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise;
 - (vii) (while the Company is listed) include a proxy form which complies with any applicable requirements of the Listing Rules and the Act;
 - (viii) (while the Company is listed) specify a place and a facsimile number for the purposes of receipt of proxy appointments and proxy appointment authorities; and
 - (ix) in the case of a notice of an annual general meeting while the Company is listed, include a notification to members that the resolution referred to in s.250R(2) of the Act (resolution on remuneration report) will be put at the annual general meeting.
- (b) A notice of a general meeting may specify:
 - (i) an electronic address for the purposes of receipt of proxy appointments and proxy appointment authorities; and
 - (ii) other electronic means by which a member may give the Company a proxy appointment or proxy appointment authority.
- (c) Notice of every general meeting shall be given to:

- (i) every member;
 - (ii) every director;
 - (iii) every person entitled;
 - (iv) the Company's auditor; and
 - (v) any other person who is entitled under the Act or the Listing Rules to receive notices of general meetings.
- (d) In addition to the various means of giving notices to members as set out in **clause 15.1(a)**, a notice of a general meeting may be given to members as set out below.

If a member nominates:

- (i) an electronic means by which the member may be notified that notices of meeting are available; and
 - (ii) an electronic means the member may use to access notices of meeting,
- the Company may give the member notice of the meeting by notifying the member (using the notification means nominated by the member):
- (iii) that the notice of meeting is available; and
 - (iv) how the member may use the access means nominated by the member to access the notice of meeting.

A notice of meeting given to a member by this electronic means is taken to be given on the day on which the member is notified that the notice of meeting is available.

- (e) Subject to the Act, non-receipt (including an inability to access the notice using an electronic means) of the notice convening a general meeting or cancelling or postponing a general meeting by, or accidental omission to give such notice to, any person who is entitled to receive such notice shall not invalidate the proceedings at or any resolution passed at that meeting or at a postponed meeting or the cancellation or postponement of a meeting (as applicable).
- (f) A person's attendance at a meeting waives any objection that that person may have to a defect in the giving of notice of that meeting unless, at the commencement of the meeting, the person objects to the meeting being held.

6.4 Quorum

- (a) Except for the election of a chairperson and the adjournment of the meeting, no business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
- (b) Five members present in person or by proxy, attorney or corporate representative constitute a quorum at a general meeting.
- (c) For the purpose of determining whether a quorum is present:

- (i) a person attending as a proxy, or as an attorney for a member, or as a representative of a corporation that is a member, is deemed to be a member;
 - (ii) if a member has appointed more than one proxy, attorney or corporate representative, only one of the persons so appointed shall be counted; and
 - (iii) if a person attends a meeting both as a member and as a proxy, attorney or corporate representative, that person shall be counted only once.
- (d) If a quorum is not present within 30 minutes from the time appointed for the meeting:
- (i) where the meeting was convened on the requisition of members, the meeting shall be dissolved; or
 - (ii) in any other case:
 - (A) the meeting stands adjourned to such day and at such time and place as the board determines or, if no determination is made by the board, to the same day in the next week at the same time and place; and
 - (B) if a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.
- (e) A declaration by the chairperson of the meeting that a quorum is present is conclusive evidence of that fact without proof of the number or identity of members actually present.

6.5 Chair of meetings

- (a) If the board has elected a chairperson of its meetings, that person may chair a general meeting.
- (b) Where a general meeting is held and:
 - (i) a chairperson has not been elected by the board; or
 - (ii) the chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting or declines to act,

the members present shall elect another director as chairperson of the meeting and, if no other director is present or every director present declines to act, the members present shall elect one of their number as chairperson of the meeting.
- (c) The chairperson may, in the case of a conflict of interest or otherwise in his discretion, appoint someone else (who need not be a director) to chair one or more items of business or resolutions at a general meeting. While acting as chairperson, the appointee may exercise all of the chairperson's powers and discretions. The chairperson resumes the role of chairperson of the meeting after the appointment concludes.

- (d) The chairperson of a general meeting is responsible for the general conduct of and procedures at the general meeting.
- (e) The chairperson's decisions about general conduct and procedures is final.
- (f) At any general meeting, if:
 - (i) the chairperson declares that a resolution or special resolution has been carried, or carried by a particular majority, or not carried; and
 - (ii) an entry to that effect is recorded in the minutes of proceedings of the Company,

that declaration is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against that resolution or special resolution.

6.6 Adjournments

- (a) 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. Only unfinished business is to be transacted at a meeting resumed after an adjournment.
- (b) Where a meeting is adjourned for more than 30 days, notice of an adjourned meeting is to be given (in the same manner as for an original meeting). Otherwise, notice of an adjourned meeting need not be given.

6.7 Voting at general meetings

- (a) A resolution put to the vote at a general meeting will be decided on a show of hands unless a poll is demanded.
- (b) Where a resolution is decided on a show of hands, a declaration by the chairperson is conclusive evidence of the result.
- (c) A poll may be demanded by:
 - (i) the chairperson;
 - (ii) at least 5 members present in person or by proxy, representative or attorney and entitled to vote on the resolution; or
 - (iii) a member or members present in person or by proxy, representative or attorney and representing not less than 5% of the votes that may be cast on the resolution on a poll;

either:

 - (iv) before the vote is taken;
 - (v) before the voting result on a show of hands is declared; or
 - (vi) immediately after the voting result on a show of hands is declared.

- (d) For the purpose of paragraph (c), the percentage of votes that members have is to be worked out as at the midnight before the poll is demanded.
- (e) A demand for a poll may be withdrawn.
- (f) In the case of an equality of votes, the chairperson has a casting vote, both on a show of hands and on a poll, in addition to any deliberative vote held in his capacity as a member.
- (g) The directors may, subject to law, determine that, at any general meeting or class meeting, a member who is entitled to attend and vote on a resolution at that meeting is entitled to give their vote on that resolution by a valid notice of their voting intention (a “**Direct Vote**”). A Direct Vote includes a vote delivered to the Company by post, fax or electronic or other means approved by the directors. The directors may prescribe regulations, rules and procedures in relation to the giving of Direct Votes, including specifying the form, method and timing of giving a Direct Vote at, or for the purposes of, a meeting in order for the vote to be valid.

6.8 Polls

- (a) Subject to paragraph (b), a poll must be taken when and in the manner the chairperson directs.
- (b) A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.
- (c) If a poll (other than a poll referred to in paragraph (b)) has been taken, the chairperson may close the meeting before the result of the poll is declared.
- (d) If a meeting is closed pursuant to paragraph (c), the result of the poll must be declared within 2 business days after the closure of the meeting by either notice in a newspaper nominated at the meeting by the chairperson or by another means approved by the meeting.

6.9 Voting rights

- (a) Subject to any rights or restrictions attached to any class of share and to paragraphs (b)-(d), at a meeting of members or a class of members each member:
 - (i) entitled to attend and vote may attend and vote in person or by proxy, representative or attorney;
 - (ii) has 1 vote on a show of hands; and
 - (iii) has, on a poll, 1 vote for each share held except that a partly paid share shall only confer the right to cast, for each share, a fraction of a vote equivalent to the proportion which the amount paid up bears to the total issue price for that share.
- (b) If the total of the whole votes and fractions of votes to which a member is entitled on a poll does not constitute a whole number, then that fractional part will be disregarded.

- (c) In the case of joint holders:
 - (i) any one of such persons may vote at any meeting, either personally or by attorney or proxy, as if he were solely entitled;
 - (ii) if more than one joint holder is present at any meeting, either personally or by attorney or proxy, the vote of the holder whose name appears first in the register and who by any method tenders a vote, shall be accepted to the exclusion of the vote of any other joint holder; and
 - (iii) several legal personal representatives of a deceased member in whose name any share is registered shall for the purpose of this clause be deemed joint holders.
- (d) A member is not entitled to be present or be reckoned in a quorum at any general meeting, or to vote in respect of a share, unless all calls and other sums presently payable in respect of that share have been paid.
- (e) If a person present at a meeting represents more than one member personally, or by proxy, attorney or representative, on a show of hands:
 - (i) the person is entitled to only 1 vote;
 - (ii) a vote cast by that person will be taken to have been cast on behalf of each member represented by that person; and
 - (iii) if the person has been appointed as proxy under 2 or more instruments that specify different ways to vote on a resolution, the person may not vote on that resolution as a proxy, but may exercise any vote which that person may exercise as the holder of a share.
- (f) Any person entitled to be registered as the holder of a share under **clause 5** may vote at any general meeting in respect of that share in the same manner as if he were the share's registered holder if:
 - (i) at least 48 hours before the time notified for the holding of the meeting (or adjourned meeting) at which he proposes to vote, he satisfies the board of his right to that share; or
 - (ii) the board has previously admitted his right to vote at such meetings.
- (g) If the Listing Rules provide that:
 - (i) a person must abstain from voting or not vote on a resolution; or
 - (ii) a vote cast by a person on a resolution is to be disregarded,that person is not entitled to vote on that resolution.

6.10 Objections to qualification to vote

- (a) An objection may be raised to the qualification of a voter only at or before the meeting at which the relevant vote objected to is given or tendered.

- (b) Any such objection shall be referred to the chairperson of the meeting whose decision is final.
- (c) A vote not disallowed under such an objection is valid for all purposes.

6.11 Proxies

- (a) A person who is entitled to attend and cast a vote at a meeting may appoint not more than 2 persons (being either natural persons or body corporates), neither of whom need hold shares, as proxies to attend and vote for the person.
- (b) Where 2 proxies are appointed, each proxy may exercise half of the votes able to be cast by the appointor unless the appointment specifies the number or proportion of the appointor's votes that each proxy may exercise. Fractions of votes arising pursuant to this clause are to be disregarded.
- (c) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument but if there is no such voting specification in the instrument, the proxy may vote as he thinks fit.
- (d) An instrument appointing a proxy shall be deemed to confer authority to:
 - (i) demand or join in demanding a poll; and
 - (ii) vote as the proxy sees fit on:
 - (A) an amendment moved to a proposed resolution, a motion that a proposed resolution not be put or similar; and
 - (B) a procedural motion.
- (e) An instrument appointing a proxy shall be in such form as may be approved by the board from time to time, subject to the requirements of the Act and the Listing Rules (as applicable).
- (f) An instrument appointing a proxy is not valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed (or otherwise authenticated in a manner prescribed by regulations made for the purposes of s.250A(1)), or a certified copy, is or are received by the Company at any place that is specified for that purpose in the notice convening the meeting not less than 48 hours (or any lesser period that the board permits) before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote.

Documents to be lodged pursuant to this clause may be lodged by facsimile or, if an electronic address (or other electronic means) is specified for the purpose in the notice of meeting, electronically.

- (g) The attorney of any member holding a general power of attorney to attend and vote at meetings of companies or a special power to attend and vote at meetings of this Company may attend and vote at its meetings provided that the power of attorney (or a certified copy) shall be received by the Company as in the case of powers of attorney in accordance with paragraph (f).

- (h) A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding:
- (i) the previous death or unsoundness of mind of the principal;
 - (ii) the revocation of the instrument (or of the authority under which the instrument was executed or otherwise authenticated) or of the power; or
 - (iii) the transfer of the share in respect of which the instrument or power is given,

if no written notice of the death, unsoundness of mind, revocation or transfer has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

- (i) The appointment of a proxy or attorney is not revoked by the appointor attending and taking part in the meeting but if the appointor votes on any resolution, a proxy or attorney is not entitled (as that appointor's proxy or attorney) to, and must not, vote on that resolution.
- (j) An instrument appointing a proxy is not invalid merely because it does not contain the address of the appointor or of a proxy, is not dated or does not specify the manner in which the proxy is to vote in relation to any resolution.
- (k) An instrument appointing a proxy which does not contain the name of the proxy:
 - (i) is not invalid merely for that reason; and
 - (ii) shall be deemed to be given in favour of the chairperson of the meeting.
- (l) The person who has the management of the estate of a member:
 - (i) who is of unsound mind; or
 - (ii) whose estate is liable to be dealt with under the law relating to mental health,

may exercise any rights of a holder of a share in relation to a meeting as if he were the holder of that share.

- (m) Subject to the Act and the Listing Rules, any question regarding the validity of an instrument appointing a proxy or a vote given by proxy shall be determined by the chairperson whose decision is final.

7. DIRECTORS AND THE BOARD

7.1 Number of directors

The number of directors shall be not less than 3 nor more than the number determined by the directors from time to time (in each case excluding alternate directors).

7.2 Qualification and nomination of directors

- (a) There is no share qualification for appointment as a director.
- (b) Except where a director retires from the board under this Constitution or a person is recommended for appointment by the board, a person is only eligible for appointment as a director by resolution of the Company in general meeting where that person has been validly nominated as a candidate for election by a member of the Company in accordance with paragraph (c).
- (c) Nominations for the purposes of paragraph (b) must be in writing, executed by the nominating member, accompanied by a consent to nomination signed by the nominee and received by the Company at its registered office no later than the date which the Listing Rules prescribe as the last date on which the Company must accept nominations for election as a director, or if the Listing Rules do not prescribe such a period, 45 business days before the relevant general meeting.

7.3 Election of directors by Company

Subject to any contrary provision in this Constitution:

- (a) directors must be elected by the Company in general meeting; and
- (b) the Company may, at an annual general meeting at which any director retires for any reason, fill the office so vacated and may fill any other vacancies.

7.4 Appointment of directors by the board

- (a) The board may at any time appoint a person to be a director, either to fill a casual or other vacancy or as an addition to the board but so that the total number of directors shall not at any time exceed the maximum number for the time being fixed by or under this Constitution.
- (b) A director appointed pursuant to paragraph (a) shall hold office only until, and shall retire at, the next following annual general meeting at which time that director shall be eligible for re-election.

7.5 Retirement of directors

- (a) In addition to any director who retires pursuant to **clause 7.4(b)**, subject to the Act, the Listing Rules, this Constitution and paragraph (b), a director must retire from office by no later than the third annual general meeting following his appointment or election, or 3 years, whichever is longer.
- (b) Unless otherwise determined by a resolution of the Company, while the Company is listed, at least one director must retire from office at each annual general meeting unless there has been an election of directors earlier that year.
- (c) If no director is required to retire at an annual general meeting under **clause 7.4(b)** or **clause 7.5(a)**, then the director to retire under **clause 7.5(b)** will be the one who has been longest in office since his last election.
- (d) As between directors who were elected on the same day, unless they otherwise agree among themselves, the director to retire shall be determined by lot.

- (e) A retiring director may act as a director throughout the meeting at which he retires and at any adjournment.
- (f) Paragraphs (a), (b), (c) and (d) do not apply to any managing director or any other executive director.
- (g) A director who retires or whose office is vacated under this Constitution will be eligible for election or re-election to the board.

7.6 Remuneration of directors

- (a) The directors (excepting any managing director and any other executive director) shall be remunerated for their services as directors by such fixed maximum sum as may from time to time be determined by the Company in general meeting.
- (b) Remuneration payable pursuant to paragraph (a) accrues from day to day and shall be apportioned accordingly.
- (c) Such remuneration shall be divided among the directors referred to in paragraph (a) in such proportions and manner as the board determines and, in default of such determination, equally.
- (d) Remuneration payable pursuant to paragraph (a) shall not be increased without the prior approval of the Company in general meeting. The notice convening a meeting for such purpose must include the amount of the proposed increase, the maximum sum (inclusive of the amount of the proposed increase) that may be paid to the directors as a whole (excepting any managing director and any other executive director) and a voting exclusion statement under the Listing Rules.
- (e) No director shall be paid a commission on, or percentage of, operating revenue.
- (f) A director may also be paid all reasonable travelling, accommodation and other expenses properly incurred in attending and returning from a meeting of the board or any committee of the board or a general meeting of members or otherwise in connection with the business of the Company.
- (g) If, with the concurrence of the board, a director performs extra services or makes any special exertions for the benefit of the Company, the board may cause that director to be paid remuneration by a fixed sum to be determined by the board and such remuneration may either be in addition to or in substitution for any remuneration payable to that director pursuant to paragraphs (a)-(d).

7.7 Vacation of director's office

In addition to the circumstances in which a director vacates office by virtue of the Act, the office of a director becomes vacant if that director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) resigns his office by notice in writing to the Company;
- (c) is removed by a resolution of members in accordance with the Act;

- (d) is absent without the consent of the board from meetings of the directors for a period of 6 consecutive months; or
- (e) being a managing director or other executive director, ceases for any reason to be employed as managing director or other executive director, unless the board determines otherwise.

7.8 Retiring allowance for directors

Subject to the Act and the Listing Rules, the board may make a payment to a non-executive director (or such director's spouse, dependants or legal personal representatives upon the death of the director) of a lump sum retirement benefit on and after that director ceases to hold office as director, under a contract or arrangement with that non-executive director which is in existence at the date this Constitution is adopted.

7.9 Powers of the board

- (a) The business of the Company shall be managed by or under the direction of the directors.
- (b) Subject to the Act and this Constitution, the board may exercise all the powers of the Company that are not, by law or by this Constitution, required to be exercised by the members in general meeting.
- (c) Without limiting the generality of paragraph (b), the board may:
 - (i) exercise all powers of the Company:
 - (A) to borrow money;
 - (B) to charge any property or business of the Company or all or any of its uncalled capital;
 - (C) to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
 - (D) in relation to any seal; and
 - (ii) by power of attorney, appoint any person to be the attorney of the Company for such purposes, with such powers, authorities and discretions, and for such period and subject to such conditions as the board thinks fit and including such provisions for the protection and convenience of persons dealing with the attorney that the board thinks fit.
- (d) The board may determine the manner in which cheques, promissory notes, bank drafts, bills of exchange, other negotiable instruments and receipts for money paid to the Company may be signed, drawn, accepted, endorsed or executed and the people who may do so. In the absence of a contrary determination, any 2 directors may do so.
- (e) No resolution passed or provision inserted into the Constitution invalidates any prior act of the board which would otherwise have been valid.

- (f) Subject to the Act and the Listing Rules, any sale or disposal of the Company's main undertaking is conditional upon approval or ratification by ordinary resolution at a general meeting.

7.10 Meetings of the board

- (a) The board may meet, adjourn and, subject to this Constitution, otherwise regulate its affairs as it thinks fit.
- (b) A director may at any time, and a secretary shall on the requisition of a director, convene a meeting of the board.
- (c) Reasonable notice shall be given to every director of the place, day and time of every meeting of the board except that notice need not be given to a director who is temporarily outside of Australia.
- (d) A director may participate in a meeting of the board by any communication system which enables the director to hear and be heard by each of the other directors participating in the meeting which is approved by the directors and made known to each director for the purpose of any meeting of the board. Each director who so participates shall throughout the meeting be taken to be present at the place of the meeting of which notice is given in accordance with paragraph (c) unless the chairperson gives express consent for that director to leave the meeting.
- (e) No business shall be conducted at a meeting of the board unless a quorum is present when the meeting proceeds to business.
- (f) The number of directors who constitute a quorum for a meeting of the board is 2 or such other number as is determined by the board from time to time.
- (g) For the purpose of calculating whether a quorum is present, an alternate director who attends a meeting of the board is counted as a director for each director that person represents.
- (h) The board may continue to act notwithstanding a vacancy in the number of directors but, if the number of remaining directors falls below 3, the board may act only:
 - (i) in an emergency;
 - (ii) to fill vacancies on the board; or
 - (iii) to convene a general meeting of the Company.
- (i) Questions arising at a meeting of the board shall be decided by a majority of votes of those directors present and voting and, in the case of an equality of votes, subject to the Act and the Listing Rules, the chairperson of the meeting has a casting vote in addition to a deliberative vote.

7.11 Chair of meetings

- (a) The board may from time to time elect one of the directors as chairperson of meetings of the board and may determine the period for which that person holds office.

- (b) If at any time during a meeting of the board:
 - (i) a chairperson has not been elected; or
 - (ii) the chairperson is not present or declines to act as chairperson,the directors present shall choose one of their number to be chairperson of that meeting.

7.12 Interests of directors

- (a) Notwithstanding any rule of law or equity to the contrary, a director is not disqualified by his office from contracting with the Company in any capacity.
- (b) A contract or arrangement made by the Company with a director or in which a director is in any way, directly or indirectly, interested shall not be avoided merely because the director is a party to or interested in it.
- (c) A director shall not by virtue of that office be disqualified from holding any office or place of profit (other than that of auditor) under the Company or under any company promoted by the Company or in which the Company is a shareholder or is otherwise interested or which is a member of the Company.
- (d) A director who has duly declared the nature of his interest in a contract or arrangement with the Company is not, merely because of his office as director or the resulting fiduciary relationship, liable to account to the Company for any profit derived by him from that contract or arrangement.
- (e) A director who is interested in a contract or arrangement with the Company and who has declared that interest may affix or witness the affixing of the seal to a document (or otherwise take part in its execution) evidencing that contract or arrangement without affecting its validity, and whether or not that director is entitled to vote or does vote in relation to the contract or arrangement.
- (f) A director who has a material personal interest in a matter that is being considered at a directors' meeting must not be present while the matter is being considered at the meeting or vote on the matter.
- (g) A reference in **clause 7.12** to the declaring of an interest of a director means a declaration or disclosure in accordance with the applicable provisions of the Act.

7.13 Alternate directors

- (a) Subject to paragraphs (m) and (n) below, a director may, with the approval of the board, appoint a person (whether or not a member or director) to be an alternate director in his place for any period or until the appointment is revoked.
- (b) An alternate director is not entitled to notice of meetings of the board unless his appointor has, by notice in writing to the board, required it to provide such notices either generally or in particular circumstances.
- (c) An alternate director may attend and vote at a meeting of the board only if his appointor is not present at that meeting.

- (d) An alternate director may exercise any powers that the appointor may exercise (except the power to appoint an alternate director) and the exercise of any such power by the alternate director shall be deemed to be the exercise of the power by the appointor.
- (e) The appointment of an alternate director:
 - (i) may be terminated at any time by the appointor even if the period of the appointment of the alternate director has not expired; and
 - (ii) terminates if the appointor ceases to be a director.
- (f) An appointment, or the termination of an appointment, of an alternate director shall be effected by service on the Company of a notice in writing signed by the director who makes or made the appointment.
- (g) An alternate director shall not, in his capacity as such, be entitled to participate in the remuneration of the directors under **clause 7.6(a)** but shall be entitled under **clause 7.6(f)** to reimbursement of expenses reasonably incurred for the purpose of attending any meeting of the directors at which his appointor is not present and at which he is entitled to be present and to vote.
- (h) An alternate director is entitled to a separate vote for each director who the alternate director represents in addition to any vote the alternate director has as a director in his own right.
- (i) While acting as a director, an alternate director is:
 - (i) an officer of the Company and not the agent of the appointor; and
 - (ii) responsible to the exclusion of the appointor for the alternate director's own acts and defaults.
- (j) An alternate director is not to be taken into account separately from the appointor in determining the number of directors.
- (k) An alternate director is not subject to the provisions of this Constitution relating to the appointment, election and retirement of directors.
- (l) An alternate director does not have a conflict of interest solely by reason of the fact that his appointor has (or vice versa).
- (m) A managing director may not appoint an alternate to act as managing director.
- (n) An executive director may not appoint an alternate to act as executive director.

7.14 Committees

- (a) The board may delegate any of its powers to a committee of directors (which may consist of a sole director) and may revoke that delegation.
- (b) A committee shall exercise its powers in accordance with any directions of the board.

- (c) The exercise by a committee of a power delegated to it is deemed to be an exercise of that power by the board.
- (d) The chairperson of a committee meeting at which only 2 directors are present shall not have a casting vote (but otherwise shall).
- (e) Determinations and proceedings of every committee consisting of 2 or more directors and minutes of all the proceedings of such committees shall be made, conducted, entered and signed in the same manner in all respects as determinations and proceedings of the board and minutes of proceedings of the board (subject to any direction to the contrary made by the board under this clause).

7.15 Written resolutions

- (a) If a document containing a statement that the signatories to it are in favour of a resolution in the terms set out or otherwise identified in the document is signed by a majority of the directors, or a majority of the members of a committee, entitled to vote on the resolution, a resolution in those terms shall be deemed to have been passed at a meeting of the board, or of the committee, held at the time at which the document was last signed, provided that the persons signing the statement would constitute a quorum at such a meeting.
- (b) For the purposes of paragraph (a):
 - (i) two or more separate documents containing statements in identical terms each of which is signed by one or more directors shall together be deemed to constitute one document;
 - (ii) a reference to a majority of the directors or a majority of the committee members does not include a reference to an alternate director whose appointor has signed the document, but an alternate director may sign the document in the place of his appointor;
 - (iii) a facsimile or electronic transmission received by the Company and expressed to have been sent for and on behalf of a director or alternate director shall be deemed to be signed by that director or alternate director at the time of its receipt by the Company; and
 - (iv) an alternate director may sign the document even if his appointor could not have voted on the resolution.

7.16 Defects in appointments

The acts of a person acting as a director or committee member and the resolutions of the board and of a committee comprising that person are as valid as if the person had been duly appointed as a director or a committee member notwithstanding that it may subsequently be discovered that there was a defect in that person's appointment or that the person was disqualified from acting as such, had vacated office or was otherwise not entitled to vote or act.

8. MANAGING DIRECTORS AND EXECUTIVE DIRECTORS

8.1 Appointment

- (a) The board may from time to time appoint one or more directors as managing director or to any other executive office for such period and on such terms as it thinks fit, and, subject to the terms of any agreement entered into in a particular case, may revoke any such appointment.
- (b) An appointment under paragraph (a) shall automatically terminate if the appointee ceases to be a director.
- (c) If an appointee ceases to be the managing director or other executive director, that person will also automatically cease to be a director unless the board determines otherwise.

8.2 Remuneration

Subject to the Listing Rules and the terms of any agreement entered into with any managing director or other executive director, the board may fix the remuneration of each managing director or other executive director which may comprise salary or commission on or participation in profits of the Company, but may not comprise commission on, or a percentage of, operating revenue.

8.3 Delegation of powers

- (a) The board may, upon such terms and conditions and with such restrictions as it thinks fit, confer any of its powers on a managing director or other executive director.
- (b) Any powers conferred on a managing director or other executive director may be concurrent with, or be to the exclusion of, the powers of the board.
- (c) The board may at any time withdraw or vary any of the powers so conferred on a managing director or other executive director.

9. SECRETARY

9.1 Appointment

A secretary or secretaries will be appointed by the board in accordance with the Act on such terms as the board thinks fit.

9.2 Termination

The board may at any time terminate the appointment of a secretary.

10. SEALS AND EXECUTION OF DOCUMENTS

10.1 Safe custody

The board shall provide for the safe custody of any seal.

10.2 Use of seals

- (a) A seal shall be used only by the authority of the board.
- (b) Every document to which a seal is affixed shall be signed:
 - (i) by a director and be countersigned by another director, a secretary or another person appointed by the board to countersign that document or a class of documents in which that document is included; or
 - (ii) in any other manner permitted by the Act.

10.3 Seal not required for valid execution

The Company may execute a document in any manner permitted by the Act or as authorised by the board and nothing in this clause shall be read as requiring execution of any document by the Company under seal.

11. MINUTES AND RECORDS

11.1 Minutes of all proceedings to be kept

The directors will cause minutes of all proceedings of general meetings and of the board, including committees, to be duly entered in books kept for that purpose in accordance with the Act.

11.2 Inspection of records

A member does not have any right to inspect any document of the Company unless permitted to do so by the Act or authorised to do so by the board.

11.3 Evidence

Minutes of a meeting of the members, the board or any committee purporting to be signed by the chairperson of that meeting or by the chairperson of the next succeeding meeting and any document purporting to be signed by a director pursuant to **clause 7.15** are, unless the contrary is proved, conclusive evidence:

- (a) of the matters stated; and
- (b) in the case of minutes of a meeting, of:
 - (i) the meeting having been duly convened and held; and
 - (ii) the validity of all proceedings at the meeting.

12. DIVIDENDS AND RESERVES

12.1 Dividends

- (a) Dividends may be declared by the board.
- (b) Subject to any special rights attaching to a share:
 - (i) all dividends shall be declared and paid according to the amounts paid (or credited as paid) on the share in respect of which the dividend is declared;
 - (ii) all dividends shall be apportioned and paid proportionately to the ratio of the amount paid (or credited as paid) on the share to the amounts paid or payable (including amounts credited) on the share during any portion of the period in respect of which the dividend is paid;
 - (iii) an amount paid on a share in advance of a call does not confer the right to a dividend; and
 - (iv) dividends may be declared at different rates for different classes of share.
- (c) No dividend shall bear interest against the Company.
- (d) All dividends unclaimed may, subject to any law, be invested or otherwise made use of by the board for the benefit of the Company until claimed.

12.2 Application of profits

The board may pay or apply profits in any manner it considers appropriate, including by doing any of the following:

- (a) transferring profits to a reserve;
- (b) carrying profits forward without transferring them to a reserve; and
- (c) capitalising profits.

12.3 Distribution in specie

- (a) Subject to any special right attaching to a share, the board may determine that a dividend payable in respect of a share be paid or partly paid by the distribution of specific assets, including paid up shares in, or debentures of, any other corporation.
- (b) Where a difficulty arises in regard to such a distribution, the board may do all things necessary or convenient to implement a distribution in accordance with paragraph (a).

12.4 Dividend reinvestment plans

- (a) The board may, at any time, on terms determined by it:

- (i) establish a plan or plans under which the holder of a share may elect:
 - (A) that dividends to be paid in respect of that share be satisfied by the issue of fully paid shares of the same class as that share; or
 - (B) that dividends shall not be declared or paid in respect of that share but the holder of that share will receive an issue of fully paid shares of the same class as that share; and
- (ii) vary, suspend or terminate any such plan.
- (b) The board may do all things necessary or convenient for the purposes of implementing any such plan.

12.5 Election to accept bonus shares in lieu of dividend

The directors may determine in respect of any dividend which it is proposed to pay or to declare on any shares that holders of the shares may elect to forego the right to share in the proposed dividend or part of such proposed dividend and to receive instead an issue of shares credited as fully paid on such terms as the directors think fit.

13. ACCOUNTS

13.1 Company to keep financial records

The Company will keep such accounting and other records of the business of the Company as it is required to keep by the Act.

13.2 Company to audit accounts

The directors must cause the financial records of the Company to be audited in accordance with the requirements of the Act.

13.3 Annual accounts to be laid before annual general meeting

At the annual general meeting in every year, the board will lay before the Company the financial report, directors' report and the auditor's report for the last financial year of the Company that ended before the annual general meeting, together with any other accounts, reports and statements as may be required by the Act from time to time.

13.4 Copy of financial reports to be sent

Except where a member has made a request to the Company in accordance with the Act for these not to be provided, the Company will send to members the financial reports referred to in **clause 13.3**, or a concise report for the year that complies with the Act, in accordance with the requirements of the Act.

13.5 Sending of financial reports by electronic means

Without limiting **clause 15.2**, any financial reports to be sent to a member may be sent in the manner set out below.

If a member nominates:

- (i) an electronic means by which the member may be notified that the financial reports referred to in **clause 13.3** are available; and
- (ii) an electronic means the member may use to access those reports,

the Company may send a report referred to in **clause 13.3** by notifying the member (using the notification means nominated by the member):

- (iii) that the report is available; and
- (iv) how the member may use the access means nominated by the member to access the report.

14. AUDITOR

The auditor of the Company will be appointed and may be removed as provided in the Act. The auditor will perform the duties and have the rights and powers as may be provided in the Act.

15. NOTICES AND PAYMENTS

15.1 Notices

- (a) The Company may give a notice to a member by:
 - (i) serving it personally;
 - (ii) sending it by post to the address as shown in the register or another address supplied by that person for this purpose;
 - (iii) sending it by facsimile to the facsimile number supplied by that person for this purpose;
 - (iv) sending it by electronic means to an electronic address supplied by that person for this purpose; or
 - (v) sending it by other electronic means as may be nominated by the member for this purpose.
- (b) The Company may give notice to a person entitled to a share in consequence of the death or bankruptcy of a member by:
 - (i) serving it personally;
 - (ii) sending it by post addressed to that person by name, or by the title of representative of the deceased or assignee of the bankrupt, or by any like description, at the address (if any) in Australia supplied for this purpose by the person or, if such an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred;
 - (iii) sending it by facsimile to the facsimile number supplied by that person for this purpose or, if such a facsimile number has not been supplied, to the facsimile number to which the notice might have been sent if the death or bankruptcy had not occurred; or

- (iv) sending it by electronic means to the electronic address supplied by that person for this purpose or, if such an electronic address has not been supplied, to the electronic address to which the notice might have been sent if the death or bankruptcy had not occurred.
- (c) A notice to a member whose address for notices is outside Australia must be sent by airmail, facsimile or electronically.
- (d) Where a notice is sent by post, service of the notice shall be deemed to be effected by the proper addressing, prepaying and posting of a letter containing the notice and to have been effected on the business day after the date of posting.
- (e) Where a notice is sent by facsimile, service of the notice shall be deemed to be effected at the time of its successful transmission.
- (f) Where a notice is sent electronically, service of the notice is deemed to be effected at the time that it is sent, unless otherwise provided in this Constitution.
- (g) The fact that a person has supplied a facsimile number, electronic address or other nominated electronic means to the Company for the giving of notices does not oblige the Company to give notices to that person by any of those means.
- (h) 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.
- (i) A notice given to the holder of a share is, despite that person's death, bankruptcy or mental incapacity and regardless of whether the Company is aware of the death, bankruptcy or mental incapacity:
 - (i) duly given in respect of any share held by that person, whether solely or jointly with any other person; and
 - (ii) sufficiently given to the person entitled to the share.
- (j) A notice given to a person who is entitled to be registered as the holder of, or who is entitled to a transfer of, a share is sufficient notice to the holder of the share.
- (k) The date on which a notice is (or is deemed to be) given shall be disregarded for the purpose of calculating periods of notice.
- (l) The signature to any notice to be given by the Company may be written, printed or provided by electronic means.

15.2 Other documents

Clause 15.1 applies, to the extent possible, to the service of any communication, report or other document.

15.3 Electronic communications

Where the Company is required by the Act or this Constitution to:

- (a) give information in writing;
- (b) provide a signature;
- (c) produce a document;
- (d) record information; or
- (e) retain a document,

that requirement is, subject to any provision of the Act, the Listing Rules or this Constitution to the contrary, taken to have been met if the Company uses an electronic communication or an electronic form of the relevant document, and the Company complies with any further requirements of the Electronic Transactions Act, 1999 (Cth) or the Act.

15.4 Payments

The Company may pay any amount payable to a member in respect of that member's share (including, without limitation, a dividend, interest or other money payable in cash in respect of shares) at that person's risk:

- (a) by cheque sent by post to:
 - (i) an address at which, and in a manner in which, the Company may give notice to that member; or
 - (ii) any other address which the member has directed in writing; or
- (b) in accordance with any written direction given by that member, including if a member elects under an arrangement offered by the Company to have such amounts credited directly to a bank account, by crediting that bank account.

16. JURISDICTION AND ENFORCEABILITY

16.1 Jurisdiction

Each holder of a share submits to the non-exclusive jurisdiction of the Courts of New South Wales in relation to any matter arising:

- (a) under this Constitution; or
- (b) between the Company and that holder.

16.2 Proper law

Any matter arising:

- (a) under this Constitution; or
- (b) between the Company and the holder of a share,

shall be determined in accordance with the law of New South Wales.

16.3 Enforceability

- (a) Any provision, or the application of any provision, of this Constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- (b) Any provision, or the application of any provision, of this Constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in any other place.
- (c) If a provision of this Constitution is illegal, ineffective or unenforceable:
 - (i) if the provision would not be illegal, ineffective or unenforceable if a word or words were omitted, that word is or words are severed; and
 - (ii) in any other case, the whole provision is severed,
 and the remainder of this Constitution continues in force.

17. WINDING UP

17.1 Distribution in specie

- (a) If the Company is wound up, a liquidator may, subject to paragraph (b) and with the sanction of a special resolution, divide among the members in kind all or any of the Company's property.
- (b) No person shall be compelled to accept any shares or other securities in respect of which there is any liability.
- (c) For the purpose of a division in accordance with paragraph (a), the liquidator may set a fair value for the property to be so divided and may determine how the division is to be carried out as between the members or classes of members.

17.2 Vesting in trustees

A liquidator may, with the sanction of a special resolution, vest all or any of the property to be divided pursuant to **clause 17.1** in trustees upon such trusts for the benefit of members as the liquidator thinks fit, subject to **clause 17.1(b)**.

17.3 Fee or commission to be approved by general meeting

The Company must not pay any director or liquidator any fee or commission on the sale or realisation of the whole or part of the Company's undertaking or assets unless the Company in general meeting approves. The approval must be given at a meeting convened by notice specifying the fee or commission proposed to be paid.

18. OFFICERS' INDEMNITY AND INSURANCE

18.1 Indemnity

To the maximum extent permitted by law, every officer and former officer of the

Company or of a related body corporate of the Company must be indemnified out of the property of the Company (or of a related body corporate) against any liability (including a liability for legal costs) incurred as a result or in consequence of the holding or performance of that office including:

- (a) in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted; or
- (b) in connection with any application in relation to any such proceedings in which relief is granted under the law to him by the court.

18.2 Insurance

- (a) The board may cause the Company to effect, at the Company's (or a related body corporate's) expense, insurance indemnifying an officer or former officer of the Company or of a related body corporate of the Company against claims arising from the holding or performance of that person's office, to the maximum extent permitted by law.
- (b) A policy of insurance permitted under paragraph (a) must not provide an indemnity which is prohibited by law.
- (c) Any premium paid under paragraph (a) in relation to a director is in addition to, and not regarded as part of, the remuneration determined by members under **clause 7.6(a)**.

18.3 Contract

The board may cause the Company to enter into an agreement with a person referred to in **clauses 18.1 and 18.2** with respect to the matters covered by those clauses. An agreement entered into pursuant to this clause may include provisions relating to rights of access to the books and papers of the Company conferred by the Act or otherwise by law.

19. EMPLOYEE SHARE SCHEMES

Subject to this Constitution, the Act and the Listing Rules, the board may, either itself or (as it determines) consequent upon the approval of the members in general meeting:

- (a) establish a scheme or schemes for the allotment, issue or grant of shares, options or other securities of the Company to or for the benefit of any or all of the employees and officers (including, without limitation, any director including a managing director or other executive director) of the Company or of any related body corporate on such terms and conditions as are considered appropriate including, without limiting the generality of this clause, the allotment, issue or grant to a trustee to be held for the benefit of the relevant employees or officers;
- (b) amend, suspend or terminate any such employee share and/or option scheme; and
- (c) procure the giving of financial assistance in connection with the acquisition of securities of the Company under any such employee share and/or option scheme in any manner permitted by the Act.

20. PROPORTIONAL TAKEOVER APPROVAL

20.1 Special definitions

The following definitions apply in this **clause 20**:

“**Approving Resolution**” means a resolution to approve the Proportional Takeover Bid passed in accordance with **clause 20.5 or clause 20.6**;

“**Associate**” has the meaning given to it by the Act;

“**Bidder**” has the meaning given to it by the Act;

“**Proportional Takeover Bid**” means a takeover bid of the type referred to in s.618(1)(b) of the Act;

“**Resolution Deadline**”, in relation to a Proportional Takeover Bid, means the 14th day before the last day of the period during which the offers under the Proportional Takeover Bid remain open.

20.2 Approving Resolution required

Notwithstanding any other provision of this Constitution, if offers are made under a Proportional Takeover Bid for securities of the Company in accordance with the Act:

- (a) **clauses 20.1 to 20.6** apply;
- (b) the registration of a transfer giving effect to a takeover contract resulting from acceptance of an offer made under the Proportional Takeover Bid is prohibited unless and until an Approving Resolution to approve the bid is passed in accordance with **clause 20.5 or clause 20.6**; and
- (c) the directors must ensure that an Approving Resolution is voted on in accordance with **clauses 20.3 to 20.4** before the end of the day before the Resolution Deadline.

20.3 Procedure for Approving Resolution

The directors may determine whether the Approving Resolution is voted on:

- (a) at a meeting of persons who are entitled to vote on the resolution convened and conducted, subject to the provisions of **clause 20.4**, as if it were a general meeting of the Company convened and conducted in accordance with this Constitution and the Act with such modifications as the directors determine the circumstances require; or
- (b) by means of a postal ballot conducted in accordance with the following procedure:
 - (i) a notice of postal ballot and ballot paper must be sent to all persons who are entitled to vote on the resolution not less than 14 days before the date specified in the notice for closing of the postal ballot, or such lesser period as the directors determine the circumstances require;
 - (ii) the non-receipt of a notice of postal ballot or ballot paper by, or the accidental omission to give a notice of postal ballot or ballot paper to, a

person who is entitled to receive them does not invalidate the postal ballot or any resolution passed under the postal ballot;

- (iii) the notice of postal ballot must contain the text of the resolution and the date for closing of the ballot and may contain any other information the directors consider appropriate;
- (iv) each ballot paper must specify the name of the person who is entitled to vote;
- (v) a postal ballot is only valid if the ballot paper is duly completed and:
 - (A) if the person who is entitled to vote is an individual, signed by the individual or a duly authorised attorney; or
 - (B) if the person who is entitled to vote is a corporation, executed under seal or as permitted by the Act or under the hand of a duly authorised officer or duly authorised attorney;
- (vi) a postal ballot is only valid if the ballot paper and the power of attorney or other authority, if any, under which the ballot paper is signed or a copy of that power or authority certified as a true copy by statutory declaration is or are received by the Company before close of business on the date specified in the notice of postal ballot for closing of the postal ballot at the registered office of the Company, the share registry of the Company or at such other place as is specified for that purpose in the notice of postal ballot; and
- (vii) a person may revoke a postal ballot vote by notice in writing to be received by the Company before the close of business on the date for closing of the postal ballot.

20.4 Persons who are entitled to vote

The only persons who are entitled to vote on the Approving Resolution are those persons who, as at the end of the day on which the first offer under the bid was made, held bid class securities. Each person who is entitled to vote is entitled to 1 vote for each bid class security held by that person at that time.

Neither the Bidder nor any Associate of the Bidder is entitled to vote on the Approving Resolution.

20.5 Approving Resolution passed or rejected

If the Approving Resolution is voted on in accordance with **clauses 20.2 to 20.4** then it is to be taken to have been passed if the proportion that the number of votes in favour of the Approving Resolution bears to the total number of votes on the Approving Resolution is greater than one-half, and otherwise is to be taken to have been rejected.

20.6 Approving Resolution taken as passed

If, as at the end of the day before the Resolution Deadline in relation to a Proportional Takeover Bid, no Approving Resolution has been voted on in accordance with **clauses 20.2 to 20.4**, an Approving Resolution is taken to have been passed in accordance with **clauses 20.2 to 20.4**.

20.7 Limited life of clause

In accordance with the Act, this **clause 20** ceases to have effect on the day 3 years after the later of its adoption or last renewal.