

## **Constitution**

**of**

**Driveschool Enterprises Pty Ltd**  
**ACN 063 395 219**

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# The Corporations Act

## Constitution

### of

## Driveschool Enterprises Pty Ltd ACN 063 395 219

### 1 Replaceable rules not to apply

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The replaceable rules contained in the Act are hereby displaced and shall not apply to the Company but instead the following shall be the constitution of the Company.

### 2 Interpretation

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#### 2.1 Definitions

In this Constitution, unless the context otherwise requires or admits the following expressions shall have the following meanings respectively:

**Act** or **Corporations Act** means the *Corporations Act 2001* (Cth);

**Alternate Director** means a person so appointed under clause 31;

**ASIC** means the Australian Securities and Investments Commission;

**Audio Conference** means a conference of the kind described in clause 37.3;

**Auditor** means any person appointed as the Company's auditor from time to time;

**Board** means the Director or Directors for the time being of the Company or any one or more of them as has or have authority to act for the Company;

**Call** includes instalment of a call and any amount due on allotment of any share;

**capital** means share capital;

**Company** means the company named above whatever the company's name may be from time to time;

**Constitution** means this Constitution as amended from time to time and any reference to a clause by number is a reference to the clause of that number in this Constitution;

**Director** means a Director for the time being of the Company and includes any Alternate Director;

**dividend** includes bonus and interim dividend;

**Employee Shareholder** means a shareholder who is an employee of the Company or of a subsidiary of the Company or a shareholder who was an employee of the Company, or of a subsidiary of the Company, when they became a shareholder;

**General Meeting** means a meeting of Members convened under clause 22 or the Act;

**Managing Director** means any person appointed to perform the duties of the managing director of the Company from time to time, and includes any person appointed to perform the duties of Managing Director temporarily;

**Maximum Rate** means 20% per annum;

**Member** means a person whose name is entered for the time being on the Register or any branch register as the holder of one or more shares;

**Money Due** means, in respect of a call payment of the amount of which is not made on the day specified for its payment under clause 19.1, the amount of money payable in respect of that call plus (subject to clause 19.9):

- (a) interest on that amount from that day until payment is made; and
- (b) all costs and expenses incurred by the Company as a consequence of payment not being made on that day.

**Register** means the register of Members of the Company;

**Secretary** means any person appointed to perform the duties of a Secretary of the Company and includes any person appointed to perform the duties of Secretary temporarily;

**written** includes words handwritten printed typed lithographed represented or reproduced in any mode in a visible form; and

**year** means calendar year.

## 2.2 Interpretation

Unless the contrary intention appears:

- (a) A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision.
- (b) An expression used or defined in the Act has the same meaning in this Constitution.
- (c) Where a particular Chapter, Part or Division of the Act gives an expression a special meaning for the purposes of that Chapter, Part or Division, that expression has the same meaning in this Constitution that deal with the matter dealt with by that Chapter, Part, Division.
- (d) Words importing the singular include the plural and vice versa.
- (e) Words denoting any gender include all genders.
- (f) Words importing persons include partnerships associations corporations, companies unincorporated and incorporated by acts of Parliament or registration, authorities or governments and vice versa.
- (g) Headings do not affect the construction of this Constitution.
- (h) A reference to a person is also to the legal personal representative of that person.
- (i) A reference to a power is also to authority and discretion.

## 3 Powers and authorisation

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### 3.1 Capacity and powers

The Company has the rights, powers, privileges and legal capacity of a natural person and a body corporate.

### 3.2 General authorisation

The Company may do all such acts matters and things which are authorised or permitted by the Act and at such times as the Company thinks fit.

### 3.3 Constitutional authorisation

Where the Act authorises or permits a company to do any thing if so authorised by its constitution, the Company is authorised by this clause to do that thing.

## 4 Liability of Members

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The liability of the Members is limited to the amount (if any) unpaid on the shares respectively held by them.

## 5 Share issues

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### 5.1 Rights and restrictions

- (a) Subject to this Constitution and the Act, the Directors may issue or dispose of shares or other securities to persons:
  - (i) on terms determined by the Directors;
  - (ii) at the issue price that the Directors determine; and
  - (iii) at the time that the Directors determine.
- (b) The Directors' power under clause 5.1(a) includes the power to:
  - (i) grant options to have shares or other securities issued;
  - (ii) issue shares or other securities with:
    - (A) any preferential, deferred or special rights, privileges or conditions; or
    - (B) any restrictions in regard to dividend, voting, return of capital or otherwise; or
  - (iii) issue preference shares or other securities that are liable to be redeemed.

### 5.2 Capital raised is original capital

Subject to the conditions of issue and this Constitution, any capital raised by the creation and issue of new shares shall be considered part of the original capital and shall be subject to this Constitution.

### 5.3 Classification

The Board has power to classify and re-classify the whole or any portion of the securities in the Company in any manner the Board may determine.

## 6 Variation of rights

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### 6.1 Approval

If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may whether or not the Company is being wound up be varied with:

- (a) the consent in writing of the holders of 75% of the issued shares of that class; or
- (b) with the sanction of a special resolution passed at a separate General Meeting of the holders of the shares of the particular class.



## 6.2 Class meetings

For every separate General Meeting of the holders of a particular class of shares:

- (a) the necessary quorum is 2 shareholders of the particular class (unless there is only one shareholder of that particular class, in which case the quorum is that one shareholder);
- (b) any holder of shares of the particular class present (whether in person, by proxy or by other duly authorised representative) may demand a poll; and
- (c) in all other respects, clauses of this Constitution relating to General Meetings shall mutatis mutandis apply with any necessary modifications.

## 6.3 Variation by new issue

Subject to any express provision to the contrary under the terms of issue of shares in a particular class, the rights conferred upon the holders of the shares of any class issued with preferred or other rights are taken to be varied by the creation or issue of further shares ranking equally with the shares of that particular class.

## 7 Share commissions

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### 7.1 Powers and restrictions

The Company may exercise the powers of paying brokerage or commission conferred by the Act.

### 7.2 Payment

The commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares (or a combination of both).

## 8 Financial assistance

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Subject to the Act, the Company may financially assist a person to acquire shares or units of shares in the Company or in a holding company of the Company.

## 9 Share buy back

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Subject to the Act, the Company may buy back its own shares.

## 10 Uncalled share capital

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The Company may by special resolution passed at a General Meeting determine that any portion of its share capital that has not been already called up shall not be capable of being called up except if the Company becomes an externally-administered body corporate, provided that no such resolution shall prejudice any rights acquired by a person before the passing of the resolution.

## 11 Advances on share capital

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### 11.1 Power to receive

The Board may receive from a Member all or a part of the money uncalled and unpaid upon any shares held by that Member.

**11.2 Interest**

Upon all or any part of the money so advanced the Company may (until the money would but for the advance become payable) pay interest at a rate agreed between such Member and the Company provided that such rate does not exceed the Maximum Rate (unless the Company in General Meeting otherwise directs).

**11.3 Payment in advance**

Payment of an amount in advance of a call does not entitle the paying Member to any dividend, benefit or advantage, other than the payment of interest under this clause 11, to which the Member would not have been entitled if it had paid the amount when it became due.

**12 Interest on share capital**

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Subject to the Act, the Company may pay interest on share capital raised for works, buildings or plant.

**13 Ownership of shares**

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**13.1 Register**

Except as required by law or this Constitution, the Company must treat the person whose name is entered in the Register in respect of a share as the absolute owner of that share.

**13.2 Equitable interests**

Unless otherwise required by law, the Company is not bound to recognise (whether or not the Company has notice) that:

- (a) a person holds any share on trust; or
- (b) any equitable, contingent, future or partial interest in, or unit of, any share.

**14 Share certificates**

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**14.1 Entitlement**

- (a) Subject to clause 14.2, every person whose name is entered as a Member in the Register is entitled without payment to receive a share certificate in accordance with the Act.
- (b) Every share certificate must be issued and despatched in accordance with the Act.

**14.2 Joint shareholders**

- (a) In respect of a share or shares held jointly by several persons the Company is not bound to issue more than one share certificate.
- (b) Delivery of a share certificate for a share to one of several joint holders is sufficient delivery to all such holders.

**14.3 Replacement certificates**

- (a) Where a Member applies to the Company for the issue of a share certificate to replace a lost, destroyed, worn out or defaced certificate, the Company will cancel the original certificate and issue a duplicate certificate.
- (b) The Company may require the Member to pay up to 10 dollars for the duplicate (or such other amount as prescribed by the Act).

## **15 Convert shares to larger or smaller number**

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The Company may, from time to time by ordinary resolution passed at a General Meeting, convert all or any of its shares into a larger or smaller number of shares.

## **16 Capital reduction**

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Subject to the Act, the Company may by resolution passed at a General Meeting reduce its share capital in any manner which the Company thinks fit.

## **17 Calls on shares**

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### **17.1 Differentiation between shareholders**

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

### **17.2 Making calls**

The Company may from time to time make calls upon the Members in respect of any money unpaid on their shares that is not by the conditions of allotment of the shares made payable at fixed times.

### **17.3 Notice**

- (a) The Company shall give relevant Members at least 14 days' prior notice specifying the amount, the time (or times) and the place of payment of any call.
- (b) Failure to send a notice of a call to any Member or the non-receipt of a notice by any Member does not invalidate the call.

### **17.4 Payment**

- (a) Members must pay the amount called on their shares at the time or times and place determined by the Company.
- (b) The Company may require calls to be paid by instalment.

### **17.5 Revocation or postponement of calls**

A call may be revoked or postponed as the Company may determine.

### **17.6 Time of call**

A call shall be deemed to have been made at the time when the resolution of the Board authorising the call is passed.

### **17.7 Liability of joint holders**

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

### **17.8 Interest and expenses on late calls**

If a sum called in respect of a share is not paid before or on the day appointed for its payment, the person from whom the sum is due must also pay:

- (a) interest on such sum from the day appointed for its payment to the time of actual payment at a rate (not exceeding the Maximum Rate) as may be determined by the Board; and

- (b) all expenses incurred by the Company as a consequence of the non-payment, but the Board may waive payment of the interest and expenses in whole or in part.

## **18 Lien**

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### **18.1 Lien for calls and debts**

The Company has a first and paramount lien on:

- (a) every share for all money (whether presently payable or not) called or payable at a fixed time in respect of that share; and
- (b) all shares registered in the name of a single person for all moneys presently payable by such person (including such person's estate) to the Company.

### **18.2 Extent of lien**

The Company's lien on a share extends to all dividends payable in respect of the share.

### **18.3 Waiver by Board**

The Board may, at any time, exempt a share from clause 18.1 to the extent and on any terms the Board determines.

### **18.4 Sale under lien**

Where:

- (a) the Company has a lien on a share;
- (b) an amount in respect of which the lien exists is presently payable;
- (c) the Company has given notice to the Member registered in respect of the share requiring payment of the amount which is presently payable, specifying a date (which is at least 14 days after the date of the notice) by which, and a place at which, payment of the account must be made; and
- (d) the requirements of the notice given under clause 18.4(c) are not fulfilled,

the Company may sell the share as if it had been forfeited under clause 19.2 and the provisions of clauses 19.10 to 19.13 (with necessary modifications) apply as if the liability of the Member was the Money Due.

## **19 Forfeiture of shares**

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### **19.1 Forfeiture notice**

If an amount payable in respect of a call is not paid on or before the day specified for its payment the Company may at any time until the Money Due is paid give the relevant Member a notice which:

- (a) requires the Member to pay the Money Due;
- (b) specifies a date (which is at least 14 days after the date of the notice) by which and a place at which payment of the Money Due must be made; and
- (c) states that if payment is not made on or before the date and at the place specified the share to which the call relates is liable to be forfeited.

**19.2 Forfeiture**

If the requirements of a notice given under clause 19.1 are not satisfied, the shares in respect of which the notice is given may, at any time before the payment required by the notice has been made, be forfeited to the Company by a resolution of the Board to that effect.

**19.3 Forfeiture includes unpaid dividends**

Forfeiture of a share under clause 19.2 includes all dividends declared in respect of the forfeited share but not paid before forfeiture.

**19.4 Notice and entry of forfeiture**

Where a share is forfeited under clause 19.2:

- (a) the Company should promptly give notice of the forfeiture to the Member holding the share immediately after the resolution of the Board for its forfeiture is passed; and
- (b) the forfeiture (together with its date) must be promptly entered in the Register,

provided always that the failure to give that notice or effect that entry shall not affect the validity of the forfeiture.

**19.5 Forfeited shares are Company property**

A share forfeited under clause 19.2 immediately becomes the property of the Company and may be sold, re-allotted or otherwise disposed of by the Company on the terms and conditions determined by the Board.

**19.6 Cancellation of forfeiture**

The forfeiture of a share under clause 19.2 may be cancelled by the Company on any terms and conditions it determines at any time before the share is disposed of under clause 19.5.

**19.7 Surrender as forfeiture**

Where the Company is entitled to forfeit a share under clause 19.2, it may accept the surrender of that share on any terms and conditions considered appropriate by the Board and a share so surrendered may be disposed of in the same way as a share forfeited under clause 19.2.

**19.8 Effect of forfeiture**

A person who held a share which has been forfeited under clause 19.2 ceases to be a Member in respect of that share, but remains liable to pay to the Company the Money Due and that liability shall only cease when the Company receives full payment of all the Money Due.

**19.9 Board may waive**

The Board may elect not to enforce payment, in whole or in part, of amounts owing to the Company under clause 19.6.

**19.10 Evidence of forfeiture**

A written statement declaring that the person making the statement is a Director or Secretary and that a share was forfeited on a date specified in the statement in accordance with this Constitution is sufficient evidence of the facts set out in the statement as against all persons claiming to be entitled to the share and of the title of the Company to dispose of the share.

**19.11 Transfer of forfeited shares**

The Company may execute a transfer in respect of a share forfeited under clause 19.2 in favour of a person to whom it is sold, re-allotted or disposed of and receive the consideration for that share and register the transferee as the holder of the share.

**19.12 Application of proceeds**

The net proceeds of any sale, re-allotment or disposal of a share under clause 19.5 or clause 19.7 (after payment of all costs and expenses incurred) must be applied in or towards payment or satisfaction of the Money Due and any residue must be paid to the person liable referred to in clause 19.8 or as that person directs.

**19.13 Title of transferee**

On execution of a transfer under clause 19.11, the title of the transferee is not affected by any irregularity or invalidity relating to the forfeiture or the sale, re-allotment or disposal of the share and the remedy of any person is solely in damages and only against the Company.

**19.14 Application**

This clause 19 applies in the case of non-payment of any sum which by the terms of issue of a share becomes payable at a fixed time as if the sum had been payable by virtue of a call duly made and notified.

## **20 Transfer and transmission of shares**

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**20.1 Member may transfer**

Subject to this Constitution and the Act, a Member may transfer all or any of the shares held by the Member by instrument in writing.

**20.2 Form of transfer**

- (a) The instrument of transfer of any share must be in writing in the usual or common form or in any other form as the Board may prescribe or in particular cases accept.
- (b) The instrument of transfer of any share must be signed by or on behalf of both the transferor and the transferee.
- (c) The transferor is taken to be the holder of the share until the name of the transferee is entered in the Register in respect of the share.

**20.3 No fee**

No fee is to be charged by the Company in respect of any transfer of shares.

**20.4 Procedure for transfer**

- (a) Every instrument of transfer must be left at the registered office of the Company for registration.
- (b) The instrument of transfer must be accompanied by the certificate for the shares to be transferred and any other evidence as the Board may require to prove the title of the transferor or the right of the transferor to transfer the shares.
- (c) The Board may waive the production of any share certificate upon evidence of its loss or destruction being provided to the Board.

**20.5 Transferees of unsound mind**

- (a) No transfer is to be made to a person of unsound mind.
- (b) The Company need not enquire as to any of these matters regarding any transferee.

**20.6 Instruments of transfer**

- (a) Every registered instrument of transfer must be retained by the Company.

- (b) Any instrument of transfer which the Board refuses to register must (except in case of fraud) be returned on demand to the person depositing it.

## 20.7 Certificates

- (a) Upon registration of the transfer of any shares or of any person as a Member in respect of any shares which may have been transmitted to such person by operation of law or otherwise the share certificate specifying the shares for which registration is effected must be cancelled and a new share certificate in similar form specifying the shares transferred or transmitted must be delivered to the transferee or transferee.
- (b) If the registration of any transfer is required in respect of some only of the shares specified in the share certificate delivered up to the Company a new share certificate specifying the shares remaining untransferred must be delivered to the transferor.

## 20.8 Deceased Members

- (a) The executor or administrator of a deceased Member (not being one of several joint holders) is the only person recognised by the Company as having any title to shares registered in the name of the deceased Member.
- (b) If a deceased Member was a joint holder of shares, the other joint holder is the only person whom the Company will recognise as having any title to the deceased Member's shares.
- (c) The estate of the deceased Member will not be released from any liability to the Company in respect of the shares.
- (d) The Company may register a transfer to a transferee who dies before the transfer is registered.

## 20.9 Transfer after transmission

- (a) This clause applies to:
  - (i) the Committee or statutory representative of a person of unsound mind who is a Member or a Member whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
  - (ii) any person who is or may become entitled to shares in any way other than by transfer (including, without limitation, in consequence of the death, insolvency, bankruptcy, liquidation by arrangement or composition with creditors or assignment for the benefit of creditors of any Member).
- (b) A person to whom this clause applies may be registered as a Member or, subject to this Constitution, may transfer the relevant shares.
- (c) Before a person to whom this clause applies may be registered as a Member, that person must produce the share certificate for the relevant shares and such other evidence as the Board, subject to the Act, decides is necessary.

## 21 Restriction on transfer of shares

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### 21.1 Refusal to register

- (a) The Board may refuse to register any transfer of shares where the requirements of clauses 20.2 and 20.4 have not been satisfied.
- (b) The Board may also refuse to register a transfer of shares in respect of which the Company has a lien.
- (c) Notice of refusal to register must be given to the proposed transferee within 1 month after the date on which the instrument of transfer was lodged with the Company, and if

notice is not given within that period, then acceptance of the transfer for registration shall be deemed to have occurred on the expiry of that period.

## **21.2 No transfer to subsidiaries**

Except as provided in the Act, shares must not be allotted or transferred to a company that is a subsidiary of the Company.

## **22 General Meetings**

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### **22.1 Convening by Directors**

Any Director may convene a General Meeting at any time.

### **22.2 Requisition by Members**

- (a) Directors must convene a General Meeting whenever the Members use their powers under the Act to requisition a General Meeting.
- (b) If the Directors fail to convene a General Meeting as validly requisitioned, the Members may do so.
- (c) A Member may not call or arrange to hold a General Meeting except under sections 249E or 249F of the Corporations Act.

## **23 Notice of meetings**

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### **23.1 Length of notice**

Subject to the Act relating to agreements to short notice of meetings, at least 21 days' notice of a general meeting must be given to the persons entitled to receive that notice.

### **23.2 Contents of notice**

The notice of meeting must:

- (a) specify the place, date and time for the meeting;
- (b) set out in full any motion intended to be proposed as a special resolution and state that it is intended to propose the motion as a special resolution;
- (c) specify the general nature of any business to be transacted at the meeting; and
- (d) explain the Member's entitlement to appoint a proxy.

## **24 Proceedings at General Meetings**

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### **24.1 Quorum**

- (a) No business is to be transacted at any General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
- (b) Where the Company has 2 or more Members, 2 Members entitled to vote at any General Meeting shall constitute a quorum and where the Company has only one Member, a quorum is constituted by that Member.
- (c) For the purposes of this clause 'Member' includes a person attending as a proxy or attorney or as representing a corporation which is a Member.



- (d) Where all of the issued shares in the Company are owned by a company, one person authorised to act as the representative of that company at meetings of the Company constitutes a quorum.

#### 24.2 Quorum not present

If a quorum is not present within 15 minutes after the time appointed for the General Meeting:

- (a) where the meeting was convened by, or upon the requisition of, the Members, the General Meeting must be dissolved; or
- (b) in every other case:
  - (i) the General Meeting stands adjourned to the day, time and place that the Board may determine and notify to the Members or, if no determination is made, the same day in the next week at the same time and place; and
  - (ii) if a quorum (which is 2 for the purposes of an adjourned General Meeting) is not present at the adjourned General Meeting within 15 minutes after the time appointed for the General Meeting, the General Meeting must be dissolved.

#### 24.3 Chair of General Meetings

- (a) The Chair of the Board shall preside as Chair at every General Meeting.
- (b) Where a General Meeting is held and:
  - (i) there is no Chair of the Board; or
  - (ii) the Chair of the Board is not present within 15 minutes after the time appointed for the meeting or is unwilling or unable to act,
 then the Members must elect as Chair of the Meeting:
  - (iii) another Director who is present and willing to act; or
  - (iv) if no other Director is present and willing to act, a Member or other person who is present and willing to act.

#### 24.4 Adjournment

##### (a) Power to adjourn

The Chair may, with the consent of any General Meeting at which a quorum is present (and must if so directed by the meeting), adjourn the meeting from time to time and from place to place.

##### (b) Business at adjourned meeting

No business is to be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

##### (c) Notice of adjourned meeting

When a meeting is adjourned for:

- (i) 1 month or more notice of the adjourned meeting must be given as in the case of an original meeting; or
- (ii) less than 1 month, it is not necessary to give any notice of the adjournment or of the business to be transacted at the adjourned meeting.

**24.5 Voting**

At any General Meeting, a resolution put to the vote of the meeting is to be decided on a show of hands unless a poll is demanded.

**24.6 Polls**

A poll may be demanded in respect of a resolution, before a vote is taken or before or on or immediately after the declaration of the result of the show of hands, by:

- (a) the Chair;
- (b) at least 5 Members entitled to vote on the resolution; or
- (c) any Member or Members representing at least 5% of the total voting rights that may be case on the resolution on a poll.

**24.7 Chair's declaration conclusive**

Unless a poll is demanded in accordance with clause 24.6 the following is conclusive evidence of the result of a resolution on a show of hands without proof of the number or proportion of votes recorded in favour of the resolution:

- (a) a declaration by the Chair that the resolution has been:
  - (i) carried;
  - (ii) carried unanimously;
  - (iii) carried by a particular majority; or
  - (iv) lost; and
- (b) an entry to that effect in the book containing the minutes of the proceedings of the Company.

**24.8 Withdrawal of demand for poll**

The demand for a poll may be withdrawn.

**24.9 Poll timing**

- (a) A poll duly demanded on the election of a Chair or on a question of adjournment is to be taken at once.
- (b) Any other poll duly demanded is to be taken in any manner and either at once or after an interval or adjournment or otherwise as the Chair directs.

**24.10 Effect of demand for poll**

The demand for a poll does not prevent the continuance of a General Meeting for the transaction of any business except in respect of the matter for which the poll is demanded.

**24.11 Results of poll**

The result of the poll is the resolution of the General Meeting at which the poll was demanded.

**24.12 Casting vote**

In the case of an equality of votes whether on a show of hands or on a poll the Chair of the General Meeting at which the show of hands takes place or at which the poll is demanded is entitled to a casting vote.

### 24.13 Resolution of Sole Member

Notwithstanding any other clause, where the Company has only one Member and the Member records the Member's decision to a particular effect, the recording of the decision counts as the passing by the Member of a resolution to that effect. The records made under this clause also have effect as minutes of the passing of the resolution.

## 25 Voting

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### 25.1 Vote in person or by proxy

Subject to any rights or restrictions for the time being attached to any class or classes of shares, at meetings of Members or classes of Members each Member entitled to vote may vote in person or by proxy or by attorney.

### 25.2 Number of votes

#### (a) Show of hands

On a show of hands, every person present who is a Member or a representative of a Member has 1 vote.

#### (b) Poll

On a poll, every Member present in person or by proxy or by attorney or other duly authorised representative has 1 vote for each share held by the Member.

### 25.3 Joint holders

In the case of joint holders of a share, the vote of the joint holder whose name appears first in the Register is to be accepted to the exclusion of the votes of the other joint holders.

### 25.4 Members owing the Company not to vote

No Member is entitled to vote at any General Meeting or be counted in a quorum unless all calls or other sums presently payable by the Member in respect of shares in the Company have been paid.

### 25.5 Validity of votes

- (a) No objection may be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- (b) Every vote not disallowed at the meeting or adjourned meeting (as the case may be) is valid for all purposes.
- (c) Any objection made in due time must be referred to the Chair of the meeting or adjourned meeting (as the case may be) whose decision is final and conclusive.

## 26 Representation and proxies

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### 26.1 General

Subject to this Constitution, each Member who is entitled to vote at a meeting of Members may vote:

- (a) in person;
- (b) by not more than 2 proxies;
- (c) by not more than 2 attorneys; or

- (d) where the Member is a body corporate, by its representative.

## 26.2 **No required membership**

A proxy, attorney or representative may be, but need not be, a Member.

## 26.3 **All or some meetings**

A proxy, attorney or representative may be appointed for all General Meetings, or for any number of General Meetings, or for a particular General Meeting.

## 26.4 **Form**

An instrument appointing the proxy, attorney or representative, may be in any usual form or any other form that the Board approves.

## 26.5 **Specified proportion**

If a Member appoints 2 proxies or attorneys to vote in respect of the Member's shares at the same General Meeting:

- (a) and the appointment does not specify the proportion or number of the Member's votes, each proxy may exercise half the votes; and
- (b) notwithstanding clause 26.5(a), neither may vote on a show of hands.

## 26.6 **Voting**

An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.

## 26.7 **Execution**

Subject to clause 26.9, an appointment of a proxy or attorney must be in writing and:

- (a) in the case of a natural person, signed by the appointor;
- (b) in the case of a body corporate, executed under the seal of the appointor; or
- (c) signed by the duly authorised attorney of the appointor.

## 26.8 **Lodgement**

Subject to clause 26.9, a proxy or attorney may not vote at a General Meeting unless the instrument appointing the proxy or attorney, and a copy of the Power of Attorney or other authority (if any) under which the instrument is signed, are:

- (a) delivered at the registered office of the Company or at some other place specified for that purpose in the notice convening the meeting at least 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote or, in the case of a poll, the time appointed for the taking of the poll;
- (b) in the case of a meeting or an adjourned meeting, tabled at the meeting or adjourned meeting of which the person named in the instrument proposes to vote; or
- (c) in the case of a poll, produced when the poll is taken.

## 26.9 Waiver

The Board may waive all or any of the requirements of clauses 26.7 and **Error! Reference source not found.** and in particular may, upon the production of such other evidence as the Directors require to prove the validity of the appointment of a proxy or attorney, accept:

- (a) an oral appointment of a proxy or attorney;
- (b) an appointment of a proxy or attorney which is not signed or executed in the manner required by clause 26.7; and
- (c) the deposit, tabling or production of a copy (including a copy sent by email) of an instrument appointing a proxy or attorney.

## 26.10 Attendance

The appointment of a proxy or attorney is not revoked by the appointor attending and taking part in the General Meeting but, if the appointor votes on any resolution, no person acting as proxy or attorney for the appointor is entitled to vote, and must not vote, as the proxy or attorney of the appointor on that resolution.

## 26.11 Valid unless Company informed otherwise

- (a) Subject to clause 26.11(b), a vote given in accordance with the terms of an instrument of proxy or attorney is valid notwithstanding:
  - (i) the previous death or unsoundness of mind of the principal;
  - (ii) the revocation of the instrument or of the authority under which the instrument was executed; or
  - (iii) the transfer of the share in respect of which the instrument is given.
- (b) Clause 26.11(a) applies unless written notice of a matter listed in clause 26.11(a) is received by the Company at its registered office before the commencement of the meeting (or adjourned meeting) to which the instrument of proxy or attorney relates.

## 26.12 Corporate Member representative

Any corporation which is a Member may by resolution of its directors authorise any person (whether a Member or not) to act as its representative at any meeting of the Company, of any class of Members or of creditors or debenture holders or relating to resolutions to be passed without meetings and to exercise (whether at a meeting or not) the same powers (including the giving of any consent and the signing of any resolution appointment or other document) as the corporation could exercise if it were a natural person who is a Member.

## 27 Written resolution

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Notwithstanding any other clause, if all the Members entitled to vote sign a document containing a statement that they are in favour of a specified resolution in terms set out in the document a resolution in those terms shall (subject to the Act) be taken to have been passed at a General Meeting in accordance with and subject to the Act.

## 28 Directors

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### 28.1 Number of Directors

The Company shall have not less than 2 and not more than 6 Directors. A majority of the Directors must ordinarily reside in Australia, unless there are only 2 Directors, in which at least one of them must ordinarily reside in Australia.

**28.2 Appointment and removal of Directors**

The Company may by resolution passed in General Meeting:

- (a) remove any Director; and
- (b) appoint another person in the Director's place.

**28.3 Share qualification**

A Director need not be a Member.

**28.4 Continuing Directors**

The Directors holding office at the date of adoption of this Constitution (if any) continue in office subject to this Constitution.

**29 Casual vacancies**

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The Board may appoint any person to be a Director to fill a casual vacancy.

**30 Additional Directors**

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Where the number of Directors is less than the maximum number fixed in accordance with this Constitution, the Board may appoint any person to be a Director as an addition to the existing Directors.

**31 Alternate Directors**

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**31.1 Appointment**

- (a) Each Director may in writing under that Director's hand appoint any person approved by a majority of the Board to act as an Alternate Director in the appointing Director's place.
- (b) Such appointment may be for a stated period or periods or until the happening of a specified event or from time to time whenever by absence for illness or otherwise the appointing director is unable to attend to that Director's duties as a Director.

**31.2 Other matters**

An Alternate Director:

- (a) may be removed or suspended from office by written notice to the Company from the appointing Director;
- (b) is entitled to receive notice of meetings of the Board and to attend speak and vote at those meetings if the appointing Director is not present;
- (c) is entitled to exercise all the powers (except the power to appoint an Alternate Director) and perform all the duties of a Director insofar as the appointing Director had not exercised or performed them;
- (d) is not required to hold any shares in the Company;
- (e) is not entitled to receive any remuneration as a Director from the Company;
- (f) vacates office if the appointing Director vacates office or dies;
- (g) is not to be taken into account in determining the number of Directors; and

- (h) is whilst acting as a Director responsible to the Company for his own acts and defaults and is not taken to be the agent of the appointing Director.

## 32 Directors' vacation of office

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The office of a Director immediately becomes vacant if the Director:

- (a) (**insolvency**) becomes bankrupt or makes any arrangement or composition with the Director's creditors generally;
- (b) (**Act**) ceases to qualify as a Director or under the Act becomes prohibited from being a Director by reason of any order made under the Act;
- (c) (**disability**) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under any law relating to mental health, age or infirmity;
- (d) (**resignation**) resigns the office of director by notice in writing to the Company; or
- (e) (**removal**) is removed by a resolution of the Company.

## 33 Interests of Directors

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### 33.1 Material personal interest

Where required by the Act, a Director must give the Board notice of any material personal interest in a matter that relates to the affairs of the Company.

### 33.2 Directors' interests

- (a) Subject to the Act (particularly section 208 of the Act) and the provisions of this Constitution, a Director or a body or entity in which a Director has a direct or indirect interest may:
  - (i) enter into any agreement or arrangement with the Company;
  - (ii) hold any office or place of profit (other than as auditor) in the Company; and
  - (iii) act in a professional capacity (other than as auditor) for the Company,
 and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits 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.
- (b) The fact that a Director holds office as a director, and has fiduciary obligations arising out of that office:
  - (i) will not void or render voidable a contract made by a Director with the Company;
  - (ii) will not void or render voidable a contract or arrangement entered into by or on behalf of the Company and in which the Director may have any interest; and
  - (iii) will not 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 any interest.
- (c) A Director may be or become a director or other officer of, or otherwise be interested in:

- (i) any related body corporate; or
- (ii) any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise,

and is not accountable to the Company for any remuneration or other benefits received by the director or officer of, or from having an interest in, that body corporate.

- (d) A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:

- (i) be present while the matter is being considered at the meeting; or
- (ii) vote on the matter,

unless permitted to do so by the Act, in which case the Director may:

- (iii) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or a proposed contract or arrangement;
- (iv) sign or countersign any document relating to that contract or arrangement or a proposed contract or arrangement; and
- (v) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

### 33.3 Power to vote shares

- (a) The Board may exercise the voting powers conferred by the shares in any company held or owned by the Company in any manner in all respects as the Board thinks fit (including in favour of any resolution appointing the Directors or any of them directors of that company or providing for the payment of remuneration to the directors of that company).
- (b) Any Director may vote in favour of the exercise of such voting rights notwithstanding that the Director may be or be about to be appointed a director of the other company and as such is or may become interested in the exercise of such voting rights.

### 33.4 Holding company

Notwithstanding any other clause, a Director may act in the best interests of a holding company of which the Company is a wholly-owned subsidiary.

## 34 Remuneration and expenses

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### 34.1 Remuneration

- (a) Subject to any agreement with a Managing Director, the remuneration of the Directors shall from time to time be determined by the Board.
- (b) The remuneration of the Directors accrues from day to day and is to be divided amongst the Directors in the proportions and manner as the Board may determine and in default of determination is to be divided equally.
- (c) Fees payable to non-executive Directors must be by a fixed sum and not by a commission on or a percentage of profits or turnover.
- (d) Salaries payable to executive Directors must not include a commission on or a percentage of turnover.



**34.2 Travelling to meetings**

Every Director is entitled to be paid out of the funds of the Company all reasonable travelling hotel and other expenses incurred in attending meetings of the Company or the Board or any committee of Directors or while engaged on any business of the Company.

**34.3 Other travel**

The Company must pay any Director all reasonable travelling hotel and other expenses incurred by the Director in going from the Director's usual residence or abroad or otherwise for any purpose of the Company.

**34.4 Additional work**

The Company must pay any Director remuneration as fixed by the Board whenever the Director is, for any purpose of the Company, called upon to:

- (a) perform extra services; or
- (b) exercise any special professional requirements.

**34.5 Retirement**

Subject to the Act, compensation may be paid to a Director or a Managing Director or to a former Director or a Managing Director for loss of office or retirement.

**35 Powers of Directors**

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**35.1 Company managed by Board**

Except as otherwise required by the Act or any other applicable law or this Constitution:

- (a) the business of the Company is to be managed by the Board; and
- (b) the Board may exercise each and every right, power or capacity of the Company to the exclusion of the Company in general meeting and the Members.

**35.2 Power to borrow money**

The Board may exercise all the powers of the Company to:

- (a) borrow money;
- (b) mortgage or charge all or any part of its undertaking property and uncalled capital; or
- (c) issue debentures and other securities whether outright or as security for any debt liability or obligation of the Company or of any third party.

**35.3 Vacancies**

- (a) Subject to clause 35.3(b), the continuing Directors may act notwithstanding any vacancy in their body.
- (b) When the number of Directors is reduced below the number fixed by or pursuant to this Constitution as the necessary minimum number of Directors the continuing Directors or Director may act for the purpose of increasing the number of Directors to that number or of calling a General Meeting but for no other purpose.
- (c) If for any reason there are no Directors, then any Member may call a General Meeting.

## **36 Attorneys**

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### **36.1 Appointment**

The Board may by power of attorney appoint any corporation or person or body of persons whether nominated directly or indirectly by the Board to be the attorney or attorneys of the Company.

### **36.2 Terms**

Such appointment is for the purposes and with the powers authorities and discretions (not exceeding those vested in or exercisable by the Board under this Constitution) and for the period and subject to the conditions as the Board may think fit and such powers of attorney may:

- (a) contain the provisions for the protection and convenience of persons dealing with the attorney; and
- (b) authorise the attorney to delegate all or any of the powers authorities and discretions vested in the attorney.

## **37 Proceedings of Directors**

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### **37.1 Calling meetings and notice**

- (a) A Director may at any time call a meeting of the Board.
- (b) At the request of a Director, the Secretary must call a meeting of the Board.
- (c) Subject to this Constitution, notice of a meeting of Directors must be given to each person who is at the time of giving the notice a Director or an Alternate Director.
- (d) Notice of a meeting of Directors:
  - (i) must specify the time and place of the meeting;
  - (ii) need not state the nature of the business to be transacted at the meeting;
  - (iii) must be given at least 3 business days before the proposed meeting, or such shorter period as all the Directors may from time to time agree; and
  - (iv) may be given in person or by post, email, telephone or other method of written, audio or audio visual communication.
- (e) A Director or Alternate Director may waive the giving of a notice of any meeting of Directors to such Director or Alternate Director by notifying the Company to that effect.
- (f) Failure to give notice to a Director of a meeting of Directors does not invalidate any act, matter or thing done or resolution passed at the meeting if:
  - (i) the failure occurred by accident or error;
  - (ii) before or after the meeting the Director or the Director's alternate waives notice of the meeting under clause 37.1(e) or notifies the Company of the Director's agreement to the act, matter, thing or resolution in any of the ways mentioned in clause 37.1(d)(iv); or
  - (iii) the Director or the Director's alternate actually attended the meeting.
- (g) Clause 37.1(f) applies to the case of failure to give notice of a meeting of Directors to an Alternate Director, so far as those provisions can apply and with such changes as are necessary.

**37.2 Conduct of meetings**

The Board may meet together for the dispatch of business adjourn and otherwise regulate its meetings as the Board thinks fit.

**37.3 Audio Conference**

- (a) Without limiting the discretion of the Board to regulate its meetings the Board may confer using any technology consented to by all the Directors, including without limitation, by telephone or other electronic means of contemporaneous audio or audio-visual communication (**Audio Conference**).
- (b) A resolution passed at an Audio Conference shall be taken to have been passed at a meeting of the Board held on the day on which and at the time at which the Audio Conference was held.
- (c) The provisions of this Constitution relating to proceedings of the Board apply so far as they are capable of application to an Audio Conference.

**37.4 Quorum**

- (a) The quorum necessary for the transaction of the business of the Board may be fixed by the Board and unless fixed is 2 Directors.
- (b) An interested Director is to be counted in a quorum notwithstanding the interest.

**37.5 Chair**

- (a) The Directors must elect a Chair of their meetings and determine the period for which the Chair is to hold office.
- (b) If no Chair is elected or if at any meeting the Chair is not present within 15 minutes after the time appointed for holding the meeting the Directors present must elect one of their number to be Chair of the meeting.

**37.6 Voting**

- (a) Questions arising at any meeting of Board are to be decided by a majority of votes of Directors present and voting.
- (b) A determination by a majority of Directors is for all purposes a determination of the Board.
- (c) A Director may vote in respect of any matter or thing before the Board in which the Director has or may have an interest.
- (d) In the case of an equality of votes the Chair of the meeting shall have a casting vote.

**37.7 Committees****(a) Delegation**

- (i) The Board may delegate any of its powers to committees consisting of 1 or more of the Directors.
- (ii) Any committee formed must in the exercise of the powers delegated conform to any regulations that may be imposed on the committee by the Board and powers so exercised are taken to have been exercised by the Board.

**(b) Chair of committee**

- (i) A committee of Directors must elect a Chair of its meetings.

- (ii) If no Chair is elected or if at any meeting the Chair is not present within 30 minutes after the time appointed for holding the meeting the members present must elect one of their number to be Chair of the meeting.

(c) **Conduct of committee**

A committee of Directors may meet and adjourn as it thinks proper.

(d) **Voting**

Questions arising at any meeting are to be determined by a majority of votes of the members present and voting and in the case of an equality of votes the Chair has a casting vote.

### 37.8 **Invalid appointment or disqualification**

When a person acting as Director was not properly appointed or was disqualified from appointment then any act done, before this was discovered by a meeting of the Board or a committee of Directors, is as valid as if the person was properly appointed or was not disqualified.

### 37.9 **Written resolutions**

- (a) If a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed is assented to by all the Directors then that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the Directors.
- (b) For the purposes of clause 37.9(a):
  - (i) the meeting is taken as having been held when the last director assents;
  - (ii) 2 or more separate documents in identical terms each of which is assented to by 1 or more Directors are to be taken as constituting one document;
  - (iii) a Director may signify assent to a document by signing the document or by notifying the Company of the Directors' assent in person; and
  - (iv) any document referred to in this clause 37.9 may be in the form of an email or other electronic notification.
- (c) The document is to be taken as a minute of a meeting of the Directors.

### 37.10 **Minutes**

- (a) The Board must cause minutes to be made of:
  - (i) all appointments of officers;
  - (ii) the names of the Directors present at all meetings of the Company or of the Board or of committees of Directors;
  - (iii) all proceedings at all meetings of the Company or of the Board or of committees of Directors;
  - (iv) all resolutions passed by Directors in accordance with clause 37.9; and
  - (v) all disclosures of interests made under clause 33.
- (b) Such minutes must be signed by the Chair of the meeting at which the proceedings were held or by the Chair of the next meeting, and if so signed will as between the Directors be conclusive evidence of the matters stated in such minutes.

## **38 Managing Director**

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### **38.1 Appointment and removal**

- (a) The Board may by writing appoint 1 or more Directors to the office of a Managing Director for the period and on the terms as the Board thinks fit.
- (b) Subject to the terms of any agreement entered into in any particular case, the Board may suspend, remove or dismiss him or her from that office and appoint another Director in that place.
- (c) A Managing Director must not be appointed for life and is subject to the control of the Board.
- (d) If a Managing Director ceases to be a Director, that person ceases to be Managing Director automatically.
- (e) If a Managing Director is suspended from office, that person will not be entitled to attend or vote at any Board meeting.

### **38.2 Remuneration**

Subject to the terms of any agreement entered into in any particular case, a Managing Director is to receive such remuneration as the Board may determine.

### **38.3 Powers**

- (a) The Board may entrust to and confer upon a Managing Director any of the powers exercisable by the Board upon such terms and conditions and with such restrictions as the Board may think fit, either collaterally with or to the exclusion of the Board's own powers.
- (b) The Board may revoke withdraw alter or vary all or any of those powers.

## **39 Secretary**

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### **39.1 Appointment**

If required by the Act, there must be at least one secretary of the Company appointed by the Board for a term and at remuneration and on conditions determined by them.

### **39.2 Entitlement to be heard**

The Secretary (if any) is entitled to attend and be heard on any matter at all Directors' meetings and General Meetings.

### **39.3 Removal**

The Board may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

## **40 Financial records**

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### **40.1 Records to be kept**

The Board must cause the Company to keep written financial records and to prepare financial documents and reports (**Reports**) in accordance with the requirements of the Act.

### **40.2 Distribution and availability**

The Board must distribute and make available the Company's Reports as required by the Act.

### 40.3 Financial year

Until otherwise determined by the Company in General Meeting, the financial year of the Company ends on 30 June in each year.

## 41 Annual financial reports and directors' reports

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- (a) As soon as practicable after the end of a financial year, and in any event not more than 4 months after the end of a financial year, the Board must cause an annual financial report and a directors' report to be prepared in accordance with the Act and lodged with ASIC.
- (b) The Board must cause the annual financial report of the Company to be prepared in accordance with Australian Accounting Standards.
- (c) If required by the Act, the Board must cause the annual financial report of the Company to be audited.
- (d) If clause 41(c) applies, the Company must observe the Act in relation to the appointment of an Auditor.

## 42 Inspection

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### 42.1 Board discretion subject to the Act

Subject to the Act, the Board may determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of Members not being Directors.

### 42.2 Members' rights

No Member (not being a Director) has any right to inspect any account or book or paper of the Company except as authorised by the Board or by the Company in General Meeting or as required by the Act or otherwise by statute.

## 43 Dividends

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### 43.1 Payment of dividends

Dividends may only be paid as permitted by law.

### 43.2 Reserves

- (a) Before recommending any dividend, the Board may set aside out of the profits of the Company such sums as the Board thinks proper as reserves.
- (b) Such reserves are in the discretion of the Board and may be applied for any purpose to which the profits of the Company may be properly applied.
- (c) Pending application, such reserves may at the discretion of the Board either be employed in the business of the Company or invested.
- (d) The Board may, without placing an amount to a reserve, carry forward any profits which the Board may think prudent not to distribute.

### 43.3 Classes of shares

Subject to any preferential, special, deferred or other rights to a dividend upon which any shares may be issued:

- (a) a dividend may be declared and paid on the shares of one or more classes (if any) to the exclusion of the other or others;
- (b) if the Board resolves to declare dividends on shares of more than one class, the dividend declared on the shares of the class may be at a higher or lower rate than or at the same rate as the dividend declared on the shares of the other class or classes (if any);
- (c) a dividend on shares within a class must be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is declared;
- (d) no amount paid or credited as paid on a share in advance of calls is to be treated for the purposes of this clause 43.3 as paid on the share;
- (e) all dividends are to be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; and
- (f) no dividend bears interest against the Company.

### 43.4 Notice

Notice of a dividend declared must be given to the Members.

### 43.5 Type of payment

- (a) The Board in declaring a dividend or bonus may by resolution direct payment to be wholly or partly made by the distribution of specific assets and in particular of paid-up shares, debentures or assets of the Company or any other company or in any one or more of these ways.
- (b) Where any difficulty arises in regard to such distribution the Board may:
  - (i) settle the distribution;
  - (ii) fix the value for distribution of all or part of the specific assets;
  - (iii) determine that cash payments are to be made to any Members upon the footing of the value fixed by the Board in order to adjust the rights of all parties; and
  - (iv) vest the specific assets in trustees.

### 43.6 Deductions

The Board may deduct from a dividend or bonus payable to any Member all sums of money presently payable by the Member to the Company on account of calls or otherwise in relation to the shares of the Company.

### 43.7 Method of payment

- (a) Any dividend interest or other money payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to:
  - (i) the address of the holder appearing in the Register;
  - (ii) in the case of joint holders, to the address of that one of the joint holders who is first named on the Register; or

- (iii) to the person and to the address as the holder or joint holders may in writing direct.
- (b) The cheque or warrant is to be made payable to the order of the person to whom it is sent.
- (c) Any one of 2 or more joint holders may give effectual receipts for any dividends bonuses or other money payable in respect of the shares held by them as joint holders.

## **44 Capitalisation of profits**

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### **44.1 Resolutions**

The Company in General Meeting may, upon the recommendation of the Board, resolve that:

- (a) it is desirable to capitalise any sum being the whole or part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to Members; and
- (b) that sum be applied for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of that sum by way of dividend.

### **44.2 Directors' response**

The Directors must do everything necessary to give effect to any such resolution with power to:

- (a) issue fractional certificates or make cash payments or otherwise where shares or debentures become distributable in fractions; and
- (b) authorise any person to make, on behalf of all the Members entitled to any further shares upon the capitalisation, an agreement with the Company (binding on all the Members concerned):
  - (i) for the distribution of the shares or debentures to them, credited as fully paid up; or
  - (ii) for the payment up by the Company, on their behalf, of all or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised.

## **45 Notices**

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### **45.1 Address**

A notice may be given by the Company to a Member:

- (a) personally;
- (b) by sending it by post to the Member at the address of the Member appearing in the Register or the alternative address (if any) nominated by the Member; or
- (c) by sending it to the email address (if any) nominated by the Member.

### **45.2 Effective service**

- (a) Where a notice is sent by post, service of the notice is taken:
  - (i) to be effected by properly addressing prepaying and posting a letter containing the notice; and



- (ii) to have been effected at the time at which the letter would be delivered in the ordinary course of post.
- (b) Where a notice is sent by email, service is taken:
  - (i) to be effected by correctly sending an electronic version of the notice; and
  - (ii) to have been effected at the time that the Company sent the email.

#### 45.3 **Joint holders**

- (a) A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the Register in respect of the share.
- (b) Notice to one of joint holders is sufficient notice to all of them.

#### 45.4 **Death or bankruptcy**

A notice may be given by the Company to the persons entitled to a share in consequence of the death or bankruptcy of a Member either:

- (a) personally; or
- (b) by sending it by post in a prepaid letter or email addressed to them:
  - (i) by name;
  - (ii) by the title of any representative of the deceased or assignee of the bankrupt;
  - (iii) by any like description at the address or email address within Australia supplied for the purpose by the persons claiming to be so entitled; or
  - (iv) if no address within Australia has been supplied by the persons claiming to be so entitled, by giving the notice in any manner in which the notice might have been given if the death or bankruptcy had not occurred.

#### 45.5 **Entitlement**

Only the following persons are entitled to receive notice of General Meetings:

- (a) Members who have a registered address within Australia;
- (b) Members who have supplied to the Company an address within Australia for the purpose of giving notices to them;
- (c) any person entitled to a share in consequence of the death or bankruptcy of a Member who but for the person's death or bankruptcy would be entitled to receive notice of the meeting; and
- (d) the Auditor.

#### 45.6 **Counting of days**

Where a specified period (including, without limitation, a particular number of days) is required to elapse or expire from or after the giving of a notice before an action may be taken neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

#### 45.7 **Certificate of Director or Secretary**

If a Director or Secretary signs a certificate that a notice was given in the manner set out in the certificate, that certificate is conclusive evidence of the accuracy of the matters set out in it.

## 46 Winding up

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### 46.1 Winding up

If the Company is to be or is being wound up, the liquidator may with the sanction of a special resolution of the Company:

- (a) **(division)** divide amongst the Members in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose set such value as the liquidator deems fair upon any property to be divided and may determine how the division is to be carried out as between the Members or different classes of Members; or
- (b) **(vesting)** vest the whole or any part of any of the assets of the Company in trustees upon any for the benefit of the Members as the liquidator thinks fit but no Member is to be compelled to accept any shares or other securities to which any liability attaches.

### 46.2 Rights not affected

Nothing in this clause prejudices the rights of the holders of shares issued on special terms and conditions.

## 47 Payments by the Company

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- (a) To the extent permitted by law and subject to the restrictions in section 199A of the Act, the Company indemnifies every person who is or has been an officer of the Company or a subsidiary of the Company against:
  - (i) any liability (other than a liability for legal costs); or
  - (ii) reasonable legal costs incurred in defending an action for a liability, incurred by that person as an officer of the Company or subsidiary.
- (b) The amount of any indemnity payable under clause 47(a) will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of any input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.
- (c) For the purposes of this clause 47, officer means:
  - (i) a Director; or
  - (ii) a Secretary.