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22 November 2013

The Manager, Company Announcements  
Australian Securities Exchange Limited  
Exchange Centre  
20 Bridge Street  
Sydney NSW 2000

### **Amended Company Constitution**

Attached is the amended Company Constitution adopted by the company following approval by shareholders at the company's annual general meeting held on 21 November 2013.

Yours faithfully,

A handwritten signature in blue ink that reads "Richard Beament". The signature is fluid and cursive, with a large, sweeping flourish at the end.

**Richard Beament**

Manager – Finance & Commercial / Assistant Company Secretary



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**HORIZON OIL LIMITED**

**ABN 51 009 799 455**

**CONSTITUTION**

**Corporations Act  
A Company Limited by  
Shares**

**CONSTITUTION**

**of**

**HORIZON OIL LIMITED  
ABN 51 009 799 455**

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# 1 INTERPRETATION

## 1.1 Definitions

In this Constitution unless the contrary intention appears:

“**ASX**” means Australian Stock Exchange Limited.

“**Business Day**” has the meaning ascribed to that term in the Listing Rules.

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

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

“**Company**” means **Horizon Oil Limited** ABN 51 009 799 455.

“**CS Facility**” has the same meaning as prescribed CS Facility in the Corporations Act.

“**CS Facility Operator**” means the operator of a CS Facility.

“**Director**” includes an alternate Director.

“**Home Branch**” has the meaning ascribed to that term in the Listing Rules.

“**Listed Company**” means a company which has been admitted to the Official List of 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 entered in the register as a member for the time being of the Company.

“**Operating Rules**” means the operating rules of a CS Facility regulating the settlement, clearing and registration of uncertificated shares as amended, varied or waived (whether in respect of the Company or generally) from time to time.

“**Paid**”, in relation to shares and capital, includes credited as paid.

“**Register**” means the register of members of the Company kept pursuant to the Corporations Act.

“**Representative**” means a representative appointed by a member pursuant to section 250D of the Corporations Act.

“**Restricted Securities**” has the meaning ascribed to that term in the Listing Rules.

“**Seal**” means the common seal of the Company and includes any official seal of the Company.

“**Secretary**” means any person appointed to perform all or any of the duties of a secretary of the Company.

“**State**” means the State of Queensland.

## **1.2 Interpretation Generally**

1.2.1 Deleted.

1.2.2 An expression used in a particular Part or Division of the Corporations Act that is given by that Part or Division, a special meaning for the purposes of that Part or Division has, in any of this Constitution that deals with a matter dealt with by that Part or Division, the same meaning as in that Part or Division, unless the contrary intention appears.

1.2.3 A reference to a provision of the Corporations Act includes:

- (a) a reference to that provision as amended; and
- (b) a reference to a corresponding provision contained in any substituted or re-enacted legislation superseding or replacing, in whole or in part, the Corporations Act subject however to the corresponding provision in the substituted or re-enacted legislation being in identical or substantially identical terms to the provision in the Corporations Act.

1.2.4 A reference to a body or entity whether corporate or unincorporated includes, in the event that such body or entity ceases to exist, or is reconstituted, renamed or replaced from time to time, a reference to such other body or entity as the Directors consider most nearly fulfils the objects of the first-mentioned body or entity.

1.2.5 Unless the contrary intention appears:

- (a) words importing, the singular include the plural and vice versa;
- (b) words importing any gender include all genders;
- (c) the term “person” or words importing persons include bodies corporate;
- (d) a reference to writing includes any mode of representing reproducing words in tangible and permanently visible form, and includes facsimile transmission; and
- (e) if a word or phrase is defined, cognate words and phrases have corresponding definition.

1.2.6 Headings are for ease of reference only and do not affect the construction of this Constitution.

## **1.3 Replaceable Rules Excluded**

The replaceable rules contained in the Corporations Act are excluded and shall not apply to the Company except to the extent that they are expressly contained in this Constitution.

## **2 SHARE CAPITAL**

### **2.1 Issue of Shares**

Subject to this Constitution, the Corporations Act, the Listing Rules and any special rights conferred on the holders of any existing shares or class of shares in the Company:

2.1.1 shares and other securities in the Company may be issued or otherwise disposed of by the Directors in such manner as they think fit and any such security may be issued with such preferred, deferred or other special rights or such restrictions as to dividends, voting, return of capital, payment of calls or otherwise, to such persons and on such terms and conditions as the Directors determine; and

2.1.2 the Directors may grant to any person options to take up unissued shares in the Company, in such manner and on such terms and conditions as they think fit.

### **2.2 Preference Shares**

2.2.1 Subject to the Corporations Act and the Listing Rules, the Company may issue preference shares which are, or at the option of the Company are to be, liable to be redeemed, in such manner and on such terms and conditions as the Directors determine.

2.2.2 Holders of preference shares shall have the right to vote at any meeting convened for the purpose of reducing the capital, winding up or sanctioning the sale of the undertaking of the Company, or where the proposition to be submitted to the meeting directly affects their rights and privileges or when the dividend on the preference shares is in arrears for more than 6 months.

2.2.3 The rights conferred upon the holders of securities of any class issued with preferred or other rights shall be deemed to be varied or abrogated by the creation or issue of further securities ranking equally with or in priority to the first-mentioned securities, and the provisions of Article 2.3 shall apply in relation to such deemed variation or abrogation.

### **2.3 Modification of Class Rights**

2.3.1 Subject to section 246B of the Corporations Act, where by reason of the issue of preference shares or otherwise, the share capital of the Company is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied or abrogated in any way or the preference share capital repaid, with the approval by way of a special resolution passed at a separate meeting of the holders of the issued shares of that class or with the consent in writing of the holders of three-quarters of the issued shares of that class.

2.3.2 The provisions of the Corporations Act and this Constitution relating to special resolutions and general meetings shall be deemed to apply so far as they are capable of application (*mutatis mutandis*) to every resolution and meeting referred to in Article 2.3.1.

## **2.4 Commission and Interest**

- 2.4.1 The Company may make payments by way of brokerage or commission to a person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares in the Company or procuring or agreeing to procure subscriptions, whether absolute or conditional, for shares in the Company.
- 2.4.2 The brokerage or commission may be satisfied by payment in cash, by allotment of fully or partly paid shares, by issue of debentures or a combination of all or any of such ways.
- 2.4.3 The Company may pay interest on the share capital of the Company in the circumstances and upon the conditions set out in the Corporations Act, but interest so paid to the holders of preference shares shall be deemed to be in satisfaction wholly or pro tanto of any dividend payable on the preference shares for the period in relation to which the interest is paid.

## **2.5 Recognition of Interest**

- 2.5.1 Except as required by law, the Company shall not recognise a person as holding a share upon any trust.
- 2.5.2 The Company is not bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) 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 of the share.
- 2.5.3 In the case of the death of a member, the legal personal representatives of the deceased, where he is a sole holder, shall be the only persons recognised by the Company as having any title to the shares held by him, and for this purpose the Directors may, require reasonable evidence of death.

## **2.6 Certificates**

- 2.6.1 Subject to Article 2.6.7, a member is entitled free of charge to receive one certificate for the shares of one class registered in his name under the seal or duplicate seal of the Company in accordance with the Corporations Act, but in respect of a share held jointly by several persons, the Company is not bound to issue more than one certificate.
- 2.6.2 Shares shall be allotted and, subject to Article 2.6.7, share certificates relating to them (including replacement certificates issued pursuant to Articles 2.6.3 and 2.6.4) shall be issued and delivered in accordance with:
- (a) the Corporations Act; and
  - (b) the Listing Rules and the Operating Rules whilst ever the Company is a Listed Company.
- 2.6.3 Where a share certificate is stolen, lost or destroyed, upon application to the Company by the owner of the shares in accordance with section 1070D



of the Corporations Act, the Directors shall, subject to that section and Article 2.6.7, and in any other case may, issue a duplicate certificate in lieu of the original. Such replacement certificate shall be clearly endorsed "Issued in lieu of stolen, lost or destroyed Certificate".

- 2.6.4 Where a share certificate is worn out or defaced, upon its production to the Company, the Directors may order it to be cancelled and issue a replacement certificate in lieu thereof.
- 2.6.5 A fee may be charged for the issue of a replacement certificate in the amount determined by the Directors, provided that such fee does not exceed \$10.00.
- 2.6.6 Delivery of a certificate for a share to one of the several joint holders is sufficient delivery to all such holders.
- 2.6.7 Notwithstanding anything to the contrary in this Constitution, the Company shall not be required to, issue a certificate for shares held by a member (whether upon the issue or transfer of the shares) and furthermore may cancel a certificate for shares held by a member without issuing a certificate in its place, in circumstances where the non issue of a certificate for shares is permitted by the Corporations Act and the Listing Rules.
- 2.6.8 Where the Company has determined not to issue share certificates or to cancel existing share certificates, a member shall have the right to receive such statements of the holdings of the member as are required to be distributed to a member under the Corporations Act or the Listing Rules.

## **2.7 Joint Holders**

- 2.7.1 Where two or more persons are registered as the holders of a share, they shall be deemed to hold it as joint tenants with rights of survivorship, subject to the provisions of this Constitution as to joint shareholdings and the following provisions:
  - (a) they and their respective legal personal representatives shall be deemed to be jointly and severally liable to pay all calls, interest or other amounts payable in respect of the share;
  - (b) subject to Article 2.7.1(a), on the death of any one of them, the survivor or survivors shall be the only person or persons whom the Company shall recognise as having any title to the share, and for this purpose the Directors may require reasonable evidence of death; and
  - (c) any one of them may give effectual receipts for any dividend, interest or other amounts payable in respect of the share.

**2.8 Deleted.**

**2.9 Deleted.**

## **2.10 Restricted Securities**

- 2.10.1 Restricted Securities cannot be disposed of during the escrow period except as permitted by the Listing Rules or ASX.

2.10.2 The Company will refuse to acknowledge a disposal (including registering a transfer) of Restricted Securities during the escrow period except as permitted by the Listing Rules or ASX.

2.10.3 During a breach of the Listing Rules relating to Restricted Securities, or a breach of a restriction agreement, the holder of the Restricted Securities is not entitled to any dividend or distribution, or voting rights, in respect of the Restricted Securities.

### **3 CALLS ON SHARES**

#### **3.1 Power to Make Calls**

The Directors may, subject to any conditions of allotment and the Corporations Act, from time to time make such calls as they think fit upon the members in respect of any moneys unpaid on the shares held by them. A call shall be deemed to have been made when the resolution of the Directors authorising such call was passed and may be payable by instalments. Subject to the Listing Rules, a call may be revoked or postponed by the Directors as they think fit. No subsequent call shall be made until after the end of 7 days after the day on which the call made immediately before it is payable.

#### **3.2 Notice of Call**

3.2.1 Notice of a call shall be sent to members upon whom a call is made in accordance with the Corporations Act and the Listing Rules.

3.2.2 The accidental omission to give notice of any call to or the non-receipt of any such notice by any of the members shall not invalidate the call.

#### **3.3 Deemed Call**

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

#### **3.4 Differentiation between Calls**

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

#### **3.5 Shareholder Not Liable to Calls**

The acceptance of a share in the Company, whether by original allotment or by transfer, does not constitute a contract on the part of the person accepting it to pay any calls in respect of the share or any contribution to the debts and liabilities of the Company and such a person is not liable to be sued for any calls or contributions but is not entitled to a dividend upon any such share upon which a call is due and unpaid.

#### **3.6 Payment in Advance of Calls**

The Directors may accept from any member all or any part of the amount unpaid on a share although no part of that amount has been called up. The Directors may

authorise payment by the Company of interest upon the whole or any part of an amount so accepted, until the amount becomes payable, at such rate as is determined by the Directors. No money received in advance of a call shall be received subject to repayment or shall be claimable by any member. The Directors may repay the whole or any part of money paid in advance of a call upon giving the member at least one month's notice.

## **4 PAYMENTS BY THE COMPANY**

### **4.1 Effect of Payments by the Company**

Whenever any law for the time being of any country, state or place imposes or purports to impose any immediate or future or possible liability upon the Company to make any payment, or empowers or purports to empower any government or taxing authority or government official to require the Company to make any payment, in respect of any shares registered in any of the Company's registers as held either jointly or solely by any member or in respect of any dividends, bonuses or other moneys due or payable or accruing due or which may become due or payable to such member by the Company on or in respect of any shares registered as aforesaid, or for or on account or in respect of any member, and whether in consequence of:

- (a) the death of such member,
- (b) the liability of such member for, or the non-payment by such member of, any tax, duty or imposition,
- (c) the non-payment of any estate, probate, succession, death, stamp or other duty by the executor or administrator of such member or by or out of his estate,
- (d) any other act or thing whatsoever whether of like or unlike nature to any of the foregoing,

the Company in every such case (without prejudice to the generality of any other remedy conferred by this Constitution and in addition thereto):

- (e) shall be fully indemnified by such member or his legal personal representative against all liability in respect thereof;
- (f) shall have a lien upon the shares registered in the name of such member and upon all dividends, bonuses and other moneys payable in respect of the shares for all moneys paid by the Company in respect of the said shares or in respect of any dividend, bonus or other money as aforesaid thereon or for or on account or in respect of such member under or in consequence of any such law, together with interest at a rate determined by the Directors thereon from date of payment to date of repayment, and may deduct or set off against any such dividend, bonus or other money payable as aforesaid, any moneys paid by the Company as aforesaid together with interest as aforesaid;
- (g) may recover as a debt due from such member or his legal personal representative, any moneys paid by the Company under or in consequence of any such law and interest thereon at a rate determined by the Directors for the

period aforesaid in excess of any dividend, bonus or other money as aforesaid then due or payable by the Company to such member.

#### **4.2 Other Remedies Not Prejudiced**

Nothing herein contained shall prejudice or affect any right or remedy which any such law may confer or purport to confer on the Company, and as between the Company and every such member, his legal personal representative and estate wheresoever constituted or situate, any right or remedy which such law shall confer or purport to confer on the Company shall be enforceable by the Company.

#### **4.3 Exemption from Lien**

The Board may at any time declare any share to be wholly or in part exempt from the provisions of this Article to such extent as the Board may determine. If the Company registers a transfer of a share upon which it has a lien without giving to the transferee notice of its claim, such share shall be freed and discharged from such lien.

#### **4.4 Enforcement of Lien by Sale**

The Board may sell, in such manner as the Board thinks fit, any share on which the Company has a lien, but no sale shall be made unless a sum in respect of which the lien exists is presently payable nor until the expiration of 14 days after notice in writing stating, and demanding payment of, such part of the amount in respect of which the lien exists as is presently payable has been given to the registered holder for the time being of the share.

#### **4.5 Transfer and Title**

To give effect to any sale of shares pursuant to the Company's lien, the Directors may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of such shares and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale. The holder of the certificate (if any) for any shares so sold shall be bound to deliver the same to the Directors.

#### **4.6 Application of Proceeds of Sale**

The net proceeds of any sale of shares pursuant to the Company's lien shall be received by the Company and applied in or towards payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue if any shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale within 7 business days of receipt of the relevant share certificate (if any).

### **5 FORFEITURE**

#### **5.1 Forfeiture of Shares**

- (a) Any share upon which a call has been made is forfeited if, after the expiration of 14 days after the day for its payment, the call remains unpaid. The forfeited share shall, subject to the provisions of the Corporations Act and the Listing Rules, be offered for sale by public auction at the Company's Home Branch not more than 6 weeks after the date on which the call is payable.

- (b) Such sale shall be advertised not less than 14 days and not more 21 days before the day appointed for the sale in a daily newspaper circulating generally throughout Australia.
- (c) At any sale by auction, a share forfeited for non-payment of any call may, if the Directors so determine, be offered for sale and sold credited as paid up to the sum of the amount paid up on the share at the time of forfeiture and the amount of the call and the amount of any other calls becoming payable on or before the day of the sale. The following must be terms of the auction:
  - (i) settlement must be effected on the day of the auction or, if the purchaser chooses, the next day on which banks are open for business; and
  - (ii) the shares must not be offered in parcels larger than 10% of the total number to be offered.
- (d) The proceeds of sale shall be applied in payment of:
  - (i) first, the expenses of the sale;
  - (ii) second, any expenses necessarily incurred in respect of the forfeiture; and
  - (iii) third, the calls then due and unpaid,and the balance (if any) shall be paid to the member whose share has been so sold, on the member delivering to the Company the share certificate (if any) that relates to the forfeited share. Until the member is so paid, the balance (if any) shall be held in trust.
- (e) If a share belonging to a person has been forfeited, the person may, at any time up to or on the business day immediately before the day upon which it is intended to sell the share, redeem the share at any time up to or on the last business day before the proposed sale, by paying to the Company:
  - (i) all calls due on the share; and
  - (ii) if the Company so requires, a portion (calculated on a pro rata basis) of all costs and expenses incurred by the Company in respect of the forfeiture and of any proceeding that has been taken in respect of the forfeiture,and upon such a payment, the person is entitled to the share as if the forfeiture had not occurred.
- (f) Forfeited shares held in trust by Directors shall not be disposed of to Directors or any person who for the purpose of the Corporations Act would be regarded as a person associated with any Director, except where an offer on the same terms and conditions of all forfeited shares of the one class has been made to members. Directors and their associates may only take up those forfeited shares not taken up by members and offer on the same terms and conditions as given to members and within 1 month of the closing of that offer.

- (g) The Directors may, in the case of a share advertised for sale as forfeited for non payment of a call, fix a reserve price not exceeding the sum of the amount of the call due and unpaid on the share at the time of forfeiture and the amount of any other calls becoming payable on or before the date of the sale. If a bid at least equal to the reserve price so fixed is not made for the share, the share may be withdrawn from sale. A share so withdrawn from sale or a share for which no bid is received at the sale shall be held by the Directors in trust for the Company and shall be disposed of in such manner as the Directors may determine, but, at any meeting of the Company, no person is entitled to any vote in respect of the shares so held by the Directors in trust.
- (h) A call does not have any effect upon any forfeited share that is held by or in trust for the Company pursuant to Part 2H.3 of the Corporations Act, but a share, when it is reissued or sold by the Company, may be credited as paid up to such amount, as the Directors so determine.

## **5.2 Notice of Forfeiture**

When any share is so forfeited, notice of the forfeiture shall be given to the person in whose name it stood immediately prior to the forfeiture and an entry of the forfeiture with the date thereof shall forthwith be made in the register. No forfeiture shall be invalidated by any failure to give such notice or make such entry.

## **5.3 Dealing with Forfeited Shares**

A forfeited share shall be deemed to be the property of the Company and the Directors may sell, re-allot or otherwise dispose of it.

## **5.4 Annulment of Forfeiture**

With the consent of the person in whose name any shares stood immediately prior to their forfeiture or of the person entitled to the shares by reason of his death or bankruptcy, the Directors may, before any forfeited shares are sold, re-allotted or otherwise disposed of and while the shares are not under offer, annul the forfeiture upon such conditions as it thinks fit.

## **5.5 Extinction of Liability**

The forfeiture of a share shall involve the extinction at the time of forfeiture of all interest in and claims and demands against the Company in respect of the share and all other rights and liabilities incidental to the share as between the member whose share is forfeited and the Company, except only such of those rights and liabilities as are by this Constitution expressly saved or as are by the Corporations Act given or imposed in the case of past members.

## **5.6 Evidence and Title**

A certificate in writing under the seal and an entry in the minute book of the Company that a share has been duly forfeited, re-allotted or sold in accordance with this Constitution shall be conclusive evidence of those facts as against all persons claiming to be entitled to such share. The Company may receive the consideration (if any given) for the share on any sale, re-allotment or other disposition thereof and the Directors may appoint a person to execute a transfer of the share sold. Upon registration of the person to whom the share is sold, re-allotted or otherwise disposed of, he shall be deemed the holder thereof discharged from all calls or other money due in respect of the share prior to such purchase or allotment, and he shall not be

bound to see to the application of the purchase money or consideration nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, re-allotment or disposal of the share. The person whose share has been forfeited shall be bound to deliver the certificate for such share to the Company.

## **5A PROCEDURE FOR SALE OR BUY BACK OF NON-MARKETABLE PARCELS**

### **5A.1 Company May Sell Shares**

Notwithstanding Article 5A.2, the Directors may cause the Company to sell a Member's shares if they hold less than a Marketable Parcel of shares and the following procedures are observed:

- (a) The Directors send a Member who on the date of the notice holds less than a Marketable Parcel of shares, a notice which:
  - (i) explains the effect of this Article 5A.1;
  - (ii) allows the Member to elect to be exempt from this Article 5A.1 (a form of election for that purpose must be sent with the notice); and
  - (iii) specifies a date at least 6 weeks from the date the notice is sent by which the Member can make the election in Article 5A.1(a)(ii).
- (b) The Member is taken to have irrevocably and for valuable consideration appointed the Company as agent and attorney to do anything in Article 5A.1(c) if at 5.00pm Sydney time, on the date specified in the notice:
  - (i) the Company has not received a form from the Member electing to be exempt from the provisions of this Article 5A.1; and
  - (ii) the Member has not increased his or her parcel to a Marketable Parcel.
- (c) The Company may:
  - (i) sell the shares which make up less than a Marketable Parcel as soon as practicable at a price which the Directors consider to be the best price reasonably obtainable for the shares at the time that they are sold; and
  - (ii) send to the Member the proceeds of sale after the Company has received any certificate related to the shares (or is satisfied that the certificate is lost or destroyed).
- (d) The costs and expenses of a sale under this Article 5A.1, including brokerage and stamp duty, if any, are payable by the purchaser or, if the Corporations Act permits, the Company.

## **5A.2 Company May Buy-Back Shares**

Notwithstanding Article 5A.1, the Directors may cause the Company to buy-back a Member's shares, and cancel those shares, if they hold less than a Marketable Parcel of shares and the following procedures are observed:

- (a) The buy-back does not materially prejudice the Company's ability to pay its creditors.
- (b) The Company complies with the provisions of the Corporations Act.
- (c) The Directors send a Member who on the date of the notice holds less than a Marketable Parcel of shares, a notice which:
  - (i) explains the effect of this Article 5A.2;
  - (ii) allows the Member to elect to be exempt from this Article 5A.2 (a form of election for that purpose must be sent with the notice); and
  - (iii) specifies a date at least 6 weeks from the date the notice is sent by which the Member can make the election in Article 5A.2(c)(ii).
- (d) The Member is taken to have irrevocably and for valuable consideration appointed the Company as agent and attorney to do anything in Article 5A.2(e) if at 5.00pm Sydney time, on the date specified in the notice:
  - (i) the Company has not received a form from the Member electing to be exempt from the provisions of this Article 5A.2; and
  - (ii) the Member has not increased his or her parcel to a Marketable Parcel.
- (e) The Company may:
  - (i) buy-back shares the which make up less than a Marketable Parcel as soon as practicable at a price which the Directors consider to be the best price reasonably obtainable for the shares at the time that they are bought-back; and
  - (ii) send to the Member the proceeds of sale after the Company has received any certificate related to the shares (or is satisfied that the certificate is lost or destroyed).
- (f) The costs and expenses of the buy-back under this Article 5A.2 are payable by the Company.

## **5A.3 General**

- (a) A notice to a member under Article 5A.1(a) and Article 5A.2(c) may only be given once in a 12 month period and may not be given during the offer period of a takeover bid for the Company.
- (b) If a takeover bid for the Company is announced after a notice is given but before an agreement for the sale of the shares or a transfer of shares under a buy back is entered into, this Article 5A ceases to operate for those shares.



After the offer period of the takeover bid closes a new notice under Article 5A.1 or 5A.2 may be given.

- (c) If a Member's holding becomes a Marketable Parcel after notice is given but before an agreement for sale of the shares or a transfer of shares under a buy back is entered into, the Directors may decide that this Article 5A no longer applies to that Member.
- (d) Before a sale is effected under this Article 5A, the Directors may revoke a notice or suspend or terminate the operation of this Article 5A either generally or in specific cases.

#### **5A.4 Definition**

In this Article 5A, "Marketable Parcel" has the same meaning as in the Listing Rules.

## **6 TRANSFER OF SHARES**

### **6.1 Transfers**

#### **6.1.1 Participation in Computerised or Electronic Systems**

- (a) The Directors may do anything they consider necessary or desirable and which is permitted under the Corporations Act and the Listing Rules to facilitate the participation by the Company in any computerised or electronic system established or recognised by the Corporations Act or the Listing Rules for the purposes of facilitating dealings in shares or securities.

#### **6.1.2 Form of Transfers**

- (1) Subject to this Constitution, a member may transfer all or any of the member's shares by:
  - (a) any computerised or electronic system established or recognised by the Listing Rules or the Corporations Act for the purpose of facilitating the clearing and settlement of transactions in shares or other securities, including a transfer that may be effected pursuant to the Operating Rules or other electronic transfer process; or
  - (b) an instrument in writing in any usual or common form or in any other form that the Directors approve.
- (2) Except as provided by the Operating Rules, the transferor remains the holder of the shares and the member of the Company in respect of those shares until the name of the transferee is entered in the register.
- (3) The Company must comply with such obligations as may be imposed on it by the Listing Rules, the Operating Rules and any applicable legislation (including stamp duty legislation) in connection with any transfer of shares.

### **6.1.3 Registration Procedure**

Where an instrument of transfer referred to in Article 6.1.2 is to be used by a member to transfer shares, the following provisions apply:

- (a) The instrument of transfer must be executed by or on behalf of both the transferor and the transferee unless it is a sufficient transfer of marketable securities within the meaning of the Corporations Act.
- (b) The stamped instrument of transfer shall be left at the share registry of the Company for registration accompanied by the certificate for the shares to be transferred (if any) and such other evidence as the Directors may require to prove the title of the transferor and his right to transfer the shares.
- (c) A fee shall not be charged on the registration of a transfer of shares or other securities.
- (d) On registration of a transfer of shares, the Company must cancel the old certificate (if any).

### **6.1.4 Transfers and Certificates**

Shares shall be transferred and, subject to Article 2.6.7, share certificates relating thereto shall be issued and delivered in accordance with:

- (a) the Corporations Act; and
- (b) the Listing Rules whilst ever the Company is a Listed Company.

### **6.1.5 Power to Refuse to Register**

(1) The Directors may only refuse to register any transfer of shares where:

- (a) the Listing Rules permit the Company to do so; or
- (b) the Listing Rules require the Company to do so;

and shall refuse to register any transfer of shares where the transfer is a transfer of Restricted Securities which is or might be in breach of the Listing Rules or any escrow agreement entered into by the Company in relation to such Restricted Securities pursuant to the Listing Rules.

(2) The Directors may request any applicable CS Facility Operator to apply a holding lock to prevent a transfer of shares in the Company from being registered on the CS Facility's subregister only if:

- (a) the Listing Rules permit the Company to do so; or
- (b) the Listing Rules require the Company to do so.

- (3) Where the Directors refuse to register a transfer, they shall send notice of the refusal and the precise reasons for refusal to the transferee, the holder and the lodging broker (if any) in accordance with the Listing Rules. Failure to give such notice does not invalidate the decision of the Directors.

#### **6.1.6 Non-interference with Registration**

Notwithstanding any other provision contained in this Constitution, the Company may not prevent or interfere with the registration of a transfer of shares in the Company in a manner which is contrary to the provisions of any of the Listing Rules, the Operating Rules or the Corporations Act.

#### **6.1.7 Deleted.**

### **6.2 Approval Required for Proportional Takeover Bid**

- 6.2.1 In this Article the following words shall have these meanings:

“**Bidder**” means the person making the offer pursuant to the Proportional Takeover Bid. Eligible Shareholders means those persons described in Article 6.2.3.

“**Meeting**” means a meeting of the Eligible Shareholders convened and conducted by the Company.

“**Postal Ballot**” means a postal ballot conducted by the Company in accordance with Article 6.2.7.

“**Prescribed Resolution**” means a resolution to approve a Proportional Takeover Bid in accordance with the provisions of this Article.

“**Proportional Takeover Bid**” has the meaning given in section 9 of the Corporations Act.

“**Relevant Day**” means the day that is 14 days before the end of the period during which the offers under the Proportional Takeover Bid remain open.

“**Shares**” means shares included in the class of shares the subject of the Proportional Takeover Bid.

- 6.2.2 Subject to the Listing Rules and the Operating Rules, the registration of a transfer giving effect to a contract resulting from the acceptance of an offer made under a Proportional Takeover Bid is prohibited unless and until the Prescribed Resolution is passed. The Directors shall ensure that the Prescribed Resolution is voted on before the Relevant Day.

- 6.2.3 The persons entitled to vote on the Prescribed Resolution shall be those persons (other than the Bidder or its Associates) who, as at the end of the day on which the first offer under the Proportional Takeover Bid was made, held Shares. On a Prescribed Resolution, Eligible Shareholders shall be entitled to one vote for each Share held.

- 6.2.4 The Prescribed Resolution shall be voted on in either of the following ways as determined by the Directors:

- (a) at a Meeting; or
- (b) by means of a Postal Ballot.

6.2.5 The Prescribed Resolution shall be taken to have been passed if the proportion that the number of votes in favour of the Prescribed Resolution bears to the total number of votes on the Prescribed Resolution is greater than one-half and otherwise shall be taken to have been rejected.

6.2.6 If the Directors determine that the Prescribed Resolution shall be voted on at a Meeting, then the provisions of this Constitution that apply to a general meeting of the Company shall, with such modifications as the circumstances require, apply to the Meeting.

6.2.7 If the Directors determine that the Prescribed Resolution shall be voted on by means of Postal Ballot:

- (a) The Directors shall despatch to the Eligible Shareholders:
  - (i) a notice proposing the Prescribed Resolution;
  - (ii) a ballot paper for the purpose of voting on the Prescribed Resolution;
  - (iii) a statement setting out details of the Proportional Takeover Bid; and
  - (iv) a memorandum explaining the postal ballot procedure which is to govern voting in respect of the Prescribed Resolution.
- (b) A vote recorded on a ballot paper shall not be counted, for the purposes of determining whether or not the Prescribed Resolution is passed, unless the ballot paper is:
  - (i) correctly completed and signed under the hand of the Eligible Shareholder or of his attorney duly authorised in writing or if the Eligible Shareholder is a body corporate under its common or official seal or the hand of its attorney so authorised; and
  - (ii) received at the registered office of the Company on or before 5.00pm on the date specified for its return in the notice proposing the Prescribed Resolution such date to be not less than 18 days before the end of the period during which offers under the Proportional Takeover Bid remain open.
- (c) On the Business Day following the date specified for the return of ballot papers in the notice proposing the Prescribed Resolution, the Directors shall count the ballot papers returned and determine whether the Prescribed Resolution has been passed or rejected and shall forthwith upon completion of counting disclose the results of the ballot and the Prescribed Resolution shall

accordingly be deemed to have been voted on upon the date of such declaration.

6.2.8 Where a Prescribed Resolution is voted on before the Relevant Day the Company shall, on or before the Relevant Day:

- (a) give to the Bidder; and
- (b) serve on each notifiable securities exchange,

a notice in writing stating that the Prescribed Resolution has been so voted on and that the resolution has been passed, or has been rejected, as the case requires.

6.2.9 Where, as at the end of the day prior to the Relevant Day no resolution to approve the Proportional Takeover Bid has been voted on, a Prescribed Resolution shall be deemed to have been passed in accordance with this Article.

6.2.10 Where a Prescribed Resolution is voted on prior to the Relevant Day and is rejected:

- (a) Notwithstanding section 652A of the Corporations Act, all offers under the Proportional Takeover Bid that have not, as at the end of the Relevant Day, been accepted or have been accepted and from whose acceptance binding contracts have not resulted, shall be deemed to be withdrawn at the end of the Relevant Day;
- (b) The Bidder shall, forthwith after the end of the Relevant Day, return to each person who has accepted any of the offers any documents that were sent by the person to the Bidder with the acceptance of the offer;
- (c) The Bidder is entitled to rescind, and shall, forthwith after the end of the Relevant Day, rescind, each contract resulting from the acceptance of an offer made under the Proportional Takeover Bid; and
- (d) A person who has accepted an offer made under the Proportional Takeover Bid is entitled to rescind the contract (if any) resulting from that acceptance.

6.2.11 This Article shall cease to have effect on the third anniversary of the date of adoption of this Article unless it is sooner omitted by amendment to this Constitution or renewed in the manner provided by section 648G(4) of the Corporations Act.

## **7 TRANSMISSION OF SHARES**

### **7.1 Death or Bankruptcy**

A person becoming entitled to a share in consequence of the death or bankruptcy of a member or a vesting order may, upon producing such evidence as is properly

required by the Directors to establish such entitlement, be registered himself as the holder of the share.

## **7.2 Estates**

A person lawfully administering the estate of a member under the provisions of a law relating to mental health or the administration of the estates of patients or infirm persons may, upon producing such evidence as is properly required by the Directors in that regard, either be registered himself as the holder of the share or subject to the provisions of this Constitution as to transfers, transfer the share to some other person nominated by him.

## **7.3 Effect of Death, Bankruptcy or Infirmary**

Subject to Articles 10.1.5, 15.3.5 and 18.6, a person entitled to be registered as the holder of a share or to transfer the share to some other person under Articles 7.1 or 7.2, shall be entitled to the same dividends and other advantages and to the same rights (whether in relation to meetings of the Company or to voting or otherwise) as the registered holder would have been entitled to if the events mentioned in Articles 7.1 or 7.2 had not occurred.

# **8 INCREASE, REDUCTION AND ALTERATION OF CAPITAL**

## **8.1 Alteration of Capital**

The Company may alter the provisions of its Constitution in accordance with the provisions of the Corporations Act.

## **8.2 Rights of New Shares**

8.2.1 Unless otherwise provided by these Articles or the terms of issue, new shares created shall be deemed to be part of the original capital and shall rank equally with and carry the same rights as the existing shares and shall be subject to the provisions of these Articles.

8.2.2 The Directors may before the issue of any new shares determine that they shall be offered in the first instance to all the members of any class of shares in proportion to the amount of capital held by them or make any other provision not otherwise inconsistent with this Constitution as to the issue and allotment of the new shares.

## **8.3 Reduction of Capital**

Subject to the Corporations Act and the Listing Rules, the Company may by special resolution reduce its share capital, any capital redemption reserve, any or any other reserve in any way.

**8.4 Deleted.**

## **9 GENERAL MEETINGS**

### **9.1 Convening and Notice of General Meetings**

9.1.1 The Company shall, in addition to any other meeting held by the Company, hold a general meeting, to be called the annual general meeting, in accordance with the provisions of the Corporations Act.

9.1.2 A general meeting shall be convened on such requisition as is provided for by sections 249D, 249E and 249F of the Corporations Act, but save as provided by those sections of the Corporations Act, a member has no right to call a meeting of the Company. A requisition pursuant to section 249D may be deposited by facsimile transmission.

9.1.3 The Directors may whenever they think fit, convene a general meeting of the Company or a meeting of any class of members of the Company.

9.1.4 Subject to the provisions of the Corporations Act as to shorter notice, at least 28 days' notice shall be given in writing to each member entitled to attend general meetings or a meeting of a class of members of the Company, as the case may be.

9.1.5 A notice convening a meeting of the Company or of any class of members shall specify:

- (a) the place, day and hour of the meeting;
- (b) general nature of the meeting's business; and
- (c) if a special resolution is to be proposed at the meeting the intention to propose the special resolution and state the resolution,

and, if a member is entitled to appoint a proxy, set out the following information:

- (d) a member entitled to attend and vote is entitled to appoint not more than 2 proxies;
- (e) where more than one proxy is appointed, each proxy must be appointed to represent a specified proportion of the member's voting rights;
- (f) a proxy need not be a member; and
- (g) a place and fax number for receipt of proxy appointments.

9.1.6 Except in the case of a meeting convened pursuant to section 249D, 249E or 249F of the Corporations Act, the Directors may, by notice in writing to the members, postpone any meeting which has been convened to a date specified in such notice, change the place of the meeting or may cancel the holding of such a meeting, provided such notice is:

- (a) published in a daily newspaper circulating in Australia;
- (b) given to ASX; or
- (c) subject to the Corporations Act and the Listing Rules, given in any other manner determined by the Directors.

9.1.7 The accidental omission to give notice of any general meeting to or the non-receipt of any such notice by any person entitled to be so notified, shall not invalidate the meeting or any resolution passed at that meeting.

## **9.2 Proceedings at General Meetings**

### **9.2.1 Business and Quorum**

- (a) The business of an annual general meeting is to receive and consider the profit and loss account, the balance sheet and the reports of the Directors and the auditor of the Company, to elect Directors in the place of those retiring, to declare dividends, to fix the fees of the Directors and to transact any other business which under this Constitution or by law ought to be transacted at an annual general meeting. All other business transacted at an annual general meeting and all business transacted at another general meeting shall be deemed special. No special business shall be transacted at any general meeting except as has been specified in the notice convening it.
- (b) The number of members whose presence is necessary to constitute a quorum at any general meeting of the Company is 3 members present in person or by proxy, attorney or representative.
- (c) 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.
- (d) If a quorum is not present within 15 minutes after the time appointed for a meeting or such longer period as the Chairman of the meeting may allow, the meeting:
  - (i) if convened upon requisition of members pursuant to section 249D of the Corporations Act, shall be dissolved;
  - (ii) in any other case, shall stand adjourned to the same day in the next week at the same time and place or to such other day, time and place as the Directors determine.
  - (iii) If at the adjourned meeting a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, those present (being not fewer than 2) shall constitute a quorum. If fewer than 2 members are present within 15 minutes after the time appointed



for the adjourned meeting, the adjourned meeting shall be dissolved.

- (e) The Chairman's ruling on all matters relating to the order of business, procedure and conduct of a general meeting shall be final and no motion of dissent from such a ruling shall be accepted.

### **9.2.2 Chairman**

- (a) The Chairman of Directors shall preside at every general meeting of the Company but where he is not present within 15 minutes after the time appointed for a meeting or is unwilling to act or has signified that he will not be present or willing to act, the following shall preside as Chairman of the meeting, in the following order of entitlement the Deputy Chairman; a Director chosen by the Directors present; the only Director present; a member present in person or by proxy, attorney or representative chosen by a majority of the members present in person or by proxy, attorney or representative.
- (b) In the case of an equality of votes, the Chairman of the meeting has, both on a show of hands and at a poll, a casting vote in addition to his deliberative vote (if any).

### **9.2.3 Demand For a Poll**

- (a) Every question submitted to a meeting shall be decided by a show of hands by the members who are present in person or by proxy, attorney or representative unless, before or upon the declaration of the result of the show of hands, a poll is demanded by:
  - (i) the Chairman of the meeting;
  - (ii) at least 5 members entitled to vote on the resolution; or
  - (iii) members with at least 5% of the votes that may be cast on the resolution on a poll.
- (b) Unless a poll is so demanded, a declaration by the Chairman of the meeting that the resolution has been carried or carried unanimously or without dissent or by a particular majority or lost and an entry to that effect in the minutes of the meeting shall be conclusive evidence of its contents and it shall not be necessary to prove the number or proportion of votes cast in favour of or against the resolution.
- (c) Where a poll is duly demanded, it shall be taken in such manner and at such time and place and at once or after an interval or adjournment or otherwise as the Chairman of the meeting directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

- (d) A poll shall not be demanded on the election of a Chairman of a meeting or on the question of adjournment of a meeting. A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.
- (e) The demand for a poll may be withdrawn.

#### **9.2.4 Adjournment**

- (a) The Chairman of a meeting may with the consent of the meeting, adjourn the meeting from time to time and place to place but the only business that may be transacted at an adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- (b) Where a meeting is adjourned for more than 21 days, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (c) Except as provided in Article 9.2.4(b), it is not necessary to give any notice of any adjournment of or the business to be transacted at an adjourned meeting.

## **10 VOTES OF MEMBERS**

### **10.1 Right to Vote**

- 10.1.1 An entitlement to receive notice of general meetings of the Company shall confer on members the right to attend thereat.
- 10.1.2 Subject to this Constitution, the Corporations Act, the Listing Rules and any rights or restrictions attached to or affecting any class of shares, , on a show of hands each person present as a member, proxy, attorney or representative has one vote and on a poll each member present in person or by proxy, attorney or representative has:
  - (a) one vote for each fully paid share held by him; and
  - (b) in respect of each partly paid share held by him, a vote pro rata to the proportion of the total issue price then paid up on each such share.
- 10.1.3 In the case of joint holders of a share, the vote of the senior who tenders a vote, whether in person or by proxy, attorney or representative, shall be accepted to the exclusion of the votes of other joint holders and for this purpose, seniority shall be determined by the order in which the names stand in the register, but the other or others of the joint holders are entitled to be present at general meetings. Several legal personal representatives of a deceased member in whose sole name a share stands shall for the purposes of this Article 10.1.3 be deemed joint holders of the share.

- 10.1.4 Where 2 proxies have been appointed by a member, the proxy first-mentioned in the instrument appointing the proxy shall have the right to vote on a show of hands.
- 10.1.5 A person entitled under Article 7 to transfer a share may vote at a meeting or adjourned meeting or on a poll in respect of that share as if he were the registered holder of it if:
- (a) the Directors have previously admitted his right to vote at that meeting or adjourned meeting or on that poll in respect of the share; or
  - (b) he satisfies the Directors of his right to a transfer of the share not less than 48 hours before the time appointed for the meeting, adjourned meeting or poll at or on which he proposes to vote in respect of the share.
- 10.1.6 Objection shall not be raised to the right of a person to attend or vote at a meeting or adjourned meeting or to vote on a poll except at that meeting or adjourned meeting or when that poll is taken and every vote not disallowed at the meeting or adjourned meeting or when the poll is taken shall be deemed valid for all purposes. In the case of a dispute as to the admission or rejection of a vote, the Chairman of the meeting shall decide the matter and his decision shall be final and conclusive.
- 10.1.7 A member is not entitled to attend or vote at a general meeting unless all calls and other sums presently payable by him in respect of shares in the Company have been paid. The prohibition shall only affect shares in respect of which moneys are due.
- 10.1.8 In the event of a breach of any escrow agreement entered into by the Company pursuant to the Listing Rules in relation to Restricted Securities, the holder of the Restricted Securities shall not be entitled to vote at a general meeting and shall not become entitled to vote at a general meeting until the breach has been remedied.

## **10.2 Proxies and Attorneys**

- 10.2.1 A member entitled to attend and vote at a meeting of the Company or of any class of members of the Company is entitled to appoint a person (whether members or not) as his proxy to attend and vote in his stead at the meeting and a proxy has the same right as the member to speak at the meeting.
- 10.2.2 If a member is entitled to 2 or more votes, the member may appoint 2 proxies. Where a member appoints 2 proxies, the appointment may specify the proportion or number of votes each proxy may exercise. If the appointment does not do so, each proxy may exercise half the member's votes. Fractions of votes will be disregarded.
- 10.2.3 An instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or if the appointor is a body corporate under its common or official seal or the hand of a director, manager or secretary or its attorney duly authorised in writing.

- 10.2.4 Subject to this Constitution, the Corporations Act and the Listing Rules, an instrument appointing a proxy shall be in a form acceptable to the Directors.

10.2.5 An instrument appointing a proxy:

- (a) shall, unless the instrument expressly provides otherwise, be deemed to confer authority to agree to a meeting being convened by shorter notice than is required by the Corporations Act or by this Constitution and to a resolution being proposed and passed as a special resolution at a meeting of which less than 28 days notice has been given, and shall also be deemed to confer authority to demand or join in demanding a poll; and
- (b) may specify the manner in which the proxy is to vote in respect of a particular resolution and where the instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.

10.2.6 A member may:

- (a) by power of attorney duly executed in the presence of at least one witness and (if necessary) duly stamped, appoint an attorney (whether a member or not) to act on his behalf at all or any meetings of the Company or of any class of members;
- (b) if it is a body corporate, appoint a representative (whether a member or not) to act on its behalf at all or any meetings of the Company or of any class of members.

10.2.7 Subject to the Corporations Act, in order to be effective, an instrument appointing an attorney or representative pursuant to Article 10.2.6 or an instrument appointing a proxy and any power of attorney or other authority under which the instrument of proxy is executed (or a copy of the power or the authority notarially certified) together with such evidence of due stamping, execution and non-revocation as the Directors may require, must be deposited at or forwarded by facsimile transmission to the registered office of the Company or such other place as is specified by the Company in the notice of meeting or instrument of proxy, not less than 48 hours before the time appointed for the meeting or adjourned meeting.

10.2.8 A vote cast by a proxy, attorney or representative is valid notwithstanding the previous revocation of his authority by the death or unsoundness of mind of his principal or otherwise and notwithstanding the transfer of the shares in respect of which the vote is cast, unless an intimation in writing of the revocation or transfer has been received by the Company at the registered office before commencement of the meeting or adjourned meeting or poll at which the instrument, authority or certificate is to be used or the power is to be exercised.

## **11 DIRECTORS**

### **11.1 Appointment of Directors**

- 11.1.1 The Company may appoint a person as a director by resolution passed in general meeting. Unless otherwise determined by the Company in general meeting, the number of Directors shall be not less than 3 or more than 8.
- 11.1.2 Each Director shall be a natural person.
- 11.1.3 A Director (including an alternate Director) is not required to hold any shares in the capital of the Company.
- 11.1.4
- (a) Subject to Article 11.1.5, the Company may, at the meeting at which a Director retires, by ordinary resolution fill the vacated office by electing a person to that office. If the vacated office is not so filled, the retiring Director shall, if offering himself for re-election and not being disqualified under the Corporations Act or this Constitution from holding office as a Director, be deemed to be re-elected unless at that meeting:
    - (i) it is expressly resolved not to fill the vacated office; or
    - (ii) a resolution for the re-election of that Director is put and lost.
  - (b) Subject to Article 11.1.5, the Company may, at any annual general meeting or at any general meeting, by ordinary resolution fill up any other vacancies in the offices of Directors, including any casual vacancies not filled by the Directors.
- 11.1.5 A person (other than a retiring Director or a person appointed in accordance with Article 11.1.7) is not eligible to be elected as a Director at a general meeting, unless a member intending to propose him, has at least 30 Business Days before the meeting left at the registered office of the Company, a notice in writing duly signed by nominee, giving his consent to the nomination and signifying his candidature for the office or signed by the member giving notice of intention to propose him. Any nomination must be seconded by a member of the Company.
- 11.1.6 Notice of each candidature shall at least 7 days prior to the meeting at which the election is to take place, be given to all members.
- 11.1.7 The Directors may at any time appoint any person to be a Director either to fill a casual vacancy or as an addition to the existing Directors but so that the total number of Directors shall not at any time exceed the number determined in accordance with this Constitution.
- 11.1.8 Any Director appointed in accordance with Article 11.1.7 shall (unless in the meantime he has been appointed a managing Director) hold office only until the next following general meeting and shall then be eligible for re-election.

## 11.2 Remuneration and Expenses

11.2.1 Subject to Article 11.2.2, the Directors shall be paid by way of fees for their services as Directors out of the funds of the Company:

- (a) such rate per annum as the Company in general meeting, determines; or
- (b) such aggregate sum not exceeding the maximum sum as the Company in general meeting determines, to be divided among them in such proportion and manner as they agree or in default of agreement, equally,

**PROVIDED** that this Article 11.2.1 shall not have application to the determination of remuneration payable from time to time to managing Directors or other executive Directors.

11.2.2 The non-executive Directors' fees for their services as Directors determined in accordance with Article 11.2.1, shall be by fixed sum and not a commission on or percentage of profits or operating revenue.

11.2.3 All Directors' fees shall accrue on a day to day basis and be apportionable accordingly.

11.2.4 If required by law, the Company may make contributions to a fund for the purpose of making provision for or obtaining superannuation benefits for a Director, and any such contributions will be included in determining the amount of the Director's remuneration under this Article 11.

11.2.5 The Directors' fees shall not be increased except with the prior approval of the Company in general meeting where particulars of the amount of the proposed increase and the new maximum sum that may be paid have been given to the members in the notice convening the meeting.

11.2.6 Where a Director (other than a managing Director or executive Director) being, willing renders or is called upon to perform extra services or to make any special exertions in going or residing outside the State or otherwise for the Company, the Directors may arrange with that Director, a special fee or remuneration by payment of a stated sum of money determined by the Directors and that special fee or remuneration may be either in addition to or in substitution for his fees or remuneration or his share in the fees or remuneration provided for in this Constitution.

11.2.7 A Director shall, in addition to his fees or remuneration or his share in the fees or remuneration provided for in this Constitution, be reimbursed out of the funds of the Company, such reasonable travelling, accommodation and other expenses as he may incur when travelling to or from and attending meetings of the Directors or a committee of Directors or when otherwise engaged on the business of the Company.

11.2.8 In addition to any other fees or remuneration otherwise provided by this Constitution, on or after a Director ceases to hold office by reason of retirement, death or otherwise, the Directors shall have the power to pay him, or in the case of his death, his widow, dependants or legal personal

representatives, such sum as the Directors shall think fit, but in any event, not exceeding the sum permitted by or approved in accordance with the Corporations Act and the Listing Rules, and such sum may be in the form of a lump sum or be paid by instalments.

### **11.3 Vacation of Office and Conflict of Interest**

11.3.1 In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act, the office of a Director becomes vacant if he:

- (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 or refuses to act;
- (c) ceases to hold office as an executive of the Company (in the case of an executive Director); or
- (d) is absent from the meetings of the Directors for a continuous period of 6 calendar months without special leave of absence from the Directors and the Directors resolve that his office shall be vacated, but attendance by his alternate shall be deemed to be attendance by him for the purposes of this Article 11.3.1(c).

11.3.2 A Director (including an alternate Director) in his capacity as such, shall not vote in respect of any contract or arrangement or proposed contract or arrangement in which he has, directly or indirectly, a material interest and shall not be present while the matter is being considered at a meeting of Directors unless permitted to do so in accordance with the Corporations Act and the Listing Rules. The provisions of section 195 of the Corporations Act shall apply in the ease of any such material interest.

11.3.3 A Director may, notwithstanding his office as such and the fiduciary relationship established by that office:

- (a) hold any other office or place of profit (except that of auditor of the Company) in the Company or in any body corporate in which the Company is a member or otherwise interested on such terms as the Directors may determine;
- (b) enter into a contract or arrangement with the Company as vendor, purchaser, underwriter or otherwise and may participate in any association, institution, fund, trust, scheme or convenience for past or present employees or Directors of the Company; and
- (c) retain for his own benefit, any profit arising from any such other office or place of profit, or from any such contract or arrangement and any remuneration, pension, allowance, commission or other benefit received in relation to such office or place of profit or received by reason of participation in any such association, institution, fund, trust, scheme or convenience.



11.3.4 Any contract or arrangement entered into by or on behalf of the Company is not void or voidable by reason only that a Director is in any way directly or indirectly interested in it.

11.3.5 A Director who is in any way directly or indirectly interested in a contract or arrangement or proposed contract or arrangement with the Company or who holds any office or possesses any property by which, directly or indirectly, duties or interests might be created in conflict with his duties or interests as Director, shall declare the nature of his interest or the nature, character and extent of the conflict (as the case may be) in accordance with section 191 of the Corporations Act.

#### **11.4 Rotation of Directors**

##### 11.4.1

(a) An election of directors shall take place each year. A Director (other than the managing Director) shall not retain office for a period in excess of 3 years or beyond the third annual general meeting following his election (whichever is the longer period) without submitting himself for re-election.

(b) Subject to paragraph (a) and Article 11.4.4 at the annual general meeting in each year, one-third of the Directors in office or if their number is not a multiple of 3, the number nearest to one-third, shall retire from office.

11.4.2 A retiring Director may act until the conclusion of the meeting at which he retires and is eligible for re-election.

11.4.3 The Directors to retire by rotation at each annual general meeting are those who have been longest in office since their election, but as between Directors who have been in office an equal length of time, those to retire shall, in default of agreement between them, be determined by lot in any manner determined by the Chairman of Directors or if he is not able and/or willing to act, by the Deputy Chairman.

11.4.4 For the purpose of ascertaining the number and identity of the Directors to retire by rotation, neither the managing Director or a Director appointed by the Directors to fill a casual vacancy or as an addition to the existing Director shall be taken into account.

#### **11.5 Powers of Directors**

11.5.1 Subject to the Corporations Act, the management of the business of the Company is vested in the Directors and they may exercise all such powers of the Company and do all such acts and things as the Company is authorised to exercise and do, except any powers that the Corporations Act or this Constitution requires the Company to exercise in general meeting.

11.5.2 Without limiting the generality of Article 11.5.1, the Directors may exercise all powers of the Company to borrow or raise or secure the payment or repayment of any sum or sums of money, to charge, mortgage or otherwise encumber any or all of the undertakings, property, assets or business of the Company (both present or future whatsoever and wheresoever situate) or

all or any of its uncalled capital and to issue notes, bonds, debentures or any other securities whatsoever or give any other security or guarantee for any debt, liability or obligation of the Company or of any other person, in each case in such manner and on such terms and conditions as the Directors in their absolute discretion think fit.

- 11.5.3 Subject to section 199A of the Corporations Act, where a Director or other officer of the Company becomes personally liable for the payment of a sum due from the Company, the Directors may execute or cause to be executed any mortgage, charge or other security over the whole or any part of the Company's undertaking, property or assets (present or future) including its uncalled capital, by way of indemnity to secure him against any loss in respect of that liability.

## **11.6 Proceedings of Directors**

### **11.6.1 Regulation and Notice of Meetings**

- (a) The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit.
- (b) Without limiting the generality of Article 11.6.1(a), the Directors may, if they think fit, confer by radio, telephone, closed circuit television or other electronic means of audio or audio-visual communication and a resolution passed at such conference shall, notwithstanding the Directors are not present together in one place at the time of the conference, be deemed to have been passed at a meeting of the Directors held on the day on which and at the time at which the conference was held. Each of the Directors taking part in such conference must be able to hear each of the other Directors taking part during the meeting. The provisions of this Constitution relating to proceedings of Directors shall apply so far as they are capable of application (*mutatis mutandis*) to such conferences.
- (c) A Director may, and the Secretary shall upon the request of a Director, convene a meeting of the Directors.
- (d) Notice of meetings of Directors shall be given to each Director by delivering or posting the notice or by sending the notice by communication service to the last address or communication service number (as the case may be) within Australia provided by the Director for the purposes of this Article 11.6.1.
- (e) If any of the Directors consider that a meeting of the Directors is required upon short notice for consideration of urgent business, notice of such meeting and of the general nature of the business for discussion at it may be given by telephone or communication service to each Director at his last telephone number within Australia provided by the Director for the purposes of this Article 11.6.1.

- (f) Where the last address or communication service or telephone number provided by a Director for the purposes of this Article 11.6.1 is outside Australia, the Director or Secretary convening the meeting of Directors may, but is not in any way obliged to, give notice of the meeting to a Director at such an address or communication service or telephone number outside Australia.
- (g) For the purposes of this Article 11.6.1, "communication service" means any facsimile, telex, electronic post service or other electronic means of written communication.
- (h) Neither the accidental omission to give notice, the non-receipt of notice nor the non-availability of a Director to receive notice shall invalidate any meeting of Directors to which the notice relates.
- (i) Unless otherwise determined by the Directors, 3 Directors shall constitute a quorum at a meeting of Directors.

#### **11.6.2 Chairman**

- (a) The Directors may elect a Chairman and Deputy Chairman and may determine the periods during which they are to hold office respectively.
- (b) The Chairman or Deputy Chairman may be removed by a resolution of the Directors of which not less than 7 days' notice has been given to all the Directors.
- (c) The Chairman of Directors or in his absence the Deputy Chairman, shall preside at meetings of the Directors but if at the time of any meeting, no such Chairman or Deputy Chairman has been elected and is in office or if at any meeting, no such Chairman or Deputy Chairman is present within 30 minutes of the time appointed for holding such meeting, the Directors present shall choose one of their number to be chairman of that meeting.

#### **11.6.3 Determination of Questions**

- (a) Subject to this Constitution, questions arising at a meeting of the Directors shall be decided by a majority of votes of the Directors present and competent to vote on them and any such decision shall for all purposes, be deemed to be a decision of the Directors.
- (b) In the case of an equality of votes, the Chairman of the meeting has a casting vote, in addition to his deliberative vote, unless only 2 Directors are present or are competent to vote on the question at issue, in either of which cases, the Chairman shall not have a casting vote.

#### **11.6.4 Delegation of Powers**

- (a) The Directors may delegate any of their powers to committees consisting of such Director or Directors as they think fit and may at any time revoke that delegation.
- (b) A committee to which any powers have been delegated shall exercise the powers delegated in accordance with any directions of the Directors.
- (c) Subject to Article 11.6.4(b), the meetings and proceedings of a committee consisting of 2 or more Directors shall be governed by the provisions of this Constitution as to the meetings and proceedings of the Directors so far as they are capable of application (*mutatis mutandis*) to meetings and proceedings of committees.

#### **11.6.5 Signed Document Passing Resolution**

- (a) Subject to the provisions of the Corporations Act, a resolution in writing signed by all the Directors or all the members of a committee of Directors for the time being present within Australia (but if any Director is absent from Australia, signed by his alternate Director, if he has an alternate Director present within Australia) is as valid and effectual as if it had been passed at a meeting of the Directors or committee duly called and constituted and may consist of several documents in like form each signed by one or more of the Directors or the members of a committee, as the case may be, and where the document is so signed, the document shall be deemed to constitute a minute of that meeting.
- (b) The meeting referred to in Article 11.6.5(a) shall be deemed to be held on the day on which the document was signed and at the time at which the document was last signed or if the Directors or the members of a committee signed the document on different days, on the day on which, and at the time at which, the document was last signed by a Director or a member of a committee, as the case may be.
- (c) For the purposes of this Article 11.6.5, an electronically transmitted facsimile copy of a document, the original of which in the opinion of the Secretary has been apparently signed by a Director or a member of a committee, shall be deemed to be a document signed by such Director or member.
- (d) A reference in Article 11.6.5(a) to all Directors or all members of a committee of Directors does not include a reference to a Director or a member who, at a meeting of Directors or a committee of Directors, would not be competent to vote on the resolution or a reference to an alternate Director whose appointor has signed the document referred to in Article 11.6.5(a).

### **11.6.6 Defect in Appointment**

All acts of the Directors, a committee of Directors or a member of a committee or a person acting as a Director or committee or member of a committee, are valid notwithstanding that it is afterwards discovered that there was some defect in the appointment, election or qualification of them or any of them or that they or any of them were disqualified or had vacated office.

### **11.6.7 Vacancy in Office**

In the event of a vacancy in the office of a Director, the remaining Director or Directors may act, but if the number of remaining Director or Directors is not sufficient to constitute a quorum at a meeting of Directors, the remaining Director or Directors may act only for the purpose of increasing the number of Directors to that number or of convening a general meeting of the Company but not for any other purpose.

## **11.7 Managing Director**

11.7.1 The Directors may appoint one of their number to be a managing Director of the Company for such period and on such terms and conditions as they think fit and, subject to the terms of any agreement entered into between the Company and him, may revoke any such appointment.

11.7.2 A managing Director while he continues to hold that office is not subject to retirement by rotation nor to be taken into account in determining the rotation of Directors, but subject to the terms of any agreement between the Company and him, he is subject to the same provisions as to resignation and removal as the other Directors of the Company.

11.7.3 The managing Director's appointment automatically ceases if he ceases for any reason to be a Director.

11.7.4 Notwithstanding Articles 11.2.1 and 11.2.2, the remuneration of an executive Director (including a managing Director) shall, subject to the terms of any agreement between the Company and him, be determined by the Directors in such manner and on such terms and conditions as they think fit (whether by way of salary, bonus, commission or participation in profits or a combination of all or any of such ways) but shall not be by way of commission on or percentage of operating revenue.

11.7.5 The Directors may confer upon a managing Director for the time being, such of the powers conferred on and exercisable by the Directors on such terms and conditions and with such restrictions as they think fit. Any of those powers may be conferred collaterally with or to the exclusion of or in substitution for such powers of the Directors and may be revoked, withdrawn or varied at any time by the Directors.

## **11.8 Alternate Directors**

11.8.1 Subject to the provisions of the Corporations Act, a Director may by writing under his hand, appoint a person (whether a member of the Company or not and whether a Director in his own right or not) approved by a majority of

the other Directors, to act as an alternate Director in his place on such terms and conditions and for such period as he thinks fit.

11.8.2 An alternate Director:

- (a) may at anytime be removed or suspended from office by writing under the hand of the Director by whom he was appointed, notwithstanding that the period of the appointment of the alternate Director has not expired;
- (b) subject to this Constitution, is entitled to receive notice of meetings of the Directors and to attend and vote at them if the Director by whom he was appointed is not present thereat and where he is also a Director in his own right, to have a separate vote on behalf of the Director he is representing in addition to his own vote;
- (c) may exercise all the powers reposed in the appointor (subject to any conditions or restrictions imposed in that regard by the appointor) but shall not have the power to appoint an alternate Director;
- (d) subject to Article 11.8.3, automatically ceases to be an alternate Director if the Director by whom he was appointed ceases to be a Director;
- (e) whilst acting, as a Director, is responsible to the Company for his own acts and defaults and the Director by whom he was appointed is not responsible for such act or default;
- (f) is not entitled to receive any fees or remuneration from the Company as a Director except for any special services which in the opinion of the Directors are outside the scope of the ordinary duties of a Director, but shall be entitled to be reimbursed out of the funds of the Company for all reasonable travelling, accommodation and other expenses incurred by him in travelling to or from and attending meeting of the Directors or a committee of Directors or when otherwise engaged on the business of the Company; and
- (g) shall not be taken into account separately from the Director by whom he was appointed in determining the rotation of Directors or the number of Directors, but subject to this, an alternate Director shall be counted in determining a quorum for the purposes of Article 11.6.1(h) except where the alternate Director is also a Director in his own right.

11.8.3 Where the Director by whom an alternate Director was appointed retires by rotation but is re-elected or deemed to be re-elected by the meeting at which he retires, the appointment of the alternate Director continues to operate after his re-election or deemed re-election as if the appointor had not so retired.

**11.9 Deleted.**

**11.10 Local Management**

11.10.1 The Directors may provide for the management and transaction of the affairs of the Company in a specified locality whether in Australia or abroad in such manner as they think fit.

11.10.2 Without limiting the generality of Article 11.10.1, the Directors may:

(a) establish local boards or agencies for managing any of the affairs of the Company in any such specified locality and may appoint persons (whether members of the Company or not) to be members of those local boards or to be managers or agents;

(b) delegate to a person so appointed, any of the powers vested in the Directors and may authorise the members for the time being of any such local board or any of them to fill up vacancies and to act notwithstanding such vacancies.

11.10.3 Any such appointment or delegation by the Directors pursuant to Article 11.10 may be made on such terms and conditions as the Directors think fit and the Directors may remove a person so appointed and may cancel or vary any such delegation.

**11.11 Appointment of Attorney**

11.11.1 The Directors may by power of attorney under the seal of the Company, appoint a person or persons jointly or severally and whether a member or members of the Company or not) to be the attorney or attorneys of the Company for such purposes and with such powers (not exceeding those conferred on the Directors by this Constitution) and for such period and on such terms and conditions as the Directors think fit. The Directors may appoint local Directors or agents by communication service in cases of urgency to act for or on behalf of the Company.

11.11.2 Without limiting the generality of Article 11.11.1, any such appointment may be made in favour of the Directors or members of the Company or any of the members of a local board or in favour of a body corporate or of the members, directors, nominees or managers of a body corporate or firm or otherwise in favour of any fluctuating body of persons whether nominated directly or indirectly by the Directors.

11.11.3 Any such power of attorney may contain such provisions for the protection or convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers for the time being, vested in him.

**11.12 Minutes**

11.12.1 The Directors shall in accordance with the Corporations Act, cause minutes of all proceedings of general meetings and of meetings of Directors to be entered, within one month after the relevant meeting is held, in books kept for that purpose.

11.12.2 Except in the ease of documents that are deemed to be minutes by virtue of Article 11.6.3, those minutes shall be signed by the Chairman of the meeting at which the proceedings took place or by the Chairman of the next succeeding meeting.

## **12 SECRETARY**

### **12.1 Appointment by Directors**

The Directors shall appoint at least one Secretary of the Company and may at any time terminate any such appointment(s).

### **12.2 Terms of Office**

A Secretary of the Company holds office on such terms and conditions, as to remuneration or otherwise, as the Directors determine.

## **13 SEAL**

### **13.1 Types of Seals**

13.1.1 The Company shall have a common seal and may have:

- (a) a duplicate common seal which shall be a facsimile of the common seal with the addition on its face of the words "Share Seal" or "Certificate Seal"; and
- (b) an official seal for use in any place outside the State, which shall be a facsimile of the common seal with the addition on its face of the name of every place where it is to be used.

13.1.2 The Directors shall provide for the safe custody of all seals in such manner as they think fit.

### **13.2 Use of Seal**

13.2.1 The seal shall be used only by the authority of the Directors and every document to which the seal is affixed shall be signed by a Director and countersigned by the Secretary or a second Director or by some other person appointed generally or in a particular case by the Directors for that purpose.

13.2.2 The seal may be affixed to or printed on certificates for shares, options and other securities by mechanical means so as to produce a facsimile of such seal and signatures. In addition, the Directors may determine generally or in a particular case, that the seal and the signatures of the Director, Secretary or other person appointed by the Directors for the purpose of signing documents to which the seal is affixed, may be affixed, printed or otherwise written on documents by a specified mechanical means so as to produce a facsimile of such seal and signatures.



### **13.3 Cheques and Negotiable Instruments**

All cheques, bills of exchange, promissory notes, bankers drafts and other negotiable instruments and all receipts for money paid to the Company, shall be signed, accepted, drawn, made, endorsed or otherwise executed for and on behalf of the Company by such persons (whether Directors or officers of the Company or not) in such manner as the Directors shall from time to time determine.

## **14 RESERVES**

### **14.1 Establishment and Application of Reserves**

Subject to the Corporations Act, the Directors may:

- 14.1.1 before declaring a dividend, set aside such sums as they think fit as reserves to be applied, at the discretion of the Directors, for any purpose for which such sums may be properly applied;
- 14.1.2 pending any such application, use the reserves, at the discretion of the Directors, in the business of the Company or invest the reserves in such investments as the Directors think fit or otherwise use the reserves as the Directors think fit; and
- 14.1.3 carry forward so much of the profits that are not included in the sums set aside under Article 14.1.1 (if any) without transferring these profits to a reserve.

## **15 DIVIDENDS**

### **15.1 Declaration of Dividend**

- 15.1.1 The Directors may authorise the payment by the Company to members of such dividends as appear to the Directors to be justified in accordance with the Corporations Act. The payment of such dividend shall not require the sanction of a general meeting.
- 15.1.2 The Company in general meeting may declare a dividend if and only if the Directors have recommended a dividend.
- 15.1.3 A dividend declared by the Company in general meeting shall not exceed the amount recommended by the Directors.

### **15.2 Interim and Preferential Dividends**

- 15.2.1 The Directors may authorise the payment by the Company to members of such interim dividends as appear to the Directors to be justified in accordance with the Corporations Act. Each interim dividend so paid shall be payable on a date fixed by the Directors.
- 15.2.2 The Directors may also pay preferential dividends on shares issued upon terms that preferential dividends are payable on such shares on fixed dates.
- 15.2.3 The payment of any such interim dividend or preferential dividend shall not require the sanction of a general meeting.

### **15.3 Payment of Dividends**

- 15.3.1 No dividend shall be paid otherwise than in accordance with the Corporations Act and a declaration by the Directors as to the amount available for dividends shall be conclusive evidence of the amount so available.
- 15.3.2 No dividend or other moneys payable on or in respect of a share shall bear interest against the Company.
- 15.3.3 The Directors may deduct from any dividend payable to a member, all sums of money (if any) presently payable by him to the Company in relation to shares held by him in the Company. While the Company is a no liability company, a member is not entitled to a dividend on a share if a call:
- (a) has been made on the share; and
  - (b) is due and unpaid.
- 15.3.4 A transfer of shares shall not pass the right to any dividend declared on those shares before registration of their transfer.
- 15.3.5 The Directors may retain the dividends payable upon shares in respect of which any person under Article 7 is entitled to be registered as the holder of those shares or is entitled to transfer such shares to some other person, until such person shall become registered as the holder of them or shall duly transfer the shares concerned in accordance with that Article.
- 15.3.6 In the event of a breach of any escrow agreement entered into by the Company pursuant to the Listing Rules in relation to Restricted Securities, the holder of the Restricted Securities shall not be entitled to receive any dividend declared and paid subsequent to the breach and shall not become entitled to payment of dividends declared on them until the breach has been remedied.
- 15.3.7 Any dividend, interest or other money payable in cash in respect of shares may be paid:
- (a) by cheque sent through the post or by courier to the address of the member shown in the register or in the case of joint holders, to the address of that holder whose name stands first in the register in respect of the joint holding, or to such address as the holder or joint holders in writing directs or direct;
  - (b) by electronic transfer; or
  - (c) in such manner as the Directors determine.

### **15.4 Dividend Entitlement**

Subject to the provisions of this Constitution relating to preferred, deferred or other special classes of shares, dividends that are payable to members are payable to the persons entitled to those dividends in proportion to the number of shares held by them respectively, irrespective of the amount paid up or credited as paid up on the shares.

## **15.5 Dividends In Specie**

- 15.5.1 Any general meeting of the Company declaring a dividend may, acting on the prior recommendation of the Directors, or the Directors, in declaring any dividend (including an interim dividend), may direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or notes or debentures of, the Company or any other corporation or in any one or more ways, and may direct that the dividend payable in respect of any particular shares shall be satisfied wholly or partly by such a distribution and that the dividend payable in respect of other shares shall be paid in cash.
- 15.5.2 Where a difficulty arises in regard to such a distribution, the Directors may settle the matter as they consider expedient and in particular, may issue shares, notes or debentures in fractions, and may fix the value for distribution of the specific assets or any part of those assets and may determine that cash payments will be made to any members on the basis of the value so fixed, in order to adjust the rights of all parties, and may vest any such specific assets in trustees as the Directors consider expedient.

## **15.6 Dividend Plans**

- 15.6.1 Notwithstanding any other provision of this Constitution and in particular, notwithstanding Articles 15.1 to 15.5 inclusive, but subject to the requirements of the Corporations Act and the Listing Rules, the Directors may in their absolute discretion establish on such terms and conditions as they think fit:
- (a) issued by the Company and interest paid by the Company on unsecured notes or debenture stock issued by the Company to be reinvested by way of subscription for shares in the Company; and
  - (b) a plan permitting holders of ordinary shares to the extent that his ordinary shares are fully paid up, to have the option to elect to forgo his right to share in any dividends (whether interim or otherwise) payable in respect of such shares and to receive instead an issue of ordinary shares credited as fully paid up to the extent as determined by the Directors.
- 15.6.2 The Directors may in their absolute discretion, modify, suspend or terminate all or any plans established pursuant to Article 15.6.1 from time to time on not less than one month's written notice to all members of the Company.
- 15.6.3 The powers given to the Directors by this Article 15.6 are additional to the other powers reposed in the Directors by this Constitution and shall not in any way be limited, restricted or otherwise affected by Articles 15.1 to 15.5 inclusive.

## **16 CAPITALISATION OF PROFITS**

### **16.1 Power to Capitalise**

The Directors, or any general meeting of the Company acting on the prior recommendation of the Directors, may at any time resolve that any moneys,

investments or other assets standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to members (including profits derived from an accretion in value disclosed upon the re-valuation of assets) be capitalised and applied in any of the ways mentioned in Article 16.2 for the benefit of such of members registered on a date stipulated by the Directors in proportion to the number of ordinary shares held by them to the extent to which they are fully paid up, unless the terms of issue of any such shares otherwise provide, or where any right has accrued to any member from time to time by reason of the terms of any securities issued or granted by the Company (including shares, options and convertible notes), such sum being applied for the benefit of such member in accordance with the terms of those securities or otherwise in any of the ways mentioned in Article 16.2.

## **16.2 Application of Capitalised Fund**

16.2.1 All or any part of the capitalised fund may be applied for the benefit of members:

- (a) in paying up in full any unissued shares, notes or debentures to be issued to members as fully paid; or
- (b) in paying up any amounts unpaid (including any premiums) on any shares, notes or debentures held by members; or
- (c) partly as mentioned in Article 16.2.1(a) and partly as mentioned in Article 16.2.1(b).

16.2.2 Such application of the capitalised sum shall be accepted by those members in full satisfaction of their interest in it.

## **16.3 Deleted.**

## **16.4 Adjustment of Rights**

16.4.1 The Directors shall do all things necessary to give effect to the resolution under this Article 16 and in particular, to the extent necessary to adjust the rights of the members among themselves, may:

- (a) issue shares, notes or debentures in fractions (and, subject to Article 2.6.7, issue fractional certificates therefore) or make cash payments in cases where shares, notes or debentures become issuable in fractions;
- (b) authorise any person to make, on behalf of all the members entitled to any further shares, notes or debentures upon capitalisation, an agreement with the Company providing for the issue to them, credited as fully paid, of any such further shares, notes or debentures or for payment up by the Company on their behalf, of the amounts or any part of the amounts remaining unpaid on their existing shares, notes or debentures by the application of their respective proportions of the sum to be capitalised; and
- (c) settle any difficulty which arises in regard to the application or distribution of the capitalised sum as they consider expedient, and fix the value for distribution of specific assets or any part of those

assets and may determine that cash payments will be made to any members on the basis of the value so fixed in order to adjust the rights of all parties and may vest any such specific assets in trustees as the Directors consider expedient.

16.4.2 Any agreement made under an authority referred to in Article 16.4.1(b) is effective and binding on all the members concerned.

## **17 ACCOUNTS AND AUDIT**

### **17.1 Requirements as to Accounts and Audits**

The Directors shall ensure that the requirements of the Corporations Act and the Listing Rules as to accounts and audit are complied with by the Company.

### **17.2 Auditor**

The auditor of the Company or his agent authorised by him in writing for the purpose, is entitled to attend general meetings, to receive all notices of and other communications relating to general meetings which a member is entitled to receive and to be heard at any general meeting which he attends on any part of the business of the meeting which concerns the auditor in his capacity as such, but does not have the right to vote at any general meeting.

### **17.3 Inspection of Company Records**

17.3.1 Subject to the provisions of the Corporations Act, the Directors shall determine whether and to what extent and at what times and places and under what conditions the accounting records and other documents of the Company or any of them will be open to inspection by the members and other persons.

17.3.2 A member or other person (not being a Director) has no right to inspect any such documents of the Company except as conferred by statute or authorised by the Directors and is not entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret or secret process of or used by the Company.

## **18 NOTICES**

### **18.1 Mode of Service**

A share certificate, cheque, warrant, notice or other document (including a notification by electronic means) may be given by the Company to any member either by serving it on him personally or by sending it by post or courier to him at his address as shown in the register or the address supplied by him to the Company for the giving of notices to him or by sending it to him by facsimile transmission or electronic means to any fax number or electronic address given to the Company by the member. In the case of joint holders, such documents may be served on the joint holder whose name appears first in the register in respect of the share. In the case of an overseas shareholder, such documents shall be forwarded by air mail or by a recognised couriered air service.

## **18.2 Deemed Receipt of Notice**

18.2.1 A document sent by ordinary post, courier, air mail or recognised couriered air service in accordance with this Article 18 by the Company shall be deemed to have been received or served on the day next following that on which it was posted or dispatched and in proving delivery or service, it is sufficient to prove that the envelope or wrapper containing the document was properly addressed and stamped (if posted) and was posted or dispatched.

18.2.2 A document sent by facsimile or other electronic means in accordance with this Article 18 by the Company shall be deemed effected at the time when transmission of the facsimile or electronic communication is completed by the Company.

## **18.3 Proof of Service**

A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was so addressed and stamped (if posted) and was posted or dispatched, shall be prima facie evidence of its contents.

## **18.4 Notice of General Meeting of the Company**

18.4.1 Notice of every general meeting and of any adjournment of it shall be given in the manner authorised by this Article to:

- (a) every member;
- (b) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of meeting; and
- (c) the auditor for the time being of the Company.

18.4.2 Except as required by the Listing Rules, no other person is entitled to receive notices of general meetings.

## **18.5 Previous Notice**

A person who by operation of law, or by transfer or other means becomes entitled to be registered as the holder of or to transfer a share, is bound by every notice previously given in respect of that share.

## **18.6 Notice on Transmission**

A notice may be given by the Company to a person entitled to a share in consequence of the death or bankruptcy of a member by serving it on him personally or by sending it to him by post or courier addressed to him 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) within Australia supplied for the 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.

## **18.7 Failure of Member to Give Address**

No person who shall have omitted to give his address for registration shall be entitled to receive any notice from the Company.

## **18.8 Day of Service**

Where a given number of days' notice or notice extending over any other period is required to be given, the day of service shall unless it is otherwise provided be counted in such number of days or other period.

## **19 WINDING UP**

### **19.1 Powers of Liquidator**

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

19.1.2 The liquidator may, with the sanction of a special resolution, vest the whole or any part of any such assets of the Company in trustees upon such trusts for the benefit of the members or any of them as the liquidator thinks fit.

19.1.3 No member shall be compelled to accept any shares or other securities in respect of which there is any Liability upon a division or vesting of assets under Articles 19.1.1 and 19.1.2 respectively.

19.1.4 If approved by special resolution, any division referred to in this Article 19.1 may be otherwise than in accordance with the legal rights of the members of the Company. In particular, any class of member may be given preference or special rights or may be excluded altogether or in part. If any division is made otherwise than in accordance with the legal rights of the members, any member who would be prejudiced by the distribution shall have a right of dissent and ancillary rights as if such distribution were a special resolution passed pursuant to the Corporations Act.

### **19.2 Distribution of Assets**

If the Company is wound up (whether voluntarily or otherwise) and:

19.2.1 the assets available for distribution among the members are insufficient to repay the whole of the capital paid up as at the commencement of the winding up, such assets shall be distributed among the members so that the losses shall be borne by the members as nearly as possible in proportion to the capital paid up or which ought to have been paid up on the shares held by them as at the commencement of the winding up;

19.2.2 a surplus remains, it must be distributed among the parties entitled to it in proportion to the numbers of shares held by them irrespective of the amount paid up on the shares.

### **19.2A Distribution of Assets where call unpaid**

A member who is in arrears in payment of a call but whose share has not been forfeited is not entitled to participate in the distribution on the basis of holding those shares until the amount owing in respect of the call has been fully paid and satisfied.

### **19.3 Restricted Securities**

Notwithstanding the provisions of this Article 19, if on a winding up of the Company, whether voluntarily or otherwise, the Company has on issue Restricted Securities which, at the date of commencement of the winding up, are the subject of escrow restrictions pursuant to the Listing Rules, then on a distribution of assets of the Company to members, the Restricted Securities shall rank behind all other shares in the Company.

### **19.4 Special Rights**

Article 19 shall be without prejudice to the rights of the holders of shares issued upon special terms and conditions.

## **20 INDEMNITY**

### **20.1 Officers**

Subject to the Corporations Act, every officer or auditor of the Company shall be indemnified out of the assets of the Company against all costs, losses, expenses or liabilities incurred or suffered by him in his capacity as an officer or auditor of the Company or in relation thereto, by reason of any contract entered into or any act or thing done or omitted to be done by him in such capacity or many way in the discharge of his duties or by reason of or relating to his status as an officer or auditor of the Company, but **EXCLUDING** any liability arising out of conduct involving a lack of good faith or any liability to the Company or any related body corporate of the Company.

### **20.2 Former Officers**

Subject to the Corporations Act, every former officer or former auditor of the Company shall be indemnified out of the assets of the Company against all costs, losses, expenses or liabilities incurred or suffered by him in his capacity as an officer or auditor of the Company or in relation to such office, by reason of any contract entered into or any act or thing done or omitted to be done by him in such capacity whilst an officer or auditor of the Company or in any way in the discharge of his duties whilst an officer or auditor of the Company, or by reason of or relating to his status as an officer or auditor of the Company whilst an officer or auditor of the Company but **EXCLUDING** any liability arising out of conduct involving a lack of good faith or any liability to the Company or any related body corporate of the Company.

### **20.3 Officer of Another Company Upon Request**

Subject to the Corporations Act, every present or former officer of the Company who is or was, at the request of the Company, serving as an officer of another company (whether that company is related to the Company or not) shall be indemnified out of the assets of the Company against all costs, losses, expenses or liabilities incurred or suffered by him in his capacity as an officer of that other company or in relation to such office, by reason of any contract entered into or any act or thing done or omitted to be done by him in such capacity whilst an officer of that other company or in any way in the discharge of his duties whilst an officer of that other company, or by reason of or relating to his status as an officer of that other company, whilst an officer of that other company but **EXCLUDING** any liability arising out of conduct involving a lack of good faith or any liability to the Company or any related body corporate of the Company.



#### **20.4 Indemnity for Proceedings**

Subject to the Corporations Act, but without limiting the generality of Articles 20.1, 20.2 and 20.3, every officer, auditor or agent of the Company shall be indemnified out of the assets of the Company against any liability incurred or suffered by him in defending any civil or criminal proceedings in which judgment is given in his favour or in which he is acquitted or in connection with any application in relation to any such proceedings in which relief is under the Corporations Act granted to him by the Court and where proceedings are commenced but are struck out or are in any other manner discontinued or determined otherwise than by a judgment or conviction against the officer, auditor or agent.

#### **20.5 Liability as Between Officers**

Subject to the Corporations Act, no Director or other officer of the Company shall be liable for the acts, deceits, neglects or defaults of any other Director or officer of the Company, any loss or expenses happening to the Company through the insufficiency or deficiency of title to any property acquired by order of the Directors for or on behalf of the Company, the insufficiency or deficiency of any security in or upon which any of the moneys of the Company shall be invested, any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any moneys, securities or effects shall be deposited or left, any other loss or damage which occurs in the execution of the duties of his office or for joining in any receipt or other act for conformity, unless arising from his own negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the Company.

#### **20.6 Constitution does not reduce indemnity at law**

Nothing in this Constitution shall be construed to lessen or abrogate any indemnity or protection given or authorised to Directors or officers of the Company by law.

### **21 REFERENCE TO ASX LISTING RULES**

#### **21.1 Application of Listing Rules**

21.1.1 In this Constitution a reference to the Listing Rules only applies while the Company is on the official list of ASX.

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

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

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