

Corporations Act 2001

Constitution of Protect Severance Scheme No. 2 Pty Ltd

A company limited by shares

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Contents

Corporations Act 2001	1
1 Definitions and interpretation	4
1.1 Definitions	4
1.2 Interpretation	6
1.3 Constitution and the Act	7
2 Nature of the company	7
2.1 Proprietary company	7
2.2 Scope of powers	7
3 The internal management of the company	8
4 Directors	8
4.1 Preliminary	8
4.2 Appointment of Directors	9
4.3 Ceasing to be a Director	11
4.4 Board Reviews	12
4.5 Managing Director	13
4.6 Remuneration and reimbursement of expenses	13
4.7 Conflicts of interest	15
5 Management of business by the Board	18
5.1 Powers of the Board	18
5.2 Directors must keep transactions secret	18
5.3 Appointment of attorney for Company	19
5.4 Delegation by the Board	19
5.5 Seal and execution of documents	19
5.6 Negotiable instruments	20
6 Proceedings of the Board	20
6.1 Board circulating resolution without a meeting	20
6.2 Calling Board meetings	20
6.3 Notice of meeting	20
6.4 Conduct of Board meetings	20
6.5 Chairing Board meetings	21
6.6 Voting by chair of Board meeting	21
6.7 Voting rights of ETU Directors and NECA Directors	21
6.8 Quorum at Board meetings	22
6.9 Passing of resolutions at Board meetings	22
6.10 Special Majority Decisions	22
6.11 Committee powers and meetings	23
6.12 Validity of acts of Directors	23
7 General meetings	23
7.1 Circulating resolution	23
7.2 No annual general meetings	24
7.3 Right to call and attend general meetings	24
7.4 Notice	25
7.5 Cancellation or postponement of a general meeting	26
7.6 Conducting general meetings	27

7.7	Adjournment of general meetings	29
7.8	Resolutions, voting and polls at general meetings	30
7.9	Proxies and Representatives	32
7.10	Meetings of holders of a class of shares	33
8	Minutes of meetings	33
9	Secretary	34
9.1	Appointment	34
9.2	Notification to ASIC	34
9.3	Terms and conditions of appointment	34
9.4	Suspension or termination of appointment of Secretary	34
10	Auditor	35
10.1	Appointment	35
10.2	Auditor and meetings of Members	35
11	Share capital	35
11.1	General	35
11.2	Changes to shares and share capital	36
11.3	Partly paid shares and calls	37
11.4	Liens	40
11.5	Certificates	41
11.6	Transfer of Shares – generally	42
12	No payment of dividends	43
13	Company books	43
13.1	Registers	43
13.2	Financial records and statements	43
13.3	Inspection and copying of registers and financial records	44
13.4	Audit	44
14	Service and payments	44
14.1	Service	44
14.2	Payments	47
15	Proceedings involving officers	47
15.1	Indemnity	47
15.2	Advances	48
15.3	Insurance	48
16	Winding up	49
16.1	Commencement of winding up	49
16.2	Rights of Members on winding up	49
16.3	Division of assets	49
17	Amendment	50

Constitution of Protect Severance Scheme No. 2 Pty Ltd

Corporations Act 2001

A company limited by shares

Constitution of Protect Severance Scheme No. 2 Pty Ltd ACN 606 361 853 (Company)

1 Definitions and interpretation

1.1 Definitions

- (a) Unless the context otherwise requires and other than in the case of an expression defined in 1.1(b), an expression used in this Constitution that has a particular meaning in the Act has the same meaning in this Constitution.

- (b) In this Constitution:

Act means the *Corporations Act 2001* and any regulations and instruments made under the Act together with any statutory modification, amendment or re-enactment in force and any reference to any chapter, section, part or division is to that chapter, section, part or division as so modified, amended or re-enacted;

Appointed Director means a Director appointed in accordance with clause 4.2(d);

Auditor means a person appointed as an auditor of the Company in accordance with clause 10.1;

Authorised Persons means:

- (i) in relation to NECA, the President and Secretary of the NECA Victorian Chapter Council; and
- (ii) in relation to the ETU, the Secretary and Assistant Secretaries of the ETU,

or such other persons agreed in writing between the parties;

Board means:

- (i) all or some of the Directors acting as a board; or
- (ii) at a time when the Company has only one Director, that Director;

Board Review has the meaning given in clause 4.4(c);

Business Day means a day on which trading banks are open for business in Melbourne, other than a Saturday or a Sunday.

Certificate means, in relation to a share, the certificate issued by the Company recording the name of the Member registered as owner of the share;

Chair means the person elected in accordance with clause 6.5;

Constitution means this constitution as amended from time to time and a reference to a clause is a reference to a clause of this constitution;

Director means a person occupying the position of a director of the Company;

ETU means Victorian Divisional Branch of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia or any person or entity which subsequently assumes the obligations, powers, duties and role of ETU (in its capacity as a sponsor) under the trust deed;

ETU Director means a Director appointed by the ETU in accordance with clause 4.2(a);

Independent has the meaning given in clause 4.2(f);

Independent Chair means the Director appointed in accordance with clause 4.2(c);

Managing Director means a person appointed as the managing director of the Company in accordance with clause 4.5(a);

Material Contract means a contract or arrangement (whether oral or in writing) to which the Company is, or is proposed to be, party and which:

- (i) is with a management services provider;
- (ii) is with a Director or a Related Party of a Director;
- (iii) is with the ETU or a Related Party of the ETU; or
- (iv) is with NECA or a Related Party of NECA;

Member means a person entered in the Register of Members as a holder of shares in the Company;

NECA means The National Electrical and Communications Association of Level 12/222 Kings Way, South Melbourne, Victoria or any person or entity which subsequently assumes the obligations, powers, duties and role of NECA;

NECA Director means a Director appointed jointly by those persons who from time to time hold the offices of President and Secretary of the NECA Victorian Chapter Council NECA in accordance with clause 4.2(b);

NECA Victorian Chapter Council means the committee of management elected by the members of the Victorian Chapter of NECA as the council of the Victorian Chapter of NECA.

Protect Scheme No.2 means the approved worker entitlement fund to be established by the ETU and NECA as sponsors and to be named 'Protect Scheme No.2'.

Protect Severance Scheme means the trust formerly known as the 'Electrical Industry Severance Scheme' which was established by trust deed dated 19 February 1998 by the ETU and NECA as sponsors;

Register of Members means the register listing each person who is a holder or joint holder of a share which the Company maintains in accordance with the provisions of the Act;

Registered Office means the registered office of the Company;

Related Party means:

- (i) in respect of a body corporate, anyone who is an associate of that body corporate under sections 11 to 15 (inclusive) of the Corporations Act; and
- (ii) in respect of an individual, an "Associate" of that individual as defined in section 318 of the *Income Tax Assessment Act 1936* (Cth).

Representative means a person appointed to represent a corporate Member at a general meeting of the Company in accordance with clause 7.9(a) and the Act;

Secretary means a person appointed in accordance with clause 9.1 as a secretary of the Company and where appropriate includes an acting secretary and a person appointed by the Board to perform all or any of the duties of a Secretary of the Company; and

Special Majority Decision has the meaning given in clause 6.10(a).

1.2 Interpretation

In this Constitution, headings are inserted for convenience only and do not affect the interpretation of this Constitution and unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other gender;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example', 'such as' or similar expressions;
- (e) a reference to a document or instrument, including this agreement, includes all of its clauses, paragraphs, recitals, parts, schedules and annexures and includes the document or instrument as amended, varied, novated, supplemented or replaced from time to time;
- (f) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a joint venture, a firm, a trust, an association (whether incorporated or not) and a government agency or authority;
- (g) a period of time dating from a given day or the day of a given act or event is to be calculated exclusive of that day; and

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- (h) a reference to an amount paid on a share includes an amount credited as paid on that share.

1.3 Constitution and the Act

- (a) Except as provided in clause 1.3(b), this Constitution is subject to the Act and where there is any inconsistency between a clause of this Constitution and the Act, the Act prevails to the extent of the inconsistency.
- (b) To the maximum extent permitted by the Act, the provisions of the Act that apply as replaceable rules are expressly displaced and do not apply to the Company.

2 Nature of the company

2.1 Proprietary company

The Company is a proprietary company limited by shares and accordingly:

- (a) the number of Members of the Company is limited to no more than 50 (counting joint holders of a share in the Company as one person and not counting any person who is an employee of the Company or of a subsidiary of the Company or any person who was an employee of the Company or of a subsidiary of the Company when that person became a Member); and
- (b) the Company must not engage in anything that would require disclosure to investors under Chapter 6D of the Act other than as authorised by the Act.

2.2 Scope of powers

- (a) The Company has the legal capacity and powers of an individual both in and outside Australia.
- (b) The Company's legal capacity to act is not affected by the fact that the Company's interests are not, or would not be, served by acting.
- (c) The Company has all the powers of a body corporate including the power to:
 - (i) issue and cancel shares in the Company;
 - (ii) issue debentures;
 - (iii) grant options over unissued shares in the Company;
 - (iv) distribute any of the Company's property among the Members in kind or otherwise;
 - (v) give security by charging uncalled capital;
 - (vi) grant a floating charge over the Company's property;
 - (vii) arrange for the Company to be registered or recognised as a body corporate in any place outside this jurisdiction; and

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- (viii) do any thing that it is authorised to do by any other law (including a law of a foreign country).

3 The internal management of the company

The internal management of the Company will be governed by this Constitution.

4 Directors

4.1 Preliminary

(a) Number of Directors

- (i) The minimum number of Directors is one. The maximum number of Directors is 8, constituted as follows:
 - (A) up to three ETU Directors;
 - (B) up to two NECA Directors;
 - (C) the Independent Chair; and
 - (D) up to two Appointed Directors.

(b) Eligibility for appointment as Director

- (i) To be eligible to be elected or appointed as a Director, a person must:
 - (A) be an individual;
 - (B) be at least 18 years old; and
 - (C) not be otherwise ineligible or disqualified from holding office by virtue of this Constitution or the Act.
- (ii) To be eligible to be elected or appointed as a Director, a person is not required to hold any shares in the Company.

(c) Non-eligibility of Auditor

Any current or former Auditor of:

- (i) the Company;
- (ii) Protect Severance Scheme,
- (iii) Protect Scheme No.2; or
- (iv) partner or employee or employer of that Auditor,

is ineligible to be elected or appointed as a Director.

(d) **Consent to act**

A person who is to be appointed as a Director must consent in writing before being appointed.

4.2 Appointment of Directors

(a) **ETU Directors**

- (i) For so long as the ETU is a Member, the ETU (acting through any Authorised Person of the ETU) may, at any time and from time to time, appoint up to three Directors and may remove any one or more of the ETU Directors. Any such appointment or removal must be by written notice to the relevant individual, with a copy to the Company and to the NECA Victorian Chapter Council.
- (ii) If the ETU removes an ETU Director in accordance with clause 4.2(a)(i), the ETU must indemnify the other Members and the Company against any claim by that ETU Director for wrongful or unfair dismissal or redundancy, and against any claim for other compensation arising from the removal.
- (iii) Each ETU Director will hold office for a maximum period of approximately three years, after which time the ETU Director's performance and continuing involvement as a Director will be reviewed in accordance with clause 4.4. Following such review, the ETU must:
 - (A) subject to clause 4.2(a)(iv), confirm in writing to the Company (with a copy to the relevant ETU Director and the NECA Victorian Chapter Council) that the ETU Director will serve for a further maximum period of approximately three years; or
 - (B) promptly remove that ETU Director from office and (in the ETU's discretion) replace him or her with a new ETU Director in accordance with clause 4.2(a)(i).
- (iv) Subject to clause 4.2(a)(v), the ETU must not re-appoint an ETU Director under clause 4.2(a)(iii)(A) if this will or may result in the ETU Director holding office as a Director for more than nine consecutive years.
- (v) Notwithstanding what is stated in clauses 4.2(a)(iii) and 4.2(a)(iv), the ETU may reappoint an ETU Director for a fourth term of between one and three years under clause 4.2(a)(iii) meaning that, for the purpose of clause 4.2(a)(iv), an ETU Director could hold office as an ETU Director for a maximum period of between ten and twelve consecutive years.

(b) **NECA Directors**

- (i) For so long as NECA is a Member, NECA (acting through any Authorised Person of NECA) may, at any time and from time to time, appoint up to two Directors and may remove any one or more of the NECA Directors. Any such appointment or removal must be by written notice to the relevant individual, with a copy to the Company and to the ETU.
- (ii) If NECA removes a NECA Director in accordance with clause 4.2(b)(i), NECA must indemnify the other Members and the Company against any

claim by that NECA Director for wrongful or unfair dismissal or redundancy, and against any claim for other compensation arising from the removal.

- (iii) Each NECA Director will hold office for a maximum period of approximately three years, after which time the NECA Director's performance and continuing involvement as a Director will be reviewed in accordance with clause 4.4. Following such review, NECA must:
 - (A) subject to clause 4.2(b)(iv), confirm in writing to the Company (with a copy to the relevant NECA Director and the ETU) that the NECA Director will serve for a further maximum period of approximately three years; or
 - (B) promptly remove that NECA Director from office and (in NECA's discretion) replace him or her with a new NECA Director in accordance with clause 4.2(b)(i).
- (iv) Subject to clause 4.2(b)(v), NECA must not re-appoint a NECA Director under clause 4.2(b)(iii)(A) if this will or may result in the NECA Director holding office as a Director for more than nine consecutive years.
- (v) Notwithstanding what is stated in clauses 4.2(b)(iii) and 4.2(b)(iv), NECA may reappoint a NECA Director for a fourth term of between one and three years under clause 4.2(b)(iii) meaning that, for the purpose of clause 4.2(a)(iv), a NECA Director could hold office as a NECA Director for a maximum period of between ten and twelve consecutive years.

(c) **Independent Chair**

- (i) The Board may by Special Majority Decision appoint a person who is Independent as a Director to chair Board meetings ("**Independent Chair**").
- (ii) The Board may by Special Majority Decision remove the Chair at any time and appoint another Independent person as Independent Chair. Subject to the foregoing, the Independent Chair is intended to serve for a maximum term of approximately three years and may (subject to this Constitution and the law) be re-appointed save that an individual Director will be ineligible for such re-appointment after holding office for three consecutive terms of approximately three years each.
- (iii) Notwithstanding what is stated in clause 4.2(c)(ii), the Board may, by Special Majority Decision, reappoint the Independent Chair for a fourth term of between one and three years, meaning that the Independent Chair could hold office for a maximum period of between ten and twelve consecutive years.

(d) **Appointed Director**

- (i) The Board may, by Special Majority Decision appoint a person to be a Director ("**Appointed Director**").
- (ii) The Appointed Director may, but need not be, Independent.
- (iii) The Board may by Special Majority Decision remove the Appointed Director at any time and (in the Board's discretion) appoint another person

as Appointed Director. Subject to the foregoing, the Appointed Director is intended to serve for a maximum term of approximately three years and may (subject to this Constitution and the law) be re-appointed save that an individual Director will be ineligible for such re-appointment after holding office for three consecutive terms of approximately three years each.

- (iv) Notwithstanding what is stated in clause 4.2(d)(iii), the Board may, by Special Majority Decision, reappoint an Appointed Director for a fourth term of between one and three years, meaning that an Appointed Director could hold office for a maximum period of between ten and twelve consecutive years.

(e) **Members cannot appoint or elect Directors**

The Members do not have the power to appoint or elect any Directors or to remove a Director from office, other than in accordance with clause 4.2(a)(i) or clause 4.2(b)(i) (as applicable).

(f) **Independence**

- (i) For the purposes of this Constitution, for a Director to be "**Independent**" the Director must be free of any interest, position, association or relationship that might influence, or reasonably be perceived to influence, in a material respect the Director's capacity to bring an independent judgement to bear on issues before the Board and act in the best interests of the Company and its Members generally.
- (ii) Without limiting clause 4.2(f)(i), in assessing whether or not a Director is Independent:
 - (A) regard must be had to the "factors relevant to assessing the independence of a director" set out in the then-prevailing "Corporate Governance Principles and Recommendations" issued by the ASX Corporate Governance Council; and
 - (B) without limiting the foregoing, a Director cannot be Independent if the Director is a beneficiary of the Protect Severance Scheme, a beneficiary of the Protect Scheme No.2, an officer, agent or employee of NECA or an official, employee or agent of the ETU.

4.3 Ceasing to be a Director

(a) **Resignation of Directors**

- (i) A Director may resign from office by giving notice in writing to the Company of the Director's intention to resign. A notice of resignation takes effect at the later of the following:
 - (A) the time of giving the notice to the Company;
 - (B) the date, if any specified in the notice; or
 - (C) the expiration of the period, if any, specified in the notice.

(b) **Removal from office**

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- (i) The ETU may remove an ETU Director from office at any time in accordance with clause 4.2(a)(i). Neither the Board nor the Members in general meeting have the power to remove an ETU Director from office.
 - (ii) NECA may remove a NECA Director from office at any time in accordance with clause 4.2(b)(i). Neither the Board nor the Members in general meeting have the power to remove a NECA Director from office.
 - (iii) The Board may remove the Independent Chair from office at any time in accordance with clause 4.2(c)(ii). The Members in general meeting do not have the power to remove the Independent Chair from office.
 - (iv) The Board may remove the Appointed Director from office at any time in accordance with clause 4.2(d)(iii). The Members in general meeting do not have the power to remove the Appointed Director from office.

(c) **Disqualification of Directors**

A Director's appointment ends immediately any of the following happens:

- (i) in the case of an ETU Director, the ETU ceasing to be a Member;
- (ii) in the case of a NECA Director, NECA ceasing to be a Member;
- (iii) the Director becomes bankrupt;
- (iv) the Director becomes mentally unfit to hold office, or the Director or his or her affairs are made subject to any law relating to mental health or incompetence; or
- (v) the Director becomes disqualified by law from being a Director.

(d) **Vacancies**

The Directors may continue to act if there is a vacancy.

(e) **Authority of sole Director**

A single Director acting as a sole Director may exercise all the powers and discretions conferred on the Directors under this Constitution or under the Corporations Act.

4.4 Board Reviews

- (a) The Board must conduct a Board Review within three years after the date of adoption of this Constitution. Thereafter, the Board must conduct a new Board Review no less than three years after the date that the previous Board Review was conducted.
- (b) Where practicable, the Board will seek to align the timing of the Board Review with the time at which the performance and continuing involvement of the relevant ETU Directors and NECA Directors is to be reviewed under clauses 4.2(a) and 4.2(b) respectively.
- (c) The review commissioned or undertaken by the Board ("**Board Review**") must:

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- (i) be designed with reference to contemporary good governance practice, taking into account the nature and operations of the Company;
 - (ii) involve a review of the performance of the Board, individual Directors and any committees of Directors in existence at the time; and
 - (iii) result in an appropriately-detailed report, which must be promptly submitted to the Board and each Member.
- (d) Subject to clause 4.4(c), the form and content of a Board Review and the manner in which a Board Review will be undertaken are otherwise at the Board's discretion.

4.5 Managing Director

(a) **Appointment of Managing Director and other executive Directors**

The Board:

- (i) may appoint one or more Directors to the office of Managing Director or to any other executive office for a period and on the terms (including as to remuneration) as the Board sees fit;
- (ii) may confer on a Managing Director any of the powers that the Board may exercise; and
- (iii) subject to the terms of appointment, may revoke or vary:
 - (A) the appointment of the Managing Director or other executive Director; or
 - (B) any of the powers conferred on the Managing Director or other executive Director.

(b) **Cessation as Managing Director or executive Director**

Without limiting clause 4.5(a)(iii)(A), a person ceases to be Managing Director or other executive Director if they cease to be a Director.

4.6 Remuneration and reimbursement of expenses

(a) **Remuneration of Director**

- (i) The Company may pay the Directors remuneration for carrying out the duties and responsibilities of the office of Director required by the Act.
- (ii) The Members in general meeting may determine the amount of remuneration to be paid to each Director under clause 4.6(a)(i).
- (iii) The remuneration that is determined by the Members to be paid under clause 4.6(a)(ii) is a debt due to the Directors, which accrues from day to day.
- (iv) Remuneration under this clause 4.6(a) may be provided in such manner that the Board decides, including by a fixed fee, by percentage of profits,

and by way of non cash benefits including contributions to a superannuation fund.

- (v) The amount of remuneration to be paid to each Director determined by the Members under clause 4.6(a)(ii) does not include any insurance premium paid or agreed to be paid for a Director under clause 15.3(a).

(b) **Remuneration of Directors for extra services**

- (i) If the Board or the Members request a Director to perform services in addition to those required by the Act, the Board may determine that the Company remunerate the Director for those services.
- (ii) Remuneration under this clause 4.6(b) may be provided in such manner that the Board decides, including by a fixed fee, by percentage of profits, and by way of non cash benefits including contributions to a superannuation fund.
- (iii) The Board may determine that the Company remunerate the Director as contemplated by this clause 4.6(b) in addition to or substitution for the remuneration paid or payable under the other provisions of this clause 4.6.

(c) **Remuneration for other offices held by a Director**

- (i) A Director may hold any other office or position of profit in the Company (other than Auditor) together with the directorship on such conditions including additional remuneration as the Board determines.
- (ii) Remuneration under this clause 4.6(c) may be provided in such manner that the Board decides, including by a fixed fee, by percentage of profits, and by way of non cash benefits including contributions to a superannuation fund.
- (iii) The Board may determine that the Company remunerate the Director as contemplated by this clause 4.6(c) in addition to or substitution for the remuneration paid or payable under the other provisions of this clause 4.6.

(d) **Reimbursement of expenses incurred by Director**

In addition to the remuneration paid or payable under the other provisions of this clause 4.6, a Director is entitled to reimbursement of a Director's travelling and other expenses that the Director properly incurs:

- (i) in attending Board meetings or any meetings of a committee of Directors;
- (ii) in attending any general meeting of the Company;
- (iii) in connection with the Company's business; and
- (iv) in the case of a Managing Director, in connection with carrying out or managing the Company's business.

(e) **No alternate directors**

No Director is permitted to appoint an alternate director to act as a Director in his or her place.

4.7 Conflicts of interest

(a) Director not disqualified

- (i) A Director or a body or entity in which a Director has a direct or indirect interest is not, by reason only of the Director's office, disqualified from:
 - (A) entering into any agreement or arrangement with the Company;
 - (B) holding any office or place of profit (other than Auditor) in the Company; or
 - (C) acting in a professional capacity (other than as Auditor) for the Company.
- (ii) A Director or a body or entity in which a Director has a direct or indirect interest is not liable to account to the Company for any remuneration, profits or benefits received under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company by reason only of the Director's office.

(b) Contracts in which Director has an interest

The fact that a Director holds office as a director and has fiduciary obligations arising out of that office:

- (A) does not on its own void or render voidable a contract made by the Director with the Company;
- (B) does not on its own void or render voidable a contract or arrangement entered into by or on behalf of the Company and in which the Director may have an interest; and
- (C) does not on its own require the Director to account to the Company for any profit realised by or under any contract or arrangement entered into by or on behalf of the Company and in which the Director may have an interest.

(c) Director may hold other office

- (i) A Director is not, by reason only of the Director's office, disqualified from being or becoming a director or other officer of, or otherwise being interested in:
 - (A) any related body corporate of the Company; or
 - (B) any other body corporate promoted by the Company or in which the Company may be interested as a shareholder or otherwise.

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- (ii) A Director is not accountable to the Company for any remuneration or other benefits received by the Director from having an interest in a body corporate under clause 4.7(c) by reason only of the Director's office.

(d) **Exercise of voting power in another company**

Any Director:

- (A) may exercise the voting power conferred by the shares or other interest held by the Company in another company in favour of a resolution appointing themselves or any Director as a director or other officer of the other company;
- (B) may vote at a Board meeting in favour of a resolution that the Company exercises its voting power conferred by the shares or other interest held by the Company in the other company to appoint that Director as a director or other officer of the other company;
- (C) may be appointed as representative of the Company and may vote at a general meeting of the other company in favour of a resolution appointing that Director as a director or other officer of the other company; and
- (D) if also a director of the other company, may vote as a director of the other company in whatever manner he or she sees fit, including voting in favour of a resolution appointing the Director to any other office in the other company and a resolution appointing any other Directors as directors or other officers of the other company.

(e) **Material personal interest - Director's duty to disclose**

- (i) If a Director has a material personal interest in a matter that relates to the affairs of the Company, the Director must give the other Directors notice of the interest unless:
 - (A) an exception in section 191(2) of the Act applies, or
 - (B) the Director is the only Director of the Company.
- (ii) A notice required by clause 4.7(e)(i) must:
 - (A) include details of the nature and extent of the interest;
 - (B) include the relation of the interest to the affairs of the Company; and
 - (C) be given at a Board meeting as soon as practicable after the Director becomes aware of their interest in the matter.

(f) **Director may give standing notice about a material personal interest**

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- (i) A Director required to give notice under clause 4.7(e) may give standing notice of the nature and extent of the interest in the matter.
 - (ii) The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.
 - (iii) A notice under clause 4.7(f)(i) may be given:
 - (A) at a Board meeting either orally or in writing; or
 - (B) to the other Directors individually in writing.
 - (iv) If the standing notice is given to the other Directors individually in writing:
 - (A) the notice is effective when it has been given to every Director; and
 - (B) the notice must be tabled at the next Board meeting after it is given.
 - (v) The Director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.
 - (vi) The standing notice ceases to have effect:
 - (A) if a person who was not a Director at the time when the standing notice was given is appointed as a Director (but commences to have effect again if it is given (by someone) to the person); and
 - (B) in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the standing notice.
 - (g) **Voting and completion of transactions in which a Director has a material personal interest**
 - (i) If a Director discloses details of an interest in accordance with clause 4.7(e) or 4.7(f) and the Act, or the interest is one that does not need to be disclosed under clause 4.7(e):
 - (A) the Director may vote on matters that relate to the interest;
 - (B) any transactions that relate to the interest may proceed; and
 - (C) if the disclosure is made before the transaction is entered into:
 - (1) the Director may retain any benefits under the transaction; and
 - (2) the Company must not avoid the contract merely because of the existence of the interest.
 - (h) **Wholly owned subsidiary**

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- (i) If the Company is a wholly owned subsidiary, a Director may act in the best interests of the holding company if:
 - (A) the Director acts in good faith;
 - (B) the Company is not insolvent at the time; and
 - (C) the Company does not become insolvent as a result of the Director's act.

(i) **ETU Directors and NECA Directors**

Subject to the Corporations Act and any other applicable law, in exercising his or her rights and powers as a member of the Board:

- (i) an ETU Director may have regard to the interests of the ETU; and
- (ii) a NECA Director may have regard to the interests of NECA.

5 Management of business by the Board

5.1 Powers of the Board

- (a) Unless otherwise provided by the Act or this Constitution, the business of the Company is to be managed by or under the direction of the Board.
- (b) The Board may exercise all of the powers of the Company except any powers that any provision of the Act or this Constitution requires the Company to exercise in general meeting.
- (c) Without limiting the generality of clause 5.1(b), the Board may exercise all the powers of the Company to
 - (i) borrow money;
 - (ii) charge any property or business of the Company or all or any of its uncalled capital; and
 - (iii) to issue debentures or give any other security for a debt, liability or obligations of the Company or of any other person.

5.2 Directors must keep transactions secret

Every Director and other agent or officer of the Company must:

- (a) keep confidential all aspects of all transactions of the Company, except:
 - (i) to the extent necessary to enable the person to perform his or her duties to the Company;
 - (ii) as required by law; or

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- (iii) when requested by the Board to disclose information to the Auditor or a general meeting; and
 - (b) if requested by the Board, sign and make a declaration that he or she will not disclose or publish any aspect of any transaction of the Company.

5.3 Appointment of attorney for Company

The Board may, by power of attorney, appoint any company, firm, person or body of persons to be the attorney or representative of the Company for:

- (a) any period; and
- (b) for the purposes and with the powers, authorities and discretions vested in or exercisable by the Board under this Constitution.

5.4 Delegation by the Board

- (a) The Board may delegate any of its powers to:
 - (i) a committee of Directors;
 - (ii) a Director;
 - (iii) an employee of the Company; or
 - (iv) any other person.
- (b) The delegate must exercise the powers delegated to it in accordance with any directions of the Board.
- (c) The effect of the delegate so exercising a power is the same as if the Board exercised it.
- (d) The Board may at any time revoke or vary any delegation to a person or committee.

5.5 Seal and execution of documents

- (a) The Board must provide for the safe custody of any seal of the Company.
- (b) If the Company has a common seal or duplicate common seal it must be used only by the authority of the Board, or of a committee of the Directors authorised by the Board to authorise its use and every document to which it is affixed must be signed by:
 - (i) a Director and be countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included; or
 - (ii) if the Company has only one Director and that Director is also the only Secretary, that Director; or
 - (iii) if the Company has only one Director and the Company does not have a Secretary, that Director.

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- (c) If the Company has only one Director and no Secretary, a document will be taken to be duly executed by the Company if it is signed by that Director.

5.6 Negotiable instruments

- (a) Any two Directors or, if there is only one Director, that Director, may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (b) The Board may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

6 Proceedings of the Board

6.1 Board circulating resolution without a meeting

- (a) While the Company has only one Director, nothing in this Constitution limits the powers of that Director to pass a resolution or make a declaration by recording it and signing the record.
- (b) The Board may pass a valid resolution without a Board meeting being held if all of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of the Board) sign a document (which may include a facsimile transmission) containing a statement that they are in favour of the resolution set out in the document.
- (c) 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.
- (d) The resolution is passed when the last Director signs.

6.2 Calling Board meetings

A Director may at any time, and the Secretary on the request of a Director must, convene a Board meeting.

6.3 Notice of meeting

Reasonable notice of every Board meeting must be given to each Director in accordance with clause 14.1(e), but failure to give or receive reasonable notice of that meeting will not invalidate anything done or any resolution passed at the meeting provided the failure occurred by accident or inadvertent error, or the Director who failed to receive notice attended the meeting or waived notice of the meeting either before or after the meeting.

6.4 Conduct of Board meetings

- (a) A Board meeting may be held:
 - (i) in person;
 - (ii) by telephone;
 - (iii) by audiovisual linkup; or

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- (iv) using any technology consented to by a majority of the Directors before or during the relevant meeting.
 - (b) Any consent under clause 6.4(a)(iv) may be a standing consent.
 - (c) If a Director gives their consent under clause 6.4(a)(iv) they may only withdraw their consent within a reasonable period before the meeting commences.
 - (d) A Director is regarded as present at a Board meeting where the meeting is conducted by telephone, audiovisual linkup or other technology if the Director is able to hear, and to be heard by, all others attending the meeting.
 - (e) A Board meeting conducted by telephone, audiovisual linkup or other technology will be deemed to be held at the place agreed on by the Directors attending that meeting provided at least one of the Directors present at the meeting was at that place for the duration of the meeting.
 - (f) Subject to the Act, and provided a majority of the Directors agree, a Board meeting may be held outside Australia.
 - (g) An original document, or a photocopy, facsimile or electronic copy of that document, which is in the possession of, or has been seen by, all Directors attending the Board meeting before, or at the time of, that meeting, is deemed to be a document tabled at that meeting.
 - (h) Subject to this Constitution, the Directors may adjourn and otherwise regulate Board meetings as they think fit.

6.5 Chairing Board meetings

- (a) The Directors present at a Board meeting may elect one of the Directors present to chair that meeting, or part of it, if:
 - (i) no Independent Chair has been appointed; or
 - (ii) the Independent Chair is not available or declines to act as chair for the meeting or part of it.

6.6 Voting by chair of Board meeting

In case of an equality of votes on a resolution at a Board meeting, the chair of that meeting does not have a casting vote on that resolution in addition to any vote the chair of that meeting has in his or her capacity as a Director in respect of that resolution.

6.7 Voting rights of ETU Directors and NECA Directors

(a) ETU Directors

For so long as there is more than one ETU Director holding office:

- (i) the ETU Directors shall have in aggregate three votes at Board meetings, and any one or more of the ETU Directors who is present and entitled to vote at the relevant Board meeting may exercise those three votes; and

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- (ii) the ETU may at any time by written notice to the Company (with a copy to the NECA Victorian Chapter Council) nominate the ETU Director or ETU Directors who may exercise those votes.

(b) **NECA Directors**

For so long as there is more than one NECA Director holding office, the NECA Directors shall have in aggregate two votes at Board meetings, and if only one the NECA Director is present and entitled to vote at the relevant Board meeting, that NECA Director may exercise those two votes.

6.8 Quorum at Board meetings

- (a) If the Company has more than one Director, the quorum for a Board meeting is at least four Directors.
- (b) The quorum must be present at all times during a Board meeting.

6.9 Passing of resolutions at Board meetings

- (a) Other than Special Majority Decisions, a resolution of the Board will be passed if a majority of votes cast by Directors entitled to vote on the resolution are in favour of the resolution.
- (b) A Special Majority Decision may only be passed if:
 - (i) a majority of votes cast by Directors entitled to vote on the Special Majority Decision are in favour of the resolution; and
 - (ii) additionally, at least two ETU Directors entitled to vote on the Special Majority Decision and at least one NECA Director entitled to vote on the Special Majority Decision are in favour of the resolution.
- (c) In the case of an equality of votes on a question arising at a meeting of the directors, the question shall be carried over to be considered again at the next meeting of the directors. If, when the question is reconsidered at the following meeting of the directors there is still an equality of votes on that question, a deadlock (**Deadlock**) shall be deemed to have occurred in relation to that question.
- (d) If a Deadlock is deemed to have occurred in relation to a question in accordance with clause 6.9(c), the question to which the Deadlock relates shall be referred to the Solicitors nominated by the NECA Directors and the ETU Directors respectively who shall forthwith discuss and make all reasonable efforts to assist the board of directors to resolve the Deadlock. If the Deadlock is not resolved within 7 days after the date on which the Deadlock is deemed to have occurred then the question will be submitted to arbitration in accordance with and subject to The Institute of Arbitrators & Mediators Australia "Rules for the Conduct of Commercial Arbitrations".

6.10 Special Majority Decisions

- (a) Any decision or resolution of the Board to do any of the following will be a "**Special Majority Decision**" requiring approval under clause 6.9(b):

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- (i) the approval of any business plan, or any material deviation from an approved business plan;
 - (ii) the appointment (including re-appointment) or removal of the Independent Chair;
 - (iii) the appointment (including re-appointment) or removal of an Appointed Director; and
 - (iv) the entry into or variation, extension, cancellation, suspension or termination of a Material Contract (other than the cancellation or termination by the Company of any such agreement or arrangement for cause in accordance with the terms of such agreement or arrangement which, to avoid doubt, will not be a Special Majority Decision and will not require approval under clause 6.9(b)).

6.11 Committee powers and meetings

- (a) Any committee of Directors may exercise the powers delegated to it in accordance with any directions that may from time to time be imposed on it by the Board.
- (b) The meetings and proceedings of any committee consisting of two or more Directors will be governed by the provisions of this Constitution regulating the meetings and proceedings of the Directors so far as they are applicable except to the extent they are superseded by any direction made by the Board under this paragraph.

6.12 Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or member of the Board or committee of Directors; or
- (b) a person appointed to one of those positions or acting as a Director was disqualified or had vacated office or was otherwise not entitled to vote or act,

all acts of the Director, the Board or the committee of Directors (as the case may be) before the discovery was made are as valid as if the person had been duly appointed and was not disqualified and was entitled to vote or act.

7 General meetings

7.1 Circulating resolution

(a) Application of clause

This clause 7.1 applies to all resolutions of Members that are required or permitted to be passed by a general meeting, other than a resolution to remove an Auditor.

(b) Members' resolution without a general meeting

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- (i) While the Company has only one Member, that Member may pass a resolution by signing a record in writing of that resolution.
 - (ii) Where the Company has more than one Member, the Members may pass a resolution without a general meeting being held if all of the Members (or their Representative) entitled to vote on the resolution (not being less than the number required for a quorum at a general meeting) sign a document containing a statement that they are in favour of the resolution set out in the document.
 - (iii) Separate copies of documents may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
 - (iv) The resolution made under clause 7.1(b)(ii) is passed when the resolution is signed by every Member entitled to vote.
 - (v) When the Members are asked to consider a resolution under this clause, the Company satisfies any requirement of the Act:
 - (A) to give Members information or a document relating to the resolution, by giving Members that information or document with the document to be signed;
 - (B) to lodge with ASIC a copy of the notice of meeting to consider the resolution, by lodging a copy of the document to be signed by Members; and
 - (C) to lodge a copy of a document that accompanies a notice of meeting to consider the resolution, by lodging a copy of the information or documents referred to in clause 7.1(b)(v)(A).

7.2 No annual general meetings

While the Company is a proprietary company:

- (a) the Act does not require the Company to hold an annual general meeting;
- (b) no meeting of Members called or held is to be regarded as an annual general meeting under the Act, even if a meeting of Members is described as an annual general meeting; and
- (c) if a meeting of Members is described as an annual general meeting:
 - (i) it has no effect on the validity of the meeting of Members; and
 - (ii) it neither attracts nor creates any additional duties or rights as to the business to be conducted at the meeting or the conduct of proceedings at the meeting.

7.3 Right to call and attend general meetings

- (a) **Calling a general meeting**
 - (i) A Director, Directors or the Board may, by written notice, call a general meeting at a time and place as the Director, Directors or the Board resolve.

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- (ii) Members may requisition the holding of a general meeting only in accordance with the Act and the Board must call a general meeting within 21 days after receiving that requisition.
 - (iii) Members may call and arrange to hold a general meeting only in accordance with the Act.

(b) **Attending general meetings**

- (i) Each Member and any Auditor of the Company is entitled to attend a general meeting.
- (ii) Each Director is entitled to attend and speak at a general meeting.
- (iii) The Auditor is entitled to speak on any part of the business of the general meeting that concerns the Auditor in their capacity as Auditor.
- (iv) A Member's proxy or Representative may attend a general meeting only as provided by this Constitution and the Act.

7.4 Notice

(a) **Amount of notice of general meetings**

- (i) Subject to clause 7.4(a)(ii), at least 21 days notice must be given of a general meeting.
- (ii) Except if a general meeting is called for the purpose of removing an Auditor, a general meeting may be held on shorter notice than 21 days if Members with at least 95% of the votes that may be passed at the meeting so agree before the meeting.

(b) **Calculation of period of notice**

In calculating the period of notice under clause 7.4(a), both the day on which the notice is given or taken to be given and the day of the general meeting convened by it are to be disregarded.

(c) **Notice of general meetings**

Written notice of the general meeting must be given to any person entitled to receive notice under the Act including:

- (i) each Member entitled to vote at the meeting;
- (ii) each Director; and
- (iii) the Auditor (if any) of the Company.

(d) **Content of notice**

A notice calling a general meeting must comply with the Act and must:

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- (i) set out the place, date and time for the general meeting (and if the general meeting is to be held in two or more places, the technology that will be used to facilitate the general meeting);
 - (ii) state the general nature of the general meeting's business;
 - (iii) if a special resolution is to be proposed at the general meeting, set out an intention to propose a special resolution and state the resolution; and
 - (iv) if a Member is entitled to appoint a proxy, contain a statement setting out the following information:
 - (A) that the Member has a right to appoint a proxy and that the proxy does not need to be a Member of the Company; and
 - (B) that a Member who is entitled to cast two or more votes may appoint two or more proxies and may specify the proportional number of votes each proxy is appointed to exercise.

(e) **Validity of resolutions**

The non-receipt of notice of a general meeting by, or the accidental omission to give notice of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting.

7.5 Cancellation or postponement of a general meeting

(a) **Board cancelling or postponing a general meeting**

- (i) The Board may cancel or postpone a general meeting by giving notice not less than three Business Days before the time at which the meeting was to be held to each person entitled to be given notice of a general meeting.
- (ii) Clause 7.5(a)(i) does not apply to general meetings convened by court order or in accordance with the Act:
 - (A) by the Board on the request of Members, unless the Members who requested the meeting consent to the postponement or cancellation; or
 - (B) by Members, unless the Members who called the meeting consent to the postponement or cancellation.

(b) **Contents of notice postponing or cancelling a general meeting**

A notice of postponement or cancellation of a general meeting must specify:

- (i) the reasons for the postponement or cancellation; and
- (ii) if the general meeting is postponed:
 - (A) the postponed date and time for the holding of the general meeting;

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

(c) **Number of clear days for postponement of general 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 general 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 Act.

(d) **Business at postponed general meeting**

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

(e) **Proxy or Representative at postponed general meeting**

Where:

- (i) an instrument or power of appointment authorises a proxy or Representative 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
- (ii) the date for holding the general meeting is postponed to a date later than the date specified in the instrument of proxy or appointment of Representative,

then that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy or appointment of Representative unless the Member appointing the proxy or Representative gives notice to the Company to the contrary not less than 48 hours before the time to which the holding of the general meeting has been postponed.

(f) **Validity of resolutions**

The non-receipt of notice of cancellation or postponement of a general meeting by, or the accidental omission to give notice of cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate the cancellation or postponement of a meeting or any resolution passed at the postponed general meeting.

7.6 Conducting general meetings

(a) **Time and place for general meetings**

A general meeting must be held at a reasonable time and place.

(b) **Technology**

A general meeting may be held at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

(c) **Quorum for a general meeting**

Except where the Company has only one Member, the quorum for a general meeting or an adjourned general meeting is two Members and the quorum must be present at all times during the meeting.

(d) **Determination of quorum at general meeting**

In determining whether a quorum is present at a general meeting:

- (i) Representatives and persons attending as proxies (in the case of an individual attending as proxy, that individual and in the case of a body corporate attending as proxy, that body corporate's Representative) are to be counted;
- (ii) if a Member has appointed more than one proxy or Representative, only one of them is to be counted;
- (iii) if an individual is attending both as a Member and as a proxy or Representative, they are to be counted only once; and
- (iv) if an individual is attending as a proxy or Representative for more than one Member, they are to be counted only once.

(e) **Absence of quorum at a general meeting**

- (i) If within 30 minutes after the time for the general meeting set out in the notice of general meeting a quorum is not present, the general meeting:
 - (A) if convened in accordance with the Act by a Director at the request of Members or by Members, is dissolved; and
 - (B) in any other case, is to be adjourned to a date, time and place as specified by the Board.
- (ii) If the Board does not specify one or more of the requirements in clause 7.6(e)(i)(B), the general meeting is adjourned to:
 - (A) if the date is not specified, the same day of the following week;
 - (B) if the time is not specified, the same time; and
 - (C) if the place is not specified, the same place.

(f) **Adjourned meeting (quorum)**

If no quorum is present at the general meeting adjourned under clause 7.6(e) within 30 minutes after the time for the general meeting, the Board may, in its absolute discretion, declare the meeting dissolved or deem that those Members present in person form a quorum and may transact the business for which the meeting was called.

(g) **Appointment and powers of chair of general meeting**

The Independent Chair will be entitled to take the chair at general meetings.

(h) **Absence of Independent Chair at general meeting**

(i) If there is no Independent Chair, or if the Independent Chair is unable or unwilling to chair a general meeting, the Board may at any time prior to the commencement of that general meeting elect a Director to take the chair at that general meeting.

(ii) If a general meeting is held and the Independent Chair, or the person elected under clause 7.6(h)(i) (as the case may be), is not present within 30 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act, the following may take the chair of the meeting (in order of precedence):

(A) the deputy chair (if any);

(B) a Director chosen by a majority of the Directors present;

(C) the only Director present; or

(D) a Member chosen by a majority of the Members present in person or by proxy or Representative who are entitled to vote at the meeting.

(iii) If an acting chair becomes unwilling or unable to act during the general meeting, the above-mentioned persons may take the chair, in the same order of precedence, until such time (if any) as the previous acting chair becomes willing and able to take the chair at that meeting.

(iv) Any person taking the chair of the general meeting under this clause 7.6(h) will have all the powers and responsibilities of the Chair in respect of the general meeting as are set out in this Constitution.

(i) **Powers of the chair and conduct of general meetings**

(i) The person chairing a general meeting in accordance with this Constitution is granted the power and is responsible for the general conduct of general meetings and for the procedures to be adopted at general meetings.

(ii) Any decision of the person chairing a general meeting in accordance with this Constitution is final.

(iii) The person chairing a general meeting in accordance with this Constitution may delegate any power conferred by this paragraph to any person.

7.7 Adjournment of general meetings

(a) **Adjournment of general meeting**

(i) The person chairing a general meeting in accordance with this Constitution may, during the general meeting, adjourn the meeting or any business, motion, resolution 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.

- (ii) The person chairing a general meeting in accordance with this Constitution must adjourn a general meeting if the Members present in person or by proxy or Representative with a majority of votes at the meeting agree or direct that the person chairing the general meeting must do so.
- (iii) If any general meeting is adjourned for more than one month, a notice of the adjournment must be given to the Members in the same manner as notice was or ought to have been given of the original meeting.

(b) **Resumption of adjourned general meeting**

- (i) Only unfinished business is to be transacted at a meeting resumed after an adjournment under clause 7.7(a).
- (ii) The resumed meeting may only be adjourned by the person chairing the resumed meeting in accordance with this Constitution.

7.8 Resolutions, voting and polls at general meetings

(a) **Members' resolutions**

The Members may propose a resolution to be moved at a general meeting only in accordance with the provisions of Division 4 of Part 2G.2 of the Act.

(b) **Resolution determined by majority**

At a general meeting, all resolutions submitted to the meeting will be decided by a simple majority of votes except where a greater majority is required by this Constitution or the Act.

(c) **Voting by Chair of general meetings**

In case of an equality of votes on a resolution at a general meeting, the person chairing a general meeting in accordance with this Constitution does not have a second or casting vote on that resolution in addition to any vote the Chair may have in his or her other capacity.

(d) **How voting is carried out**

- (i) A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded either before, on, or immediately after the declaration of the result of the vote on a show of hands.
- (ii) Unless a poll is demanded in accordance with this Constitution, on a show of hands, a declaration by the person chairing a general meeting in accordance with this Constitution that a resolution has been carried or carried by a particular majority or not carried and an entry to that effect in the minutes is conclusive evidence of the result.
- (iii) Neither the person chairing a general meeting in accordance with this Constitution nor the minutes need to state the number or proportion of the votes recorded in favour or against a resolution.

(e) **Matters on which a poll may be demanded at a general meeting**

A poll may be demanded on any resolution other than resolutions concerning:

- (i) the election of a person to chair the general meeting under clause 7.6; or
- (ii) the adjournment of the general meeting.

(f) **Demand for a poll**

(i) Subject to clause 7.8(e), a poll may be demanded on any resolution by:

- (A) the person chairing the general meeting in accordance with this Constitution;
- (B) at least two Members present in person or by proxy or by Representative; or
- (C) any one or more Members holding shares conferring not less than five percent of the total voting rights of all Members having the right to vote on the resolution.

(ii) Any demand for a poll may be withdrawn.

(g) **Conduct of poll**

The person chairing a general meeting in accordance with this Constitution may decide in each case the manner in which a poll is taken and the result of the poll is the meeting's resolution of the motion on which the poll was demanded.

(h) **Right to vote at general meetings**

Subject to any rights or restrictions attached to any class of shares and subject to clause 7.8(i), at a general meeting:

- (i) on a show of hands, each Member has one vote; and
- (ii) on a poll, each Member has one vote for each fully-paid share they hold and a fraction of a vote (equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited) for that share, ignoring any amounts paid in advance of a call) for each partly paid share they hold.

(i) **Jointly held shares**

If a share is held jointly, only the Member whose name appears first in the Register of Members is entitled to vote at a general meeting (either personally or by duly authorised proxy or Representative).

(j) **Right to vote if call unpaid on shares**

A Member is not entitled to vote on a show of hands or on a poll at any general meeting in respect of shares held by the Member for which calls or other monies are due and payable to the Company at the time of the meeting.

(k) **Objections to right to vote**

A challenge to a right to vote at a general meeting:

- (i) may only be made at the meeting; and
- (ii) must be determined by the person chairing the general meeting in accordance with this Constitution whose decision is final.

7.9 Proxies and Representatives

(a) **Appointment of proxies and Representatives**

- (i) A Member who is entitled to attend and cast a vote at a general meeting may appoint a proxy or, if the Member is a body corporate, a Representative to attend and cast a vote at that meeting.
- (ii) If a proxy appointed to attend and cast a vote at a general meeting under clause 7.9(a)(i) is a body corporate, the proxy may appoint a Representative to attend and cast a vote at that meeting.
- (iii) The appointment may specify the proportion or number of votes that the proxy may exercise.
- (iv) If a Member is entitled to cast two or more votes at a general meeting, they may appoint two proxies. If the Member appoints two proxies and the appointment does not specify the proportion or number of the Member's votes each proxy may exercise, each proxy may exercise half of the votes. Any fractions of votes will be disregarded.
- (v) Neither the proxy nor the Representative need be a Member.
- (vi) Any proxy or Representative appointed under this paragraph must be appointed in accordance with, and will have the rights set out in, this Constitution and the Act.
- (vii) An appointment of proxy or Representative received at an electronic address will be taken to be signed by the Member or proxy as applicable if the appointment has been authenticated in accordance with the Act.

(b) **Validity of proxy vote**

- (i) Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
 - (A) the appointing Member dies; or
 - (B) the Member is mentally incapacitated; or
 - (C) the Member revokes the proxy's appointment; or

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- (D) the Member revokes the authority under which the proxy was appointed by a third party; or
 - (E) the Member transfers the share in respect of which the proxy was given.
- (ii) A proxy is not revoked by the appointing Member attending and taking part in the meeting, unless the appointing Member actually votes at the meeting on the resolution for which the proxy is proposed to be used.

7.10 Meetings of holders of a class of shares

(a) General meeting provisions apply

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:

- (i) 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);
- (ii) any holder of shares of the class, present in person or by proxy or by Representative, may demand a poll; and
- (iii) the Auditor is not entitled to notice of the meeting or to attend or speak at the meeting.

(b) Director entitled to notice of class meetings

A Director is entitled to:

- (i) receive notice of all separate meetings of the holders of any class of shares in the capital of the Company;
- (ii) attend all those meetings; and
- (iii) speak at those meetings.

8 Minutes of meetings

(a) Minutes

The Directors must cause to be entered in the minute books of the Company within one month of the relevant meeting, minutes containing details of:

- (i) the names of the Directors present at each Board meeting and of any committee of Directors;
- (ii) all declarations made or notices given by any Director (either generally or specifically) of its interest in any contract or proposed contract or of its

holding of any office or property whereby any conflict of duty or interest may arise; and

- (iii) all resolutions and proceedings of general meetings of the Company, Board meetings and meetings of any committee of the Directors.

(b) **Minutes to be signed by the chair**

Any minutes of any general meetings of the Company, Board meetings or meetings of any committee of the Board must be signed by the chair of the meeting or by the chair of the next succeeding meeting and once signed will constitute prima facie evidence of the matters stated in the minutes.

(c) **Members' access to minutes**

- (i) The Board must ensure that the minute books for general meetings are open for inspection by Members free of charge.
- (ii) If requested by a Member in writing, the Board must ensure the Company sends a copy of any minutes or extract of minutes requested within 14 days after the request or, if the Board determines that payment should be made for the copies, within 14 days after the Company receives the payment.

9 Secretary

9.1 Appointment

The Board may appoint one or more persons to the office of secretary to the Company but need not do so.

9.2 Notification to ASIC

- (a) If a Secretary is appointed, the Secretary must notify ASIC of the appointment.
- (b) The Board may suspend, remove or dismiss a Secretary from that office, subject to any agreement between the Company and the Secretary.

9.3 Terms and conditions of appointment

- (a) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authority as the Board determines.
- (b) The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Board.

9.4 Suspension or termination of appointment of Secretary

The Board may suspend, remove or terminate the appointment of a Secretary, subject to any agreement between the Company and the Secretary.

10 Auditor

10.1 Appointment

The Board may appoint one or more persons to the office of Auditor to the Company but need not do so unless required by the Act.

10.2 Auditor and meetings of Members

- (a) The Auditor, if any, is ineligible to be elected or appointed as a Director.
- (b) The Auditor (if any) is entitled to receive notice of, attend, and be heard at general meetings.

11 Share capital

11.1 General

(a) Issue of shares

Subject to the Act, no shares may be issued or allotted to any person unless the prior written consent of all the Members is obtained.

(b) Pre-emption for existing Members on issue of shares

- (i) Before issuing shares of a particular class, the Board must offer them to Members holding shares of that class.
- (ii) As far as practicable, the number of shares offered to each Member under clause 11.1(b)(i) must be in proportion to the number of shares of that class held by that Member.
- (iii) To make the offer, the Board must give each Member a statement setting out the terms of the offer, including:
 - (A) the number of shares offered to that Member;
 - (B) the total number of shares offered; and
 - (C) the period for which the offer will remain open.
- (iv) The Board may issue any shares not taken up under the offer under clause 11.1(b)(i) as they see fit.
- (v) The Members may authorise the Board to make a particular issue of shares without complying with clauses 11.1(b)(i) 11.1(b)(ii) to 11.1(b)(iv).

(c) Registered holder to be treated as absolute owner

- (i) Unless otherwise required by the Act or this Constitution, the Company must treat the registered holder of a share as the absolute owner.

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- (ii) Unless ordered to do so by a court, the Company is not obliged to recognise:
 - (A) any trust, equitable, contingent, future or partial interest in any share;
 - (B) any interest in any fractional part of a share; or
 - (C) any other right (other than an absolute right) in respect of any share.

(d) **Joint holders of shares**

- (i) Where two or more persons are registered as the joint holders of a share:
 - (A) they are taken to hold the share as joint tenants with rights of survivorship;
 - (B) each Member is jointly and severally liable for any payment in respect of the share, including any call made in respect of any money unpaid on the share;
 - (C) the Member whose name first appears in the Register of Members in respect of the share is deemed to be the registered holder of the share for the purposes of this Constitution and any action permitted or required by the Constitution; and
 - (D) any one of the joint holders of the share may give an effective receipt for any bonus or return of Share Capital payable to the joint holders.
- (ii) Without limiting the above, 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.

11.2 Changes to shares and share capital

(a) **Changes to shares**

- (i) Subject to the Act and this Constitution, the Company may:
 - (A) convert an ordinary share to a preference share, other than to a redeemable preference share;
 - (B) reclassify any shares into classes of shares;
 - (C) cancel any shares; and
 - (D) buy-back its own shares,provided it obtains the consent of each Member to doing so.

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- (ii) Subject to the Act and obtaining the consent of each Member, the Company may convert all or any of its shares into a larger or smaller number of shares.

(b) **Varying and cancelling class rights**

- (i) The Company may vary or cancel the rights attaching to any class of shares only if the variation or cancellation is permitted by the Act and is approved by special resolution of each of the Members.
- (ii) The Board must give written notice of the variation or cancellation to the Members holding the shares of the relevant class within seven days of the variation or cancellation.
- (iii) The issue or creation of new shares in a particular class ranking equally with existing shares of the relevant class will not be considered to be a variation of the rights conferred on Members holding existing shares of the relevant class.

11.3 Partly paid shares and calls

(a) **Board to make calls**

The Board may:

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

(b) **Prepayment of calls and interest**

The Board may:

- (i) accept from a Member the whole or a part of the amount unpaid on a share even if no part of that amount has been called; and
- (ii) authorise payment by the Company of interest on the whole or any part of an amount so accepted, until the amount becomes payable and at such rate as is agreed on between the Board and the Member paying the sum.

(c) **Time of call**

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

(d) **Members' liability**

Other than in respect of money unpaid on the shares of a Member that are payable at fixed times, each Member must, upon receiving not less than 15 Business Days' notice specifying the due date and place of payment, pay to the Company the amount called on that Member's shares.

(e) **Joint holders' liability**

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

(f) **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 Member does not invalidate the call.

(g) **Interest payable if non-payment of calls**

(i) If a call is not paid by the due date, interest is payable on the amount of the call from the due date to the date of payment at the rate set by the Board.

(ii) The Board may waive any interest payable in whole or in part.

(h) **Forfeiture on non-payment of calls**

If a Member fails to pay any call or instalment of a call when due, the Board may serve a notice on the Member:

(i) requiring payment by a stated date of the unpaid amount of the call or instalment together with any interest accruing under clause 11.3(g) and all costs and expenses that may have been incurred by the Company be reason of the failure to pay; and

(ii) stating that failure to pay by the stated date will result in the shares being forfeited.

(i) **Forfeiture for failure to comply with notice**

(i) If the requirements of the notice issued pursuant to clause 11.3(h) are not complied with, any share in respect of which the notice has been given may be forfeited by a resolution of the Board at any time before the payment required by the notice is received.

(ii) Forfeiture under clause 11.3(i)(i) will include any dividend and other distribution declared or to be made in respect of the forfeited share that is not paid or distributed before the forfeiture.

(iii) The non-receipt of any notice by any Member, or the accidental omission to give notice of forfeiture to any Member, will not invalidate the forfeiture.

(j) **Notice of forfeiture**

If any share is forfeited under clause 11.3(i) notice of the forfeiture must be given to the Member holding the share immediately before the forfeiture and an entry of the forfeiture and its date must be made in the Register of Members.

(k) **Cessation of membership and liability**

(i) A Member whose share has been forfeited ceases to be a Member in respect of that share but remains liable to pay to the Company all amounts, including interest and costs and expenses, payable at the date of forfeiture

in respect of the share plus interest at the rate set by the Board from the date of forfeiture and reasonable expenses of sale.

- (ii) Liability under clause 11.3(k)(i) will cease only when the Company receives payment in full of all outstanding money in respect of the shares.

(l) **Action to recover called money**

- (i) On the hearing of any action by the Company for the recovery of money due for any call it is sufficient, as conclusive evidence of the debt, for the Company to prove that:
 - (A) the Member sued was a registered holder of the share in respect of which the call was made at the time the call was made;
 - (B) the resolution making the call is recorded in a minute book; and
 - (C) notice of the call was given to the Member sued in accordance with the provisions of this Constitution.
- (ii) It will not be necessary for the Company to prove the appointment of the Directors who made the call or any other matters.

(m) **Disposal of forfeited share**

Subject to the Act, the Board may cause a forfeited share to be sold, transferred or otherwise disposed of on the terms and in the manner the Board thinks fit.

(n) **Cancellation of forfeited share**

The Board may only cancel a forfeited share in accordance with the Act.

(o) **Evidence of forfeiture**

A statement in writing declaring that:

- (i) the person making the statement is a Director or a Secretary of the Company; and
- (ii) a share in the Company has been forfeited in accordance with this Constitution on the date stated in the statement,

is prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.

(p) **Transfer of forfeited share**

- (i) The Company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share under clause 11.3(m) and may execute or effect a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (ii) If a forfeited share is sold, the purchaser of the forfeited share must be registered as the holder of the share by the Company and is not bound to see to the application of any money paid as consideration.

11.4 Liens

(a) First and paramount lien

Unless the Board otherwise resolves, the Company has a first and paramount lien on every share where there is any amount payable to the Company in respect of the share at any time as a result of:

- (i) a call; or
- (ii) if the shares were acquired under an employee incentive scheme, an amount owed to the Company for acquiring them; or
- (iii) any payment made by the Company to any person or authority in any jurisdiction for or on behalf of the Member.

(b) Company's rights to recover payments

- (i) A Member must reimburse the Company on demand in writing for all payments the Company makes to a government or taxing authority in respect of the Member, the death of a Member or the Member's shares where the Company is either:
 - (A) obliged by law to make the relevant payment; or
 - (B) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxing authority that the Company is obliged by law to make the relevant payment.
- (ii) The Company is not obliged to advise the Member in advance of its intention to make the payment referred to in clause 11.4(b)(i).

(c) Reimbursement is a debt due

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

(d) Sale of shares

- (i) Subject to clause 11.4(d)(ii), the Company may sell any share over which it has a lien.
- (ii) The Company must not sell a share under clause 11.4(d)(i):
 - (A) unless a sum in respect of which the lien exists is presently payable; and
 - (B) until 14 days has passed after written notice demanding payment of the sum referred to in 11.4(d)(ii)(A) has been given to the

Member, or to the person entitled to the share by reason of the Member's death or bankruptcy.

(e) **Transfer on sale under lien**

- (i) For the purpose of giving effect to a sale under clause 11.4(d), the Company may receive the consideration, if any, given for the share so sold and may execute a transfer of the share sold in favour of the purchaser of the share, or do all such other things as may be necessary or appropriate for it to do to effect the transfer.
- (ii) The purchaser is not bound to see to the application of the purchase money.

(f) **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.

(g) **Proceeds of sale**

The proceeds of a sale under clause 11.4(d) must be applied by the Company in payment of the amount in respect of which the lien exists as is presently payable and the residue, if any, must be paid to the person entitled to the share immediately before the sale.

11.5 Certificates

(a) **Issue of Certificate**

- (i) The Company must issue each Member with a Certificate for any shares held by them.
- (ii) The Company may issue a single Certificate for more than one share held by a Member.

(b) **Form of Certificate**

Every Certificate:

- (i) must include all information required by the Act; and
- (ii) must be issued in the form determined by the Board.

(c) **Certificate of Joint Holders**

The delivery of a Certificate in relation to a share to the registered holder of the share or their agent is effective delivery to all the joint holders of that share.

11.6 Transfer of Shares – generally

(a) **Forms of instrument of transfer**

Subject to this Constitution, shares in the Company are transferable by an instrument of transfer in writing in any usual or common form or in any other form that the Board approves.

(b) **Execution and delivery of transfer**

The Board must refuse to register the transfer if the transfer referred to in clause 11.6(a):

- (i) is not executed by or on behalf of both the transferor and the transferee;
- (ii) is not left for registration at the Registered Office, accompanied by the Certificate (if any) of the share to be transferred and any other information the Board properly requires to show the right of the transferor to make the transfer; or
- (iii) otherwise does not comply with the requirements set out in Division 2 of Part 7.11 of the Act.

(c) **Registration of transfers**

A person transferring a share remains the holder of the share until the transfer is registered and the name of the person to whom the share is transferred is entered in the Register of Members in respect of the share.

(d) **Company to register transfer without charge**

Any transfer registered, or Certificate issued by the Company must be registered or issued without charge except where the issue of a Certificate is to replace a lost or destroyed Certificate.

(e) **Power to refuse to register**

- (i) The Board may refuse to register any transfer of shares on which the Company has a lien.
- (ii) The Board must notify the person who deposited the instrument of transfer of any refusal to transfer the shares within six months from the date the instrument of transfer is lodged.

(f) **Company to retain instrument of transfer**

The Board must ensure that the Company retains every instrument of transfer that is registered for such period as the Board determines.

(g) **Return of instrument of transfer**

If the Board refuses registration of a transfer, and if requested by the person who deposited the instrument of transfer, the instrument of transfer must be returned to the person who deposited it within 12 months of the giving of notice of refusal to

register unless there has been an allegation of fraud concerning the transfer or the transaction to which it relates.

12 No payment of dividends

The Shares in the Company shall carry no right to dividends.

13 Company books

13.1 Registers

In accordance with the Act, the Board must cause the Company to keep and maintain:

- (a) the Register of Members;
- (b) if the Company issues debentures, a register of the holders of those debentures;
- (c) a register of charges; and
- (d) any other registers required by the Act.

13.2 Financial records and statements

(a) Financial records

- (i) The Board must cause financial and other records to be kept to:
 - (A) correctly record and explain the transactions and financial position of the Company;
 - (B) enable true and fair statement of financial performance and statement of financial position to be prepared; and
 - (C) permit preparation of any other documents required by the Act or this Constitution.
- (ii) The records must be kept:
 - (A) in a manner which will enable them to be conveniently and properly audited;
 - (B) for seven years after the completion of the transactions or operations to which they relate; and
 - (C) at the Registered Office or at any other place as the Board thinks fit and at all times be open for inspection by the Directors.

(b) **Financial statements and reports**

The Company is not required to prepare and cause copies of the Company's financial statements and other reports to be distributed to holders of its securities unless required by or under the Act.

13.3 Inspection and copying of registers and financial records

(a) **Inspection and copying of registers**

The Board must allow persons to inspect or copy the registers referred to in clause 13.1 in accordance with the Act.

(b) **Inspection of financial records**

- (i) A request by a Member to inspect the financial records of the Company must be in writing and must be delivered to the Company at its Registered Office.
- (ii) Subject to the Act, the Board or the Members by special resolution may decide whether and to what extent and at what times and places and under what conditions a Member may inspect the financial records and other books of the Company.
- (iii) This clause does not alter the rights of a Director or former Director to inspect the books of the Company under the Act.

(c) **Copying financial records**

- (i) After inspecting the financial records a Member may request permission to copy them.
- (ii) The request under clause 13.3(c)(i) must be in writing, must specify the records the Member wishes to copy and must be delivered to the Company at its Registered Office.
- (iii) Subject to the Act, the Board must consider the request at the next Board meeting and may (but need not) consent to the request or any part of the request on such terms as it thinks fit.

13.4 Audit

The financial statements of the Company for each financial year need not be audited unless required by or under the Act.

14 Service and payments

14.1 Service

(a) **Document includes notice**

- (i) In clause 14.1(b) to 14.1(h), a reference to a document includes a notice.

(b) **Giving a document to Members**

- (i) The Company may give a document to a Member:
- (A) in person;
 - (B) by sending it by post to the address of the Member in the Register of Members or the alternative address (if any) nominated by that Member;
 - (C) by sending it to the fax number or electronic address (if any) nominated by that Member;
 - (D) by sending it to the Member by other electronic means (if any) nominated by the Member; or
 - (E) by notifying the Member in accordance with section 249J(3A) of the Act.
- (ii) If the address of a Member in the Register of Members is not within Australia, the Company must send all documents to that Member by airmail, air courier, by fax, or by other electronic means nominated by the Member.
- (iii) The Company must give any document to Members who are joint holders of a share to the person named first in the Register of Members in respect of that share, and that document is deemed received by all holders of that share.

(c) **Giving a document to a person 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 clause 14.1(b) to the person from whom that person derives title prior to registration of that person's title in the Register of Members.

(d) **Evidence of service of a document on a Member**

A certificate in writing signed by a Director or Secretary stating that a document was sent is prima facie evidence of service.

(e) **Giving a document to a Director**

The Company may give a document to a Director:

- (i) in person;
- (ii) by sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person;
- (iii) by sending it to the fax number or electronic address (if any) nominated by that person; or
- (iv) by any other means agreed between the Company and that person.

(f) **Giving a document to the Company**

A person may give a document to the Company:

- (i) by leaving it at the Registered Office;
- (ii) by sending it by post to the Registered Office;
- (iii) by sending it to the fax number at the Registered Office;
- (iv) by sending it to the electronic address (if any) nominated by the Company for that purpose; or
- (v) by any other means prescribed by the Act.

(g) **Time of service of a document**

- (i) A document sent by post to an address within Australia is taken to be given:
 - (A) in the case of a notice of meeting, one Business Day after it is posted; or
 - (B) in any other case, at the time at which the document would be delivered in the ordinary course of post.
- (ii) A document sent by post or air-mail to an address outside Australia is taken to be given:
 - (A) in the case of a notice of meeting, five Business Days after it is posted; or
 - (B) in any other case, at the time at which the document would be delivered in the ordinary course of post.
- (iii) A document sent by air courier to a place outside Australia is taken to be given five Business Days after delivery to the air courier.
- (iv) A document sent by fax or to an electronic address, or by other electronic means, is taken to be given on the Business Day it is sent, provided that the sender's transmission report shows that the whole document was sent to the correct fax number or electronic address.
- (v) A document given to a Member under clause 14.1(b)(i)(E) is taken to be given on the day on which the Member is notified that the document is available.

(h) **Signatures**

Where, by a provision of this Constitution, a document is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by the Act relating to electronic transmissions or in any other manner approved by the Board.

14.2 Payments

(a) Form of payments

The Company may pay a person entitled to an amount payable in respect of a share by:

- (i) crediting an account nominated in writing by that person;
- (ii) cheque made payable to bearer, to the person entitled to the amount or any other person the person entitled to the amount directs in writing; or
- (iii) any other manner as the Board resolves.

(b) Payment by cheque

The Company may post a cheque referred to in clause 14.2(a)(ii) to:

- (i) the address in the Register of Members of the Member in respect of the share;
- (ii) if that share is jointly held, the address in the Register of Members of the Member named first in respect of the share; or
- (iii) any other address which that person directs in writing.

(c) Receipt

Any joint holder of a share may give effective receipt for an amount paid in respect of the share.

15 Proceedings involving officers

15.1 Indemnity

(a) Company may indemnify officers

Subject to clause 15.1(b), the Board may determine that the Company indemnify any current or former Director, Secretary or executive officer of the Company or a related body corporate of the Company out of the property of the Company against:

- (i) every liability incurred by the person in that capacity (except a liability for legal costs); and
- (ii) 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.

(b) Indemnity prohibited in certain circumstances

Clause 15.1(a) does not apply to the extent that:

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

15.2 Advances

(a) Company may make an advance

Subject to clause 15.1(b) and 15.2(b), the Act, and other statute, the Board may determine that the Company may pay, by way of a loan, an advance or any other payment and may be on whatever terms the Company, in its sole discretion, thinks fit, legal costs of the type referred to in clause 15.1(a)(ii) that are reasonably incurred or reasonably anticipated to be incurred by the Officer.

(b) Officer must repay advance in certain circumstances

An officer (“**Officer**”) must repay any advance made to it by the Company under clause 15.2(a) to, or on behalf of, the Officer in relation to a liability incurred by Officer in the Officer’s capacity as an officer of the Company if:

- (i) that liability is or becomes a liability excluded by the Act or any other statute from the indemnity in clause 15.1(a);
- (ii) a court determines that the Officer is not entitled to be indemnified by the Company for that liability; or
- (iii) the liability is covered by insurance and the Officer receives payment from an insurer in respect of that liability or an insurer pays, discharges or satisfies that liability directly

15.3 Insurance

(a) Company may pay premium

Subject to clause 15.1(b), the Board may determine that the Company 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 or Secretary or executive officer of the Company or of a related body corporate of the Company against liability incurred by the person in that capacity, including a liability for legal costs.

(b) Payment of premium prohibited in certain circumstances

The Company must not pay or agree to pay a premium under clause 15.3(a) to the extent that:

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

16 Winding up

16.1 Commencement of winding up

Subject to the Act, no action may be taken or resolution passed by the Company in respect of:

- (a) the making of an application or the commencement of any proceedings or the taking of any other steps for the winding up, dissolution, or appointment of an administrator of the Company; or
- (b) the entering into by the Company of an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them,

without the consent of each of the Members.

16.2 Rights of Members on winding up

- (a) Subject to this Constitution and the rights or restrictions attached to any shares or class of shares:
 - (i) if the Company is wound up and the property of the Company available for distribution among the Members is more than sufficient to pay:
 - (A) all the debts and liabilities of the Company; and
 - (B) the costs, charges and expenses of the winding up,

the excess must be divided among the Members in proportion to the number of shares held by them, irrespective of the amounts paid or credited as paid on the shares;
 - (ii) for the purpose of calculating the excess referred to in clause 16.2(a)(i), any amount unpaid on a share is to be treated as property of the Company;
 - (iii) the amount of the excess that would otherwise be distributed to the holder of a partly paid share under clause 16.2(a)(i) must be reduced by the amount unpaid on that share at the date of the distribution; and
 - (iv) if the effect of the reduction under clause 16.2(a)(iii) would be to reduce the distribution to the holder of a partly paid share to a negative amount, the holder must contribute that amount to the Company.

16.3 Division of assets

- (a) If the Company is wound up, the liquidator, with the sanction of a special resolution of the Members:
 - (i) may divide among the Members, in specie or in kind, any part of the assets of the Company so available and may for that purpose set such value as the liquidator considers fair on any assets to be so divided; and
 - (ii) may vest the whole or any part of the assets of the Company in a trustee or trustees upon trust for the benefit of any of the Members as the liquidator

thinks fit but so that no Member is compelled to accept any shares or other securities in respect of which there is any liability on the part of the holder.

- (b) If the liquidator considers it expedient, any division of assets under the clause 16.3(a) may be otherwise than in accordance with the legal rights of the Members and any class may be given preferential or special rights or may be excluded altogether or in part from a division of assets.
- (c) Where a division under clause 16.3(a) is otherwise than in accordance with the legal rights of the Members, a Member is entitled to dissent and to exercise the same rights as if the special resolution sanctioning that division were a special resolution passed under section 507 of the Act.
- (d) If a division under clause 16.3(a) involves securities that have a liability to a call, a Member entitled under the division to any such securities may, by written notice not more than 10 days after the passing of the special resolution referred to in clause 16.3(a), direct the liquidator to satisfy the call out of the proportion of securities due to the Member and to pay any balance to the Member.
- (e) Nothing in this clause 16.3 derogates from or affects any right to exercise any statutory or other power which would have existed if this rule were omitted.

17 Amendment

Except as required by the Act, no action may be taken or resolution passed by the Company in respect of the making of any amendment to this Constitution or the replacement of this Constitution except with the consent of each Member.