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INCA MINERALS LIMITED

(ACN 128512907)

CONSTITUTION

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 *Definitions*

In this Deed, unless the contrary intention appears:

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

“ASTC Settlement Rules” means the operating rules of ASTC, or of any relevant organisation which is an alternative or successor to, or replacement of, ASTC.

“ASX” means the Australian Securities Exchange Limited;

“ASX transfer” has the meaning given to that term in the Corporations Regulations 2001 (Commonwealth);

“Auditor” means the appointed auditor of the Company;

“Company” means INCA Minerals Limited;

“Constitution” means this constitution as amended from time to time;

“Corporations Act” means the Corporations Act 2001 (Commonwealth);

“Director” means a person holding office as a director of the Company and where appropriate includes an alternative director;

“Divestment Notice” is a notice given under clause 22.1 to a Small Holding Shareholder or a New Small Holding Shareholder;

“Executive Director” means a person appointed as an executive director under Clause 12.26;

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

“Managing Director” means the person appointed as managing director under this Constitution;

“New Small Holding” means a holding of Shares created after the date on which this Constitution comes into effect which does not constitute a marketable parcel of Shares as defined in the Listing Rules;

“New Small Holding Shareholder” is a Shareholder who is the holder or a joint holder of a New Small Holding;

“Register” means the register of Shareholders of the Company under the Corporations Act;

“Registered Office” means the Registered Office of the Company;

“Relevant Period” is the period specified in the Divestment Notice;

“Relevant Shares” are the Shares specified in the Divestment Notice;

“Representative” means a person appointed to represent a corporate Shareholder at a general meeting of the Company in accordance with the Corporations Act;

“Restriction Agreement” means a restriction agreement within the meaning and for the purposes of the Listing Rules;

“Secretary” means a person appointed under clause 13.1 as a Secretary of the Company and where appropriate includes an acting Secretary and a person appointed by the Directors to perform all or any of the duties of a Secretary of the Company;

“Shareholder” means a person entered in the Register as a holder of shares in the capital of the Company;

“Shares” for the purposes of clause 22 means shares in the Company all of which are of the same class;

“Small Holding” means a holding of Shares which does not constitute a marketable parcel of Shares as defined in the Listing Rules;

“Small Holding Shareholder” means a Shareholder who is the holder or a joint holder of a Small Holding;

“Specified Interest Rate” means the rate determined by the Directors for the purpose of this Constitution, and in the absence of a determination means 10% per annum;

“State” means the State or Territory in which the Company is for the time being registered;

“Uncertificated Securities Holding” means securities of the Company which under the Corporations Act, the Listing Rules or any Uncertificated Transfer System may be held in uncertificated form; and

“Uncertificated Transfer System” means any system operated under the Corporations Act, the Listing Rules or the ASTC Settlement Rules which regulates the transfer or registration of, or the settlement of transactions affecting, securities of the Company in uncertificated form and includes CHESS (as defined in the ASTC Settlement Rules) as it applies to securities in certificated and uncertificated form.



### **1.2 Application of the Corporations Act, Listing Rules and ASTC Settlement Rules**

- (a) The rules that apply as replaceable rules in the Corporations Act do not apply to the Company except as far as they are repeated in this Constitution.
- (b) Unless the contrary intention appears:
  - (i) an expression in a clause that deals with a matter dealt with by a provision of the Corporations Act, the Listing Rules or the ASTC Settlement Rules has the same meaning as in that provision; and
  - (ii) subject to clause 1.2(b) (i), an expression in a clause that is used in the Corporations Act has the same meaning in this Constitution as in the Corporations Act.

### **1.3 Application of Listing Rules**

- (a) In this Constitution a reference to the Listing Rules only applies while the Company is on the official list of the ASX.
- (b) While the Company is on the official list of the ASX, the following clauses apply:
  - (i) Notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done.
  - (ii) Nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done.
  - (iii) If the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
  - (iv) If the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision.
  - (v) If the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision.
  - (vi) If any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

## **1.4 Exercising Powers**

The Company may, in any way the Corporations Act permits:

- (a) exercise any power;
- (b) take any action; or
- (c) engage in any conduct of procedure, which, under the Corporations Act, a company limited by Shares may exercise, take or engage in.

## **1.5 Interpretation**

In this Deed, including the recitals, unless the context otherwise requires:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any regulations or other statutory instrument issued under, that legislation or legislative provision;
- (b) the singular includes the plural and vice versa;
- (c) a word denoting an individual or person includes a corporation, firm, partnership, joint venture, association, authority, trust, state or government and vice versa; and
- (d) a word denoting any gender includes all genders;
- (e) a power, an authority or a discretion reposed in a Director, the Directors, the Company in general meeting or a Shareholder may be exercised at any time and from time to time; and
- (f) a reference to an amount paid on a share includes an amount credited as paid on that share.

## **2. Shares**

### **2.1 Directors to issue shares**

The issue of shares in the Company is at the discretion of the Directors who:

- (a) may issue or dispose of shares to any person at any time and on any terms and conditions and having attached to them any preferred, deferred or other special rights or restrictions, whether in regard to dividends, voting, return of capital or otherwise, as the Directors see fit;
- (b) may grant to any person an option over shares or pre-emptive rights, at any time and for any consideration as they think fit; and

- (c) have the right to settle the manner in which fractions of a share, however arising, are to be dealt with,

subject to the Corporations Act, the Listing Rules and any special rights conferred on the holder of any shares or classes of shares.

## **2.2 Directors may participate**

Subject to the Listing Rules, any Directors or any person who is an associate of a Director for the purposes of the Listing Rules may participate in any issue of the Company of shares.

## **2.3 Issue of further shares – no variation**

The rights conferred on the holders of the shares of any class are not to be taken as varied by the issue of further shares ranking equally with first-mentioned shares unless:

- (a) expressly provided by the terms of issue of the first-mentioned shares; or
- (b) required by the Corporations Act or the Listing Rules.

## **2.4 Class meetings**

The provisions of this Constitution relating to general meetings apply so far as they are capable of application and with any necessary changes to every separate meeting of the holders of a class of shares, except that:

- (a) a quorum is constituted by at least two persons who, between them, hold or represent one-third of the issued shares of the class (unless only one person holds all the shares of the class in which case that person constitutes a quorum); and
- (b) any holder of shares of the class, present in person or by proxy, or attorney or Representative, may demand a poll.

## **2.5 Non-recognition of interests**

Except as required by law, the Company is not required to recognise:

- (a) a person holding a share on any trust; or
- (b) any other interest in any share or any other right in respect of a share except an absolute right of ownership in the registered holder, whether or not it has notice of the interest or right.

## **2.6 Joint holders of shares**

Where two or more persons are registered as the joint holders of shares they are taken to hold the shares as joint tenants with rights of survivorship, but the Company is not bound:

- (a) to register more than three persons as joint holders of a share; or
- (b) to issue more than one certificate or holding statement in respect of shares jointly held.

## **2.7 Issue of Certificates**

- (a) The Directors may determine to issue certificates for shares or other securities of the Company to cancel any certificate on issue and to replace lost, destroyed or defaced certificates on issue on the basis and in the form it thinks fit from time to time.
- (b) If and for so long as dealings in securities of the Company take place under an Uncertificated Transfer System:
  - (i) the Company need not issue any certificate in respect of securities held as an Uncertificated Securities Holding; and
  - (ii) the Register
  - (iii) the Register may distinguish between shares or other securities held in certified form and shares or other securities held as Uncertificated Securities Holding.

## **3. LIEN**

### **3.1 Lien on share**

The Company has a first and paramount lien on every share for:

- (a) all due and unpaid calls and instalments in respect of that share; and
- (b) all money which the Company has been called on by law to pay and has paid, in respect of that share; and
- (c) interest at the Specified Interest Rate on the amount due from the date it becomes due until payment; and
- (d) reasonable expenses of the Company in respect of the default on payment.

### **3.2 Lien on loans under employee incentive schemes**

The Company also has a first and paramount lien on each share registered in the name of the Shareholder for all money payable to the Company by the Shareholder under loans made under an employee incentive scheme.

### **3.3 Lien on distributions**

A lien on a share under this clause 3 extends to all distributions in respect of that share, including dividends.

### **3.4 Exemptions**

The Directors may at any time exempt a share wholly or in part from the provisions of clause 3.1 or 3.2.

### **3.5 Extinguishment of lien**

The Company's lien on a share is extinguished if a transfer of the share is registered without the Company giving notice of the lien to the transferee.

### **3.6 Company's right to recover payments**

A shareholder must reimburse the Company on demand in writing for all payments the Company makes to a government or taxing authority in respect of the Shareholder, the death of a Shareholder or the Shareholder's shares or any distributions on the Shareholder's shares, including dividends, where the Company is either:

- (a) obliged by law to make the relevant payment; or
- (b) advised by a lawyer qualified to practise in the jurisdiction of the relevant government or taxing authority that the Company is obliged by law to make the relevant payment.

The Company is not obliged to advise the Shareholder in advance of its intention to make the payment.

### **3.7 Reimbursement is a debt due**

The obligation of the Shareholder to reimburse the Company is a debt due to the Company as if it were a call on all the Shareholder's shares, duly made at the time when the written demand for reimbursement is given by the Company to the Shareholder. The provisions of this Constitution relating to non-payment of calls, including payment of interest and sale of the Shareholder's shares under lien, apply to the debt.

### **3.8 Sale under lien**

Subject to clause 3.9, the Company may sell, in any manner the Directors think fit, any share on which the Company has a lien.

### **3.9 Limitations on sale under client**

A share on which the Company has a lien may not be sold by the Company unless:

- (a) an amount in respect of which the lien exists is presently payable; and
- (b) the Company has, not less than 14 days before the date of sale, given to the registered holder of the share or the person entitled to the share by reason of the death or bankruptcy of the registered holder, a notice in writing setting out, and demanding payment of, the amount which is presently payable in respect of which the lien exists.

### **3.10 Transfer on sale under lien**

For the purpose of giving effect to a sale under clause 3.8, the Company may receive the consideration given for the share so sold, execute a transfer of the share sold in favour of the purchaser of the share and do all other things which may be necessary or appropriate to effect the transfer. The purchaser is not bound to see to the application of the purchase money.

### **3.11 Irregularity or invalidity**

The title of the purchaser to the share is not affected by any irregularity or invalidity in connection with the sale of the share.

### **3.12 Proceeds of sale**

The proceeds of a sale under clause 3.8 must be applied by the Company in payment of the amount in respect of which the lien exists and which is presently payable, and the residue, if any, must be paid to the person entitled to the share immediately before the sale.

## **4. CALLS ON SHARES**

### **4.1 Directors to make calls**

The Directors may:

- (a) make calls on a Shareholder in respect of any money unpaid on the shares on that Shareholder, if the money is not by the terms of issue of those shares made payable at fixed times; and
- (b) make a call payable by instalments; and
- (c) revoke or postpone a call.

### **4.2 Time of call**

A call is taken to be made at the time when the resolution of the Directors authorising the call is passed.

### **4.3 Shareholders' liability**

Each Shareholder, must upon receiving not less than 30 business days' notice specifying the time or times and place of payment, pay to the Company at the time or times and place so specified the amount called on that Shareholder's shares.

### **4.4 Joint holders' liability**

The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

### **4.5 Non-receipt of notice**

The non-receipt of a notice of any call by, or the accidental omission to give notice of a call to, a Shareholder does not invalidate the call.

### **4.6 Interest on default**

If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due must pay interest on the sum to the time of actual payment at the Specified Interest Rate. The Directors may waive payment of that interest wholly or in part.

### **4.7 Fixed instalments**

Subject to any notice requirements under the Listing Rules, any sum that, by the terms of issue of a share, becomes payable on issue of the share or at a fixed date, is to be taken to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable. In case of non-payment, all the relevant provisions of this Constitution

as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duty made and notified.

#### **4.8 *Differentiation between shareholders as to 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.

#### **4.9 *Prepayment of calls and interest***

The Directors may:

- (a) accept from a Shareholder the whole or a part of the amount unpaid on a share although no part of that amount has been called; and
- (b) authorise payment by the Company of interest on the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the Specified Interest Rate, as is agreed on between the Directors and the Shareholder paying the sum.

### **5. *FORFEITURE OF SHARES***

#### **5.1 *Notice requiring payment of call***

If a Shareholder fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the Directors may, at any time afterwards during such time as any part of the call or instalment remains unpaid, give a notice on the Shareholder requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all costs and expenses that may have been incurred by the Company by reason of that non-payment.

#### **5.2 *Contents of notice***

The notice must name a further day, not earlier than the expiration of 14 days from the date of service of the notice, on or before which the payment required by the notice is to be made and must state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

#### **5.3 *Forfeiture for failure to comply with notice***

Where a Shareholder does not make payment in relation to a share as required by a notice under clause 5.1 within the period specified in the notice, the Directors may, at any time before the required payment is made, resolve that the share is forfeited. Forfeiture of the share occurs upon the passing of such a resolution.



#### **5.4 Dividends and distributions included in forfeiture**

A forfeiture under clause 5.3 includes all dividends and other distributions declared or to be made in respect of the forfeited shares and not actually paid or distributed before the forfeiture.

#### **5.5 Sale or re-issue of forfeited shares**

Subject to the Corporations Act, a share forfeited under clause 5.3 may be sold, reissued or otherwise disposed of to whom and on such terms as the Directors think fit.

#### **5.6 Notice of forfeiture**

If any share is forfeited under clause 5.3, notice of the forfeiture must be given to the Shareholder holding the share immediately before the forfeiture and an entry of the forfeiture and its date must be made in the Register.

#### **5.7 Surrender instead of forfeiture**

The Directors may accept the surrender of any share which they are entitled to forfeit on any terms they think fit and any share so surrendered is taken to be a forfeited share.

#### **5.8 Cancellation of forfeiture**

At any time before a sale or disposition of a share, the forfeiture of that share may be cancelled on such terms as the Directors think fit.

#### **5.9 Effect of forfeiture on former holder's liability**

A person whose shares have been forfeited:

- (a) ceases to be a Shareholder in respect of the forfeited shares and loses all entitlement to dividends and other distributions or entitlements on the shares; and
- (b) remains liable to pay the Company all money that, at the date of forfeiture, was payable by that person to the Company in respect of the shares, plus interest at the Specified Interest Rate from the date of forfeiture and also reasonable expenses of sale.

#### **5.10 Evidence of forfeiture**

A statement in writing declaring that the person making the statement is a director or a Secretary of the Company, and that a share in the Company has been forfeited in accordance with this Constitution on the date specified in the statement, is prima facie evidence of the facts specified in the statement as against all persons claiming to be entitled to the share.

### **5.11 *Transfer of forfeited share***

The Company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute or effect a transfer of the share in favour of the person to whom the share is sold or disposed of.

### **5.12 *Registration of transferee***

On the execution of the transfer, the transferee must be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.

### **5.13 *Irregularity or invalidity***

The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.

### **5.14 *Forfeiture applies to non-payment of instalment***

The provisions of this Constitution as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, as if that sum had been payable by virtue of a call duly made and notified.

## **6. *TRANSFER OF SHARES***

### **6.1 *Transferring Shares***

Subject to this Constitution and to any restrictions attached to a member's shares, a member may transfer any of the member's shares by:

- (a) a proper ASTC transfer;
- (b) a written transfer in any usual form or in any other form approved by the Directors; or
- (c) any other electronic system established or recognised by the Listing Rules in which the Company participates in accordance with the rules of that system.

### **6.2 *Transfer other than ASTC transfer***

A transfer referred to in clause 6.1(b) must be:

- (a) signed by or on behalf of both the transferor and the transferee unless:
  - (i) the transfer relates only to fully paid shares and the Directors have dispensed with a signature by the transferee; or
  - (ii) the transfer of the shares is effected by a document which is, or documents which together are, a sufficient transfer of those shares under the Corporations Act;

- (b) if required by law to be stamped, duly stamped; and
- (c) left for registration at the Company's Registered Office, or at any other place the Directors decide, with such evidence the Directors require to prove the transferor's title or right to the shares and the transferee's right to be registered as the owner of the shares.

### **6.3 Registration of Transfers**

Subject to the powers vested in the Directors under Clauses 6.6 and 6.7, where the Company received a transfer complying with clauses 6.1 and 6.2, the Company must register the transferee named in the transfer as the holder of the shares to which it relates.

### **6.4 Holder of Shares**

A transferor of shares remains the holder of the shares until a proper ASTC transfer has been effected or the transferee's name is entered in the register of members as the holder of the shares.

### **6.5 General provisions relating to Transfers**

- (a) The Company must not charge a fee for registering a transfer of shares.
- (b) The Company may retain a registered transfer for any period the Directors decide.
- (c) The Directors may do anything that is necessary or desirable for the Company to participate in any computerised, electronic or other system for facilitating the transfer of shares or operation of the Company's registers that may be owned, operated or sponsored by the ASX or a related body of the ASX including any Uncertificated Transfer System.

### **6.6 Power to decline to register Transfers**

- (a) The Directors may decline to register, or prevent registration of, a transfer of shares or apply a holding lock to prevent a transfer in accordance with the Corporations Act or Listing Rules where:
  - (i) the transfer is not in registrable form;
  - (ii) the Company has a lien on any of the shares transferred;
  - (iii) registration of the transfer may breach a law of Australia;
  - (iv) the transfer is not permitted under the terms of an employee share plan;or

- (v) the Company is otherwise permitted or required to do so under the Listing Rules, or except for a proper ASTC transfer, under the terms of issue of the shares.
- (b) If the Directors decline to register a transfer, the Company must give notice of the refusal as required by the Corporations Act and Listing Rules. Failure to give that notice will not invalidate the decision of the Directors to decline to register the transfer.
- (c) The Directors may delegate their authority under this clause 6.6 to any person.

## **6.7 Power to suspect Transfers**

The Directors may suspend the registration of transfers at any time, and for any periods, permitted by the ASTC Settlement Rules that they decide.

## **7. TRANSMISSION OF SHARES**

### **7.1 Transmission of Shares on death of holder**

If a Shareholder who does not own shares jointly dies, the Company will recognise only the personal representative of the Shareholder as being entitled to the Shareholder's interest in the shares.

### **7.2 Information given by personal representative**

- (a) If the personal representative gives the Directors the information they reasonably require to establish the representative's entitlement to be registered as a holder of the shares:
  - (i) the personal representative may;
    - (A) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
    - (B) by giving a completed transfer form to the Company, transfer the shares to another person; and
  - (ii) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the shareholder.
- (b) On receiving an election under clause 7.2(a) (i), the Company must register the personal representative as the holder of the shares.

### **7.3 Death of joint holder**

If a shareholder who owns shares jointly dies, the Company will recognise only the survivor as being entitled to the Shareholder's interest in the shares. The estate of the shareholder is not released from any liability in respect of the shares.

### **7.4 Transmission of Shares on bankruptcy**

- (a) If a person entitled to shares because of the bankruptcy of a Shareholder gives the Directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares, the person may:
  - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
  - (ii) by giving a completed transfer form to the Company, transfer the shares to another person.
- (b) On receiving an election under clause 7.4(a) (i), the Company must register the person as the holder of the shares.

### **7.5 Transmission of Shares on mental incapacity**

- (a) If a person entitled to shares because of the mental incapacity of a Shareholder gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:
  - (i) the person may:
    - (A) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
    - (B) by giving a completed transfer form to the Company, transfer the shares to another person; and
  - (ii) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the Shareholder.
- (b) On receiving an election under clause 7.5(a) (i) (A), the Company must register the person as the holder of the shares.

### **7.6 Application of transfer provision**

A transfer under this clause 7 must comply with the provisions of this Constitution applying to transfers generally.

## **8. GENERAL MEETINGS**

### **8.1 *Annual general meetings***

Annual general meetings of the Company are to be held in accordance with the Corporations Act.

### **8.2 *Convening general meetings***

A Director or the Directors may whenever they think fit (and must if required to do so under the Corporations Act) convene and arrange to hold a general meeting of the Company.

### **8.3 *Notice of general meetings***

Notice of a meeting of Shareholders must be given in accordance with clause 18 and the Corporations Act.

### **8.4 *Calculation of period of notice***

In calculating the period of notice for the purposes of this clause 8, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

### **8.5 *Cancellation or postponement of a meeting***

Where a meeting of Shareholders (including an annual general meeting) is convened by the Directors they may, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them. This clause 8.5 does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Shareholders or by the Directors on the request of Shareholders.

### **8.6 *Notice of cancellation or postponement of a meeting***

Notice of cancellation or postponement of a general meeting must state the reason for cancellation or postponement and be given:

- (a) to each Shareholder individually; and
- (b) to each other person entitled to be given notice of a meeting of the Company's Shareholders under the Corporations Act.

### **8.7 *Contents of notice of postponement of meeting***

A notice of postponement of a general meeting must specify:

- (a) the postponed date and time for the holding of the meeting; and
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the original notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

#### **8.8 Number of clear days for postponement of meeting**

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days' notice of the general meeting required to be given by this Constitution or the Corporations Act.

#### **8.9 Business at postponed meeting**

The only business that may be transacted at a general meeting the holding of which is postponed is the business specified in the original notice convening the meeting.

#### **8.10 Proxy, attorney or Representative at postponed meeting**

Where:

- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a Representative, a proxy or an attorney or a Representative is authorised to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative, then that later date is taken to be substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the Shareholder appointing the proxy, attorney or Representative gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

#### **8.11 Non-receipt of notice**

The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive

notice does not invalidate the convening of the general meeting, any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

## **9. PROCEEDINGS AT GENERAL MEETING**

### **9.1 *Membership at a specified time***

The Directors may determine, for the purposes of a particular general meeting, that all the shares that are quoted on the ASX at a specified time before the meeting are to be taken as being held at the time of the meeting by the persons who held them at that specified time. The determination must be made and published in accordance with the Corporations Act.

### **9.2 *References in this clause 9***

In this clause 9, unless the contrary intention appears:

- (a) a reference to a Shareholder includes a reference to a proxy, attorney or Representative of that Shareholder; and
- (b) a reference to a proxy, attorney or Representative is a reference to a proxy, attorney or Representative of a Shareholder.

### **9.3 *Number for a quorum***

Subject to clause 9.6, three Shareholders present in person or by proxy, attorney or Representative constitute a quorum at a general meeting.

### **9.4 *Requirement for a quorum***

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the beginning of a meeting it is taken to be present throughout the meeting unless the chairman of the meeting (on the chairman's own motion or at the instance of a Shareholder, proxy, attorney or Representative who is present) declares otherwise.

### **9.5 *Quorum and time***

If within 30 minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened by a Director, or at the request of Shareholders, is dissolved; and



- (b) in any other case stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Shareholders and others entitled to notice of the meeting.

#### **9.6 Adjourned meeting**

At a meeting adjourned under clause 9.5(b), three persons each being a Shareholder, proxy, attorney or Representative present at the meeting and, if a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

#### **9.7 Appointment and powers of chairman of general meeting**

If the Directors have elected one of their number as chairman of their meetings, that person is entitled to preside as chairman at a general meeting.

#### **9.8 Absence of chairman at general meeting**

If a general meeting is held and:

- (a) a chairman has not been elected by the Directors; or
- (b) the elected chairman is not present within 30 minutes after the time appointed for the holding of a meeting or is unable or unwilling to act,

one of the following people (who are listed in order of precedence) may preside as chairman of the meeting:

- (c) the deputy chairman (if any);
- (d) a Director chosen by a majority of the Directors present;
- (e) the only Director present;
- (f) a Shareholder chosen by a majority of the Shareholders present in person or by proxy, attorney or Representative.

#### **9.9 Conduct of general meetings**

The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting; and
- (b) may require the adoption of any procedure which is, in the chairman's opinion, necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and

- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting, and a decision by the chairman under this clause 9.9 is final.

**9.10 *Adjournment of general meeting***

- (a) The chairman of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.
- (b) In exercising this discretion, the chairman may, but need not, seek the approval of the Shareholders present. Unless required by the chairman, a vote may not be taken or demanded by the Shareholders present in respect of any adjournment.
- (c) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

**9.11 *Notice of adjourned meeting***

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, a notice of the adjourned meeting must be given as in the case of an original meeting.

**9.12 *Questions decided by majority***

Subject to the requirements of the Corporations Act, a resolution is passed if a simple majority of the votes cast are in favour of the resolution.

**9.13 *Equality of votes – no casting vote for chairman***

If there is an equality of votes, either on a show of hands or on a poll, the chairman of the meeting is not entitled to a casting vote in addition to any votes to which the chairman is entitled as a Shareholder or proxy or attorney or Representative.

**9.14 *Declaration of results***

At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded and the demand is not withdrawn. A declaration by the chairman that a resolution has on a show of hands been carried out unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the

fact. Neither the chairman nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

#### **9.15 Poll**

- (a) If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chairman and the result of the poll constitutes a resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a chairman or on a question of adjournment must be taken immediately.
- (c) A demand for a poll may be withdrawn.
- (d) 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.

#### **9.16 Entitlement to vote**

- (a) Subject to any rights or restrictions for the time being attached to any class or classes of shares and to this Constitution:
  - (i) on a show of hands, each Shareholder present in person and each other person present as a proxy, attorney or Representative of a Shareholder has one vote; and
  - (ii) on a poll, each Shareholder present in person has one vote for each fully paid share held by the Shareholder and each person as a proxy, attorney or Representative of a Shareholder has one vote for each fully paid share held by the Shareholder that the person represents.
- (b) A Shareholder is not entitled to a vote at a general meeting in respect of shares which are the subject of a current Restriction Agreement for so long as any breach of that agreement subsists.

#### **9.17 Voting on a poll for partly paid shares**

If a shareholder holds partly paid shares, the number of votes the Shareholder has in respect of those shares on a poll is determined as follows:

$$\frac{A \times B}{C} = D$$

C

where:

A is the number of those shares held by the Shareholder;

- B is the amount paid on each of those shares excluding any amount:
- (a) paid or credited as paid in advance of a call; and
  - (b) credited as paid on those shares to the extent that it exceeds the value (ascertained at the time of issue of those shares) of the consideration received for the issue of those shares;
- C is the issue price of each of the shares;
- D disregarding any fractions which arise, is the number of votes the Shareholder has.

**9.18 *Joint shareholders' vote***

If a share is held jointly and more than one Shareholder votes in respect of that share, only the vote of the shareholder whose name appears first in the register counts.

**9.19 *Vote of shareholder of unsound mind***

If a Shareholder is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health then the Shareholder's committee or trustee or any other person who properly has the management of the Shareholder's estate may exercise any rights of the Shareholder in relation to a general meeting as if the committee, trustee or other person were the Shareholder.

**9.20 *Effect of unpaid call***

A Shareholder is not entitled at a general meeting to cast a vote attached to a share on which a call is due and payable and has not been paid.

**9.21 *Validity of voting in certain circumstances***

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Shareholder dies; or
- (b) the Shareholder is mentally incapacitated; or
- (c) the Shareholder revokes the appointment or authority; or
- (d) the Shareholder revokes the authority under which the appointment was made by a third party; or
- (e) the Shareholder transfers the share in respect of which the appointment or authority was given.

### **9.22 *Objection to voting qualifications***

- (a) An objection to the right of a person to attend or vote at the meeting or adjourned meeting:
  - (i) may not be raised except at that meeting or adjourned meetings; and
  - (ii) must be referred to the chairman of the meeting, whose decision is final.
- (b) A vote not disallowed under the objection is valid for all purposes.

### **9.23 *Director entitled to notice of meeting***

A Director is entitled to receive notice of and to attend all general meetings and all separate general meetings of the holders of any class of shares in the capital of the Company and is entitled to speak at those meetings.

## **10. DIRECTORS**

### **10.1 *Continuation of Directors in office***

The Directors in office at the time of the adoption of this Constitution continue in office subject to this Constitution.

### **10.2 *Number of Directors***

- (a) Subject to clause 10.2(b), the number of Directors may not be less than three nor more than:
  - (i) eight; or
  - (ii) if the Directors have determined a number less than eight (but not less than the number of Directors in office at the time the determination takes effect) to be the maximum number of Directors, the number of Directors determined by the Directors.
- (b) The Company in general meeting may by resolution increase or reduce the number of Directors, and may also determine the rotation in which the changed number of Directors are to retire from office.

### **10.3 *Rotation of Directors***

- (a) At each annual general meeting one-third of the Directors for the time being, or, if their number is not three nor a multiple of three, then the number nearest one-third, and any other Director who has held office for three years or more since last being elected, must retire from office.

- (b) In determining the number of Directors to retire, account is not to be taken of a Director who only holds office until the conclusion of the meeting in accordance with clause 10.8 or the Managing Director who is exempt from retirement by rotation in accordance with clause 12.28.

#### **10.4 Office held until conclusion of meeting**

A retiring Director holds office until the conclusion of the meeting at which that Director retires, but is eligible for re-election.

#### **10.5 Directors to retire**

The Directors to retire at any annual general meeting must be those who have been the longest in office since their last election, but, as between persons who were last elected as Directors on the same day, those to retire must be determined by lot, unless they otherwise agree among themselves.

#### **10.6 Director elected at general meeting**

The Company may, at a general meeting at which a Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office.

#### **10.7 Eligibility for election as Director**

Except for:

- (a) a person who is eligible for election or re-election under clause 10.3 or 10.8; or
- (b) a person whose office as a Director becomes vacant by operation of section 201 C(3) of the Corporations Act,

a person is not eligible for election as a Director at a general meeting of the Company unless a consent to nomination signed by the person has been lodged at the Registered Office at least:

- (c) in the case of a person recommended for election by the Directors, 20 business days before the general meeting; and
- (d) in any other case, 30 business days before the general meeting.

#### **10.8 Casual vacancy**

- (a) 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 provided the total number of Directors does not exceed the maximum number determined in accordance with clause 10.

- (b) A Director appointed under this clause holds office until the conclusion of the next annual general meeting of the Company, but is eligible for election at that meeting. This clause 10.8 does not apply to one Managing Director nominated by the Directors under clause 12.28.

#### **10.9 Remuneration of Directors**

- (a) The Directors are entitled to be remunerated for their services as Directors at an amount and in the manner determined by the Directors, but the aggregate remuneration paid or provided to all Directors in any year may not exceed an amount fixed by the Company at a general meeting.
- (b) The expression “remuneration” as used in clause 10.9(a) does not include any amount which may be paid by the Company under clauses 10.10 and 10.11.

#### **10.10 Additional special duties**

If a Director at the request of the Directors performs additional or special duties for the Company, the Company may remunerate that Director as determined by the Directors and that remuneration may be either in addition to or in substitution for that Director’s remuneration under clause 10.9.

#### **10.11 Retirement benefit**

- (a) Subject to the Listing Rules and the Corporations Act, the Company may pay a former Director, or the personal representatives of a Director who dies in office, a retirement benefit in recognition of past services of an amount to be determined by the Directors. The Company may also enter into a contract with a Director providing for payment of a retirement benefit.
- (b) A retirement benefit paid under this clause 10.11 is not remuneration to which clause 10.9 applies.

#### **10.12 Expenses**

A Director is also entitled to be reimbursed out of the funds of the Company for reasonable travelling, accommodation and other expenses the Director incurs when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company.

#### **10.13 Director’s interests**

- (a) Subject to complying with the Corporations Act requirements regarding disclosure of and voting on matters involving material personal interests, a Director may:
  - (i) hold any office or place of profit in the Company, except that of auditor;

- (ii) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
  - (iii) enter into any contract or arrangement with the Company;
  - (iv) lend money to the Company at interest with or without security;
  - (v) participate in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company or persons dependent on or connected with them;
  - (vi) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor;
  - (vii) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors; and
  - (viii) sign or participate in the execution of a document by or on behalf of the Company.
- (b) A Director may do any of the above despite the fiduciary relationship with the Company arising from the Director's office:
- (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement.
- (c) A reference to the Company in clauses 10.13(a) and 10.13(b) is also a reference to each related body corporate of the Company.

#### **10.14 Vacation of office of Director**

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
- (b) resigns from the office by notice in writing to the Company; or
- (c) is not present personally or by proxy or Alternative Director at meetings of the Directors for a continuous period of three months without leave of absence from the Directors.



### **10.15 *Directorship to terminate with employment***

The office of a Director who is an employee of the Company is terminated on the Director ceasing to be employed but that person remains eligible for re-election as Director of the Company.

## **11. POWERS AND DUTIES OF DIRECTORS**

### **11.1 *Directors to manage Company***

The business of the Company is to be managed by the Directors, who may exercise all such powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.

### **11.2 *Specific powers of Directors***

Without limiting the generality of clause 11.1, the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

### **11.3 *Appointment of attorney***

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for such period and subject to such conditions as the Directors think fit.

### **11.4 *Provisions in power of attorney***

A power of attorney granted under clause 11.3 may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

### **11.5 *Minutes***

The Directors must cause minutes of meetings to be made and kept in accordance with the Corporations Act.

### **11.6 *Signing of cheques***

The Directors may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments,

and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

#### **11.7 *Audit and accounts***

- (a) The Directors must cause the Company to keep accounts of the business of the Company in accordance with the requirements of the Corporations Act and Listing Rules.
- (b) The Directors must cause the accounts of the Company to be audited in accordance with the requirements of the Corporations Act and the Listing Rules.

### **12. PROCEEDINGS OF DIRECTORS**

#### **12.1 *Directors' meetings***

The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.

#### **12.2 *Director may convene a meeting***

- (a) A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.
- (b) The Directors may meet either in person or by telephone or by using any other technology consented to by all Directors.

#### **12.3 *Questions decided by majority***

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote and that decision is for all purposes a decision of the Directors.

#### **12.4 *Alternate Director or proxy and voting***

A person who is present at a meeting of Directors as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or proxy and, if that person is also a Director, has one vote as a Director in that capacity.

#### **12.5 *Chairman's casting vote***

In the event of an equality of votes the chairman of the meeting has a casting vote, unless only two Directors are present and entitled to vote at the meeting on the question.

## **12.6 Appointment of Alternate Director**

Subject to the Corporations Act, a Director may appoint a person, approved by a majority of the other Directors, to be an Alternate Director in the Director's place during such period as the Director thinks fit.

## **12.7 Alternate Director and meetings**

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not attend a meeting, is entitled to attend and vote in the appointor's place.

## **12.8 Alternate Directors' powers**

An alternate Director may exercise the powers except the power to appoint an Alternative Director and, subject to the Corporations Act, may perform all the duties of the appointor insofar as the appointor has not exercised or performed them.

## **12.9 Alternate Director responsible for own acts and defaults**

Whilst acting as a Director, an Alternate Director is responsible to the Company for the Alternate Director's own acts and defaults and the appointor is not responsible for them.

## **12.10 Alternate Director and remuneration**

An Alternate Director is not entitled to receive from the Company any remuneration or benefit under 10.9 or 10.11.

## **12.11 Termination and appointment of Alternate Director**

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director.

## **12.12 Appointment and terminating in writing**

An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment and delivered to the Company.

## **12.13 Alternate Director and number of Directors**

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

**12.14 Director attending and voting by proxy**

A Director may attend and vote by proxy at a meeting of the Directors if the proxy:

- (a) is another Director; and
- (b) has been appointed in writing signed by the appointor.

The appointment may be general or for one or more particular meetings.

**12.15 Quorum for Directors' meeting**

At the meeting of Directors, the number of Directors whose presence in person or by proxy is necessary to constitute a quorum is three or any greater number determined by the Directors.

**12.16 Remaining Directors may act**

The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by clause 10, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a general meeting.

**12.17 Chairman of Directors**

The Directors may elect one of their number as chairman of their meetings and may also determine the period for which the person elected as chairman is to hold office.

**12.18 Absence of chairman at Directors' meetings**

If a Directors' meeting is held and:

- (a) a chairman has not been elected under clause 12.17; or
- (b) the chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number to be chairman of the meeting.

**12.19 Directors' meetings**

The Directors may delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to a committee or committees consisting of at least one Director and such other persons as they think fit.

**12.20 Powers delegated to Directors' committees**

A committee to which any powers have been delegated under clause 12.19 must exercise those powers in accordance with any directions of the Directors. A power so exercised is taken to have been exercised by the Directors.

**12.21 Chairman of Directors' committees**

The members of a committee may elect one of their number as chairman of their meetings. If a meeting of a committee is held and:

- (a) a chairman has not been elected; or
- (b) the chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members present may elect one of their number to be chairman of the meeting.

**12.22 Meetings of Directors' committee**

A committee may meet and adjourn as it thinks proper.

**12.23 Determination of questions**

- (a) Questions arising at a meeting of a committee are to be determined by a majority of votes of the members involved and voting.
- (b) In the event of an equality of votes the chairman of the meeting has a casting vote, unless only two members of the committee are present and entitled to vote at the meeting on the question.

**12.24 Circulating responses**

The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs.

**12.25 Validity of acts of Directors**

All acts done at a meeting of the Directors or of a committee of Directors, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or

(b) a person acting as a Director was disqualified or was not entitled to vote, as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

#### **12.26 Appointment of Managing and Executive Directors**

The Directors may:

- (a) appoint one or more of their number to the office of Managing Director or as an Executive Director or to any other office, except auditor, or employment under the Company for the period and on the terms they think fit; and
- (b) subject to the terms of any contract between the relevant Director and the Company, at any time remove or dismiss any Managing Director or Executive Director from that office; and
- (c) appoint another Director to that office.

#### **12.27 Ceasing to be Managing or Executive Director**

A Managing Director or Executive Director automatically ceases to be a Managing Director or Executive Director on ceasing to be a Director.

#### **12.28 One Managing Director exempt**

One Managing Director, nominated by the Directors, is exempt from the election requirements under clause 10.11 and from retirement by rotation under clause 10.3 and is not counted under clause 10.5 for determining the number of Directors to retire by rotation.

#### **12.29 Remuneration of Managing and Executive Directors**

The remuneration of a Managing Director or an Executive Director may be fixed by the Directors and may be by way of salary, superannuation contributions, other benefits, commission or participation in profits or by all or any of those modes, but may not be by a commission on or percentage of operating revenue.

#### **12.30 Powers of Managing and Executive Directors**

The Directors may:

- (a) confer on a Managing Director or an Executive Director such of the powers exercisable by them, on such terms and conditions and with such restrictions, as they think fit; and

- (b) withdraw or vary any of the powers conferred on a Managing Director or an Executive Director.

## **13. SECRETARY**

### **13.1 *Appointment of Secretary***

There must be at least one Secretary of the Company who is to be appointed by the Directors.

### **13.2 *Suspension and removal of Secretary***

The Directors may suspend or remove a Secretary from that office.

### **13.3 *Powers, duties and authorities of Secretary***

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary are subject at all times to the control of the Directors.

## **14. SEALS**

### **14.1 *Safe custody of common seals***

The Directors must provide for the safe custody of any seal of the Company.

### **14.2 *Use of common seals***

If the Company has a common seal or duplicate common seal:

- (a) It may be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise its use; and
- (b) Every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

## **15. INSPECTION OF RECORDS**

### **15.1 *Inspection by shareholder***

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to inspection of Shareholders (other than Directors).

## **15.2 Right of Shareholder to Inspect**

A Shareholder (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

## **16. DIVIDENDS AND RESERVES**

### **16.1 Payment of dividend**

Subject to the Corporations Act, this Constitution and the rights of persons (if any) entitled to shares with special rights to dividend, the Directors may determine that a dividend is payable, fix the amount and the time for payment of the dividend and authorise the payment or crediting of the dividend by the Company to, or at the direction of, each Shareholder entitled to that dividend.

### **16.2 Share investment plan and dividend reinvestment plan**

The Directors may:

- (a) establish a share investment plan or dividend reinvestment plan on terms they decide, under which:
  - (i) the whole or any part of any dividend or interest due to members or holders of any convertible securities of the Company who participate in the plan on their shares or any class of shares or any convertible securities; or
  - (ii) any other amount payable to Shareholders.

may be applied in subscribing for or purchasing securities of the Company; and

- (b) amend, suspend or terminate a share investment plan.

### **16.3 Dividend Selection Plan**

The Directors may:

- (a) implement a dividend selection plan on terms they decide, under which participants may choose:
  - (i) to receive a dividend from the Company paid wholly or partly out of any particular fund or reserve or out of profits derived from any particular source; or
  - (ii) to forego a dividend from the Company in place of some other form of distribution from the company or another body corporate or a trust; and



- (b) amend, suspend or terminate a dividend selection plan.

#### **16.4 Employee Share Plans**

The Directors may:

- (a) establish and give effect to any employee share plans for the purchase or acquisition of shares, rights to shares or options to acquire shares by or for the benefit of employees of the Company; and
- (b) resolve to apply the whole or a portion of any sum, standing to the credit of any reserve or other account in paying up in full unissued shares to the Company to be used to the holders of shares, options or other securities of the Company in accordance with the employee share plan.

#### **16.5 No interest on dividend**

Interest is not payable by the Company on a dividend.

#### **16.6 Reserves and profits carried forward**

- (a) The Directors may, before paying any dividend, set aside out of the profits of the Company such sums as they think proper as reserves, to be applied, at the discretion of the Directors, for any purposes for which the profits of the Company may be properly applied.
- (b) Pending any application, the reserves may, at the discretion of the Directors, be used in the business of the Company or be invested in such investments as the Directors think fit.
- (c) The Directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

#### **16.7 Calculation and apportionment of dividends**

- (a) Subject to the rights of any persons entitled to the shares with special rights as to dividend and to the terms of any shares issued to the contrary, the profits of the Company are divisible among the Shareholders so that, on each occasion on which a dividend is paid:
  - (i) the same sum is paid on each share on which all amounts payable have been paid; and
  - (ii) the sum paid on a share on which all amounts payable have not been paid is the proportion of the sum referred to in clause 16.7(a)(i) that the amount

paid on the shares bears to the total the amounts paid and payable on the share.

- (b) In determining the amount paid on a share, any amount:
- (i) paid or credited as paid in advance of a call; or
  - (ii) credited as paid on a share to the extent that it exceeds the value (ascertained at the time of issue of the share) of the consideration received for the issue of the share.

must be excluded.

#### **16.8 Deductions for dividends**

The Directors may deduct from any dividend payable to, or at the direction of, a Shareholder all sums of money (if any) presently payable by that Shareholder to the Company on account of calls or otherwise in relation to the shares in the Company.

#### **16.9 Distribution of specific assets**

When resolving to pay a dividend, the Directors may:

- (a) resolve that the dividend be satisfied either wholly or partly by the distribution of specific assets to some or all of the persons entitled to the dividend, included fully paid shares in or debentures of the Company or fully paid shares in or debentures of any other body corporate; and
- (b) direct that the dividend payable in respect of any particular shares be satisfied wholly or partly by such a distribution and that the dividend payable in respect of other shares be paid in cash.

#### **16.10 Resolution of distribution difficulties**

- (a) If a difficulty arises in regard to a distribution under clause 16.9, the Directors may:
  - (i) settle the matter as they consider expedient; and
  - (ii) fix the value for distribution of the specific assets or any part of those assets; and
  - (iii) determine that cash payments will be made to, or at the direction of, any Shareholders on the basis of the value so fixed in order to adjust the rights of all parties; and
  - (iv) vest any such specific assets in trustees as the Directors consider expedient.

- (b) If a distribution of specific assets to, or at the direction of, a particular Shareholder or Shareholders is illegal or, in the Directors' opinion, impractical, the Directors may make a cash payment to the Shareholder or Shareholders on the basis of the cash amount of the dividend instead of the distribution of specific assets.

#### **16.11 Payment by cheque and receipts**

- (a) A dividend, interest or other money payable in cash in respect of shares may be paid to the relevant Shareholder or Shareholders:
  - (i) by cheque sent by post to the address of the relevant Shareholder as shown in the Register or, in the case of joint Shareholders, to the address of the joint Shareholder first names in the Register; or
  - (ii) by cheque sent by post to another address nominated in writing by the relevant Shareholder or joint Shareholder; or
  - (iii) by some other method of direct credit determined by the Directors or to another person or place nominated in writing by the relevant Shareholder or joint Shareholder.
- (b) Anyone of two or more joint holders may give an effectual receipt for any dividend, interest or other money payable in respect of the shares held by them as joint holders.

#### **16.12 Unclaimed dividends**

Unclaimed dividends may be invested by the Directors as they think fit for the benefit of the Company until claimed or until required to be dealt with in accordance with any law relating to unclaimed moneys.

### **17. CAPITALISATION OF PROFITS**

#### **17.1 Capitalisation of reserves and profits**

The Directors may resolve to:

- (a) capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve amount or the profit and loss account or otherwise available for distribution to Shareholders; and
- (b) apply the sum in any of the ways mentioned in clause 17.2, for the benefit of Shareholders in the proportions to which those Shareholders would have been entitled in a distribution of that sum by way of dividend.

## **17.2 Applying a sum for the benefit of Shareholders**

The ways in which a sum may be applied for the benefit of Shareholders under clause 17.1 are:

- (a) in paying up any amounts unpaid on shares held by Shareholders; or
- (b) in paying up in full unissued shares or debentures to be issued to Shareholders as fully paid; or
- (c) partly as mentioned in clause 17.2(a) and partly as mentioned in clause 17.2(b).

## **17.3 Effecting a resolution**

The Directors may do all things necessary to give effect to a resolution under clause 17.1 and, in particular, may to the extent necessary to adjust the rights of the Shareholders among themselves:

- (a) make cash payments in cases where shares or debentures become issuable in fractions; and
- (b) authorise any persons to make, on behalf of all or any of the Shareholders entitled to any further shares or debentures on the capitalisation, an agreement with the Company providing for:
  - (i) the issue to them, credited as fully paid up, of any further shares or debentures; or
  - (ii) the payment by the Company on behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised,and any agreement so made is effective and binding on all the Shareholders concerned.

## **18. SERVICE OF DOCUMENTS**

### **18.1 Documents includes notice**

In this clause 18, a reference to a document includes a notice.

### **18.2 Methods of service**

The Company may give a document to a Shareholder:

- (a) personally; or

- (b) by sending it by post to the address for the Shareholder as appearing in the Register or any alternative address nominated in writing by the Shareholder; or
- (c) by sending it to a fax number or electronic address nominated by the Shareholder.

### **18.3 Post**

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and in either case is taken to have been received on the second day after the date of its posting.

### **18.4 Fax or electronic transmission**

If a document is sent by fax or electronic transmission, delivery of the document is taken:

- (a) to be effected by properly addressing and transmitting the fax or electronic transmission; and
- (b) to have been delivered on the day following its transmission.

### **18.5 Joint Shareholders**

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

### **18.6 Persons entitled to shares**

A person who by operation of law, transfer or other means whatsoever becomes entitled to any share is absolutely bound by every document given in accordance with this clause 18 to another person from whom that person derives titled prior to registration of that person's title in the Register.

## **19. WINDING UP**

### **19.1 Distribution of assets**

If the Company is wound up, the liquidator may, with the approval of Shareholders in the form of a special resolution, divide among the Shareholders in kind the whole or any part of the property of the Company and may for that purpose set such value as the liquidator considers fair on any property to be so divided and may determine how the division is to be carried out, as between the Shareholders or different classes of Shareholders.

### **19.2 Powers of liquidator to vest property**

The liquidator may, with the approval of Shareholders in the form of a special resolution, vest the whole or any part of the property of the Company in trustees on such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Shareholder is compelled to accept any shares or other securities in respect of which there is any liability on the part of the holder.

### **19.3 Shares issued on special terms**

This clause 19 does not prejudice or affect the rights of a Shareholder holding shares issued on special terms and conditions.

## **20. INDEMNITY AND INSURANCE**

### **20.1 Indemnity**

Every person who is or has been:

- (a) a Director of the Company; or
- (b) a Secretary of the Company; or
- (c) an executive officer of the Company,

is entitled to be indemnified out of the property of the Company against:

- (d) every liability incurred by the person in that capacity (except a liability for legal costs); and
- (e) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

unless:

- (f) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- (g) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

### **20.2 Insurance**

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director, Secretary or

executive officer of the Company against liabilities incurred by the person in that capacity, including liabilities for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by the statute.

## **21. RESTRICTED SECURITIES**

### **21.1 *Disposal during Escrow Period***

- (a) Restricted Securities cannot be disposed of during the Escrow Period except as permitted by the Listing Rules or the ASX.
- (b) The Company must not acknowledge a disposal (including by registering a transfer) of Restricted Securities during the Escrow Period except as permitted by the Listing Rules or the ASX.

### **21.2 *Breach of Restriction Agreement or Listing Rules***

The holder of the Registered Securities is not entitled to any dividend or distribution, or voting rights, in respect of the Restricted Securities while a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement, subsists in relation to those Restricted Securities.

## **22. SMALL HOLDINGS**

### **22.1 *Divestment Notice***

If the Directors determine that a Shareholder is a Small Holding Shareholder or a New Small Holding Shareholder, the Company may give the Shareholder a Divestment Notice to notify the Shareholder:

- (a) That the Shareholder is a Small Holding Shareholder or a New Small Holding Shareholder, the number of Shares making up and the market value of the Small Holding or New Small Holding and the date on which the market value was determined.
- (b) That the Company intends to sell the Relevant Shares in accordance with this clause 22 after the end of the Relevant Period specified in the Divestment Notice; and
- (c) If the Shareholder is a Small Holding Shareholder, that the Shareholder may at any time before the end of the Relevant Period notify the Company in writing that the Shareholder desires to retain the Relevant Shares and that if the Shareholder does

so the Company will not be entitled to sell the Relevant Shares under that Divestment Notice.

### **22.2 Divestment Notice to comply with ASTC Business Rules**

If the ASTC Business Rules apply to the Relevant Shares, the Divestment Notice must comply with the ASTC Business Rules.

### **22.3 Relevant Period**

The Relevant Period must be at least:

- (a) Six weeks from the date the Divestment Notice is given, in the case of a Divestment Notice given to a Small Holding Shareholder; or
- (b) Seven days from the date the Divestment Notice is given, in the case of a Divestment Notice given to a New Small Holding Shareholder.

### **22.4 Company can sell Relevant Shares**

At the end of the Relevant Period the Company is entitled to sell on-market or in any other way determined by the Directors:

- (a) The Relevant Shares of a Shareholder who is a Small Holding Shareholder, unless that Shareholder has notified the Company in writing before the end of the Relevant Period that the Shareholder desires to retain the Relevant Shares, in which event the Company must not sell those Relevant Shares under that Divestment Notice; and
- (b) The Relevant Shares of a Shareholder who is a New Small Holding Shareholder.

### **22.5 No obligation to sell**

The Company is not bound to sell any Relevant Shares which it is entitled to sell under this clause 22, but if the Relevant Shares are not sold within six weeks after the end of the Relevant Period, the Company's right to sell the Relevant Shares under the Divestment Notice relating to those Shares lapses and it must notify the Shareholder to whom the Divestment Notice was given accordingly.

### **22.6 Company as Shareholder's attorney**

The Shareholder appoints the Company and each Director and Secretary jointly and severally as the Shareholder's attorney in the Shareholder's name and on the Shareholder's behalf to do all acts and things which the Company considers necessary or appropriate to effect the sale or transfer of the Relevant Shares in accordance with this clause 22, including executing on behalf of the Shareholder all deeds, instruments or



other documents necessary to transfer the Relevant Shares and to deliver any such deeds, instruments or other documents to the purchaser.

#### **22.7 Conclusive Evidence**

A statement in writing by or on behalf of the Company under this clause 22 is binding on and, in the absence of manifest error, conclusive against a Shareholder. In particular, a statement that the Relevant Shares specified in the statement have been sold in accordance with this clause 22 is conclusive against all persons claiming to be entitled to the Relevant Shares and discharges the purchase from all liability in respect of the Relevant Shares.

#### **22.8 Registering the purchaser**

The Company must register the purchase of Relevant Shares sold and transferred by the Company under this clause 22 as the holder of those shares. The purchaser is not bound to see to the application of any money paid as consideration. The title of the purchaser to the Relevant Shares transferred to the purchaser is not affected by any irregularity or invalidity in connection with the actions of the Company under this clause 22.

#### **22.9 Payment of proceeds**

Subject to clause 22.10 where:

- (a) Relevant Shares of a Shareholder are sold by the Company under this clause 22; and
- (b) the certificate for the Relevant Shares (unless the Company is satisfied that the certificate has been lost or destroyed or the Relevant Shares are a Uncertificated Securities Holding) has been received by the Company,

the Company must, within 60 days of the completion of the sale, send the proceeds of sale to the Shareholder entitled to those proceeds by sending a cheque payable to the Shareholder through the post to the address of the Shareholder shown in the Register, or in the case of joint holders, to the address shown in the Register as the address of the Shareholder whose names first appears in the Register. Payment of any money under this clause 22.9 is at the risk of the Shareholder to whom it is sent.

#### **22.10 Costs**

In the case of a sale by the Company under this clause 22 of Relevant Shares of a New Small Holding Shareholder, the Company is entitled to deduct and retain from the proceeds of sale, the costs of the sale as determined by the Company. In any other case, the Company or purchaser must bear the costs of sale of the Relevant Shares. The costs

of sale include all stamp duty, brokerage and government taxes and charges (except for tax on income or capital gains of the Shareholder) payable by the Company in connection with the sale and transfer of the Relevant Shares.

**22.11 *Remedy limited to damages***

The remedy of a Shareholder in respect of the sale of Relevant Shares of that Shareholder under this clause 22 is limited to a right of action in damages against the Company in respect to any breach by the Company of the requirements of this clause 22, to the exclusion of any other right, remedy or relief against any other person or in relation to any other matter.

**22.12 *Dividends and voting suspended***

Unless the Directors determine otherwise, where a Divestment Notice is given to a New Small Holding Shareholder in accordance with this clause 22, then despite any other provision in this Constitution, the rights to receive payment of dividends and to vote attached to the Relevant Shares of that Shareholder are suspended until the Relevant Shares are transferred to a new holder or that Shareholder ceases to be a New Small Holding Shareholder. Any dividends that would, but for this clause 22.12, have been paid to that Shareholder must be held by the Company and paid to that Shareholder within 60 days after the earlier date the Relevant Shares of that Shareholder are transferred and the date that the Relevant Shares of that Shareholder cease to be subject to a Divestment Notice.

**22.13 *12 month limit***

If the Listing Rules require and subject to clause 22.14, the Company must not give a Small Holding Shareholder more than one Divestment Notice in any 12 month period.

**22.14 *Effect of takeover bid***

From the date of the announcement of a takeover bid for the Shares until the close of the offers made under the takeover bid, the Company's powers under this clause 22 to sell Relevant Shares of a Shareholder cease. After the close of the offers under the takeover bid the Company may give a Divestment Notice to a Shareholder who is a Small Holding Shareholder or a New Small Holding Shareholder, despite clause 22.13 even if it is less than 12 months since the Company last gave a Divestment Notice to that Shareholder.