

# Constitution

**Fremantle Seaweed Pty Ltd (ACN 644 635 996)**

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Date: 6<sup>th</sup> February 2024

## Operative provisions

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### 1. Definitions and interpretation

#### 1.1 Definitions

In this Constitution, unless the context requires otherwise:

**Act** means the *Corporations Act 2001 (Cth)* as amended, supplemented or replaced from time to time.

**Affiliate** means, in connection with a specified person, a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

**Alternate Director** means any person who, for the time being, holds office as an alternate Director duly appointed in accordance with this Constitution.

**Board** means the board of Directors of the Company.

**Business** means the business conducted by the Group as at the date of this Constitution, or any other business carried on by the Group from time to time.

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Western Australia.

**Company** means Fremantle Seaweed Pty Ltd (ACN 644 635 996) or as that name is changed from time to time.

**Constitution** means this constitution of the Company as amended, supplemented or replaced from time to time.

**CSF Offer** has the same meaning as that term is defined in the Act.

**CSF Shareholder** has the same meaning as that term is defined in the Act.

**Day 20** has the meaning in clause 11.5.

**Directors** means all or any number of the directors for the time being of the Company appointed in accordance with this Constitution but does not include associate directors.

**Drag Along Members** has the meaning in clause 11.8(a).

**Drag Along Notice** has the meaning in clause 11.8(a).

**Drag Along Shares** has the meaning in clause 11.8(a).

**Encumbrance** means:

- (a) any:
  - (i) legal or equitable interest or power created, arising in or reserved in or over an interest in any property or asset; or



- (ii) security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or retention of title arrangement, right of set-off, assignment of income, garnishee order, monetary claim and flawed deposit arrangement);
- (b) any thing or preferential interest or arrangement of any kind giving a person priority or preference over claims or other persons with respect to any property or asset;
- (c) a security interest as defined in the *Personal Property Securities Act 2009 (Cth)*; or
- (d) any agreement or arrangement (whether legally binding or not) to grant or create anything referred to in paragraphs (a), (b) or (c).

**Government Agency** means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute.

**Group** means the Company and its subsidiaries, and Group Company means any one of them.

**Law** means:

- (a) principles of law or equity established by decisions of courts;
- (a) statutes, regulations or by-laws of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency; and
- (b) requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency that have the force of law.

**Managing Director** means any person who, for the time being, holds office as a managing director duly appointed in accordance with this Constitution.

**Member** means a registered holder of any share of the Company or any person deemed by this Constitution to be such a person.

**Offeree** has the meaning in clause 11.3.

**Office** means the registered office of the Company.

**Register** means the register of Members of the Company as required to be kept under section 168 of the Act.

**Related Body Corporate** has the meaning given to that term in the Act.

**Remaining Shares** has the meaning in clause 11.7.

**Sale Shares** has the meaning in clause 11.3.

**Secretary** means any person appointed to perform the duties of a secretary of the Company.

**Seller** has the meaning in clause 11.3.

**Share** means shares in the capital of the Company.

**Shareholders Agreement** means the Shareholders Agreement, if any, entered into between the Company and the Members (as amended from time to time).

**Special Resolution** has the same meaning as in section 9 of the Act.

**Specified Price** has the meaning in clause 11.3.

**Tag Along Notice** has the meaning in clause 11.9(a).

**Tag Along Shares** has the meaning in clause 11.9(a).

**Transfer** means to sell, assign, transfer, convey or otherwise dispose of a legal or beneficial interest.

**Transfer Notice** has the meaning in clause 11.3.

## 1.2 Interpretation

In this Constitution, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) the headings are used for convenience only and do not affect the interpretation of this Constitution;
- (d) other grammatical forms of defined words or expressions have corresponding meanings;
- (e) a reference to a document includes the document as modified from time to time and any document replacing it;
- (f) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (g) the word “person” includes a natural person, partnership, body corporate, association, governmental or local authority, agency and any other body or entity whether incorporated or not;
- (h) the word “month” means calendar month and the word “year” means 12 months;
- (i) the words “in writing” include any communication sent by letter or email or any other form of communication capable of being read by the recipient;
- (j) a reference to a thing includes a part of that thing;
- (k) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (l) wherever “include”, “for example” or any form of those words or similar expressions is used, it must be construed as if it were followed by “(without being limited to)”;
- (m) money amounts are stated in Australian currency unless otherwise specified;
- (n) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body that performs most closely the functions of the defunct body; and
- (o) any expression in a provision of this Constitution that relates to a particular provision of the Act has the same meaning as in that provision of the Act.

### **1.3 Replaceable rules**

The replaceable rules contained in the Act are displaced under section 135(2) and do not apply to the Company except to the extent that they are repeated in this Constitution.

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## **2. Shareholders Agreement**

### **2.1 Inconsistency**

- (a) If there is an inconsistency between this Constitution and the Shareholders Agreement (if any), the provisions of the Shareholders Agreement prevail. An inconsistency will be considered to exist if, regardless of the purpose of the provision, the relevant subject matter or action to be taken (including the issue or transfer of shares or securities) is dealt with differently in both the Constitution and the Shareholders Agreement.
  - (b) If necessary, the Members must procure that the Constitution (and the constitution of each Subsidiary) is amended as soon as is practicable to ensure that a provision of the Shareholders Agreement is effective in accordance with its terms.
  - (c) To the maximum extent permitted by Law, the parties agree to waive any provisions contained in this Constitution to the extent that those provisions are inconsistent with the provisions in the Shareholders Agreement, so that they have no force or effect during the term of the Shareholders Agreement.
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## **3. Proprietary company**

The Company is a proprietary company and:

- (a) the liability of Members is limited by shares;
  - (b) the number of Members is limited to 50 (counting joint holders of shares as one person and excluding any CSF Shareholders); and
  - (c) it must not engage in any activity that would require disclosure to investors under Chapter 6D, except in the circumstances permitted by section 113(3).
- 

## **4. Share capital**

### **4.1 Classes of shares**

The capital of the Company will be divided into any of the following classes:

- (a) ordinary shares; and
- (b) such other classes of shares as are approved in accordance with this Constitution and the Act from time to time.

### **4.2 Directors may issue shares**

Subject to the Act and this Constitution the Directors may:

- (a) issue or dispose of shares on such terms and with such rights and restrictions as they think fit;
- (b) issue shares with such preferred, deferred or other special rights or restrictions whether with regard to dividend, voting, return of capital or otherwise; and

- (c) issue any preference shares on terms that they are, or at the option of the Company are liable, to be redeemed.

#### **4.3 Rights attaching to ordinary shares**

The ordinary shares confer on their holders:

- (a) on a winding up of the Company, the right to participate pari passu with the holders of other ordinary shares in the repayment of paid up capital and distribution of any surplus assets or profits of the Company;
- (b) the right to receive notice of and attend any general meeting of the Company;
- (c) the right to cast one vote on a show of hands at a general meeting of the Company and to cast one vote for each ordinary share held on a poll; and
- (d) the right to such dividends and bonus shares pari passu with the holders of other ordinary shares as the Directors in their absolute discretion from time to time determine.

#### **4.4 Exercise of vote and rights**

Subject to this Constitution, no person is entitled to vote or to exercise any right or privilege as a Member until the person is registered in the Register.

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### **5. Brokerage and commission**

#### **5.1 How to pay brokerage and commission**

The Company may exercise the power to make payments by way of brokerage or commission conferred by the Act in the manner provided by the Act.

#### **5.2 Issue of shares**

Payments by way of brokerage or commission may be satisfied by the payment of cash, by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.

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### **6. Shares held on trust or jointly**

#### **6.1 No recognition of trusts or other interests**

Except as required by the Act, by this Constitution, the Company will not:

- (a) be required to recognise any person as holding a share on trust; or
- (b) be bound by or compelled in any way to recognise (whether or not the Company has been given notice) any equitable, contingent, future or partial claim, right or interest or any other right in any share except an absolute right of ownership in the holder listed in the Register.

#### **6.2 Joint owners**

Subject to this Constitution, if 2 or more persons are listed in the Register as the holders of a share:

- (a) they are deemed to hold the share as joint tenants with rights of survivorship;

- (b) they and their respective legal personal representatives are jointly and severally liable to pay all instalments and calls in respect of the share;
  - (c) subject to clause 6.2(b), on the death of any one of them (evidence of which may be required by the Directors as they think fit), the survivor or survivors are the only person or persons whom the Company may recognise as having any title to the share; and
  - (d) any one of them may give effectual receipts for any dividend or other distribution in respect of the share.
- 

## **7. Certificates**

### **7.1 Entitlement to certificates**

A person whose name is entered as a Member in the Register is entitled without payment to receive a certificate in respect of the share, signed in any way authorised by the Company, in accordance with the Act. In respect of a share or shares held jointly by several persons, the Company is not bound to issue more than one certificate.

### **7.2 Delivery to joint holders**

Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.

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## **8. Lien**

### **8.1 Lien on unpaid capital and money owing**

The Company has a first and paramount lien:

- (a) on every partly paid share for all money (whether presently payable or not) called or payable at a fixed time in respect of that share; and
- (b) on all shares registered in the name of a Member (either solely or jointly with another person) for all money presently payable to the Company by that person or the person entitled to the shares by reason of the death, mental incapacity, bankruptcy or insolvency of the first mentioned person.

### **8.2 Exemption from lien**

The Directors may at any time exempt a share wholly or in part from the provisions of clause 8.1.

### **8.3 Lien to apply to dividends**

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

### **8.4 Company's right of sale**

Subject to clause 8.5, the Company may sell, in such manner as the Directors think fit, any shares on which the Company has a lien.

### **8.5 Restrictions on sale**

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

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

## 8.6 Effecting sale

- (a) The Directors may give effect to a sale referred to in clause 8.4 by authorising a person to transfer the share sold to the purchaser.
- (b) The purchaser of such a share:
  - (i) will be registered as the holder of the share;
  - (ii) is not responsible for the application of the purchase money; and
  - (iii) will possess a title which is not affected by any irregularity or invalidity in connection with the sale.
- (c) After the name of the purchaser is entered in the Register, no person may impeach the validity of the sale and the remedy of any person aggrieved is in damages only and against the Company exclusively.

## 8.7 Application of sale proceeds

The Company will pay:

- (a) the net proceeds of any sale or disposal referred to in clauses 8.4 and 8.6 towards satisfaction of the amount in respect of which the lien exists; and
- (b) the residue (if any) of the proceeds of sale to the person entitled to the shares at the date of sale.

## 8.8 Taxation

If a liability is imposed on the Company to pay any tax or other charge in relation to the shares held by a person or by another person entitled to the shares by reason of the death, mental incapacity, bankruptcy or insolvency of the first mentioned person (in each case, the **(Relevant Person)**) or any dividend or any entitlements due to the Relevant Person, the Company:

- (a) must, on demand, be fully indemnified by the Relevant Person from all such liability;
- (b) has a lien on the shares of that person and all dividends, bonuses and other moneys payable in respect of shares registered in the name of the Relevant Person, including shares where the Relevant Person is one of several joint holders;
- (c) may recover as a debt due from the Relevant Person any moneys paid by the Company in respect of such liability; and
- (d) may refuse to register a transfer of any shares by the Relevant Person until those moneys are recovered.

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## **9. Calls on shares**

### **9.1 Call by Directors**

Subject to the Act and this Constitution, the Directors may make a call on some or all of the Members in respect of any money unpaid on their shares which is not by the terms of issue of those shares made payable at fixed times.

### **9.2 Payment of call**

Upon receiving at least 14 days' notice specifying the time and place of payment, each Member so notified must pay to the Company at the time or times and place so specified the amount called on the shares.

### **9.3 Terms of call**

The Directors may revoke, postpone or extend a call as they think fit, and may authorise or require a call to be paid by instalments.

### **9.4 Deemed time of call**

A call will be deemed to have been made at the time when the Directors' resolution authorising the call was passed.

### **9.5 Liability of joint holders**

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

### **9.6 Interest on unpaid calls**

If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the Member from whom the sum is due must pay interest at a rate and on terms determined by the Directors. Interest may be calculated from the day appointed for payment of the sum to the time of actual payment. The Directors may waive payment of interest wholly or in part.

### **9.7 Fixed dates for calls**

- (a) Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date is deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable.
- (b) In the case of non-payment of a sum referred to in clause 9.7(a), all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

### **9.8 Disabilities if calls unpaid**

A Member may not exercise any right as a Member (including the right to receive a dividend, to be present at any meeting, to be counted in a quorum or to vote at any meeting or on a poll) until that Member has paid:

- (a) all calls due and payable by the Member whether alone or jointly with another person, together with interest and expenses in respect of the calls; and

- (b) all other sums (if any) presently payable by the Member in respect of any shares held by the Member, whether alone or jointly with another person.

## 9.9 Differentiation between Members

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

## 9.10 Payment of calls in advance

- (a) The Directors may:
  - (i) accept from any Member all or any part of the money unpaid on a share in excess of the sum actually called up; and
  - (ii) cause the Company to pay interest at the rate agreed between the Directors and the Member paying the sum, on the whole or any part of the amount so accepted (unless the Company in general meeting otherwise determines).
- (b) Any amount paid in advance of calls will not be taken into account in ascertaining the amount of any dividend payable on the shares in respect of which the advance is made.
- (c) The Directors may repay an amount advanced under clause 9.10(a) on giving the relevant Member one month's notice in writing.

## 9.11 Evidence of call

- (a) In an action or other proceedings for the recovery of a call, it is sufficient, and conclusive evidence of the debt, to prove that:
  - (i) the name of the defendant is entered in the Register as the holder or one of the holders of the share in respect of which the call is claimed;
  - (ii) the resolution making the call is recorded in the minute book; and
  - (iii) notice of the call was given to the defendant in accordance with this Constitution,

and it is not necessary to prove the appointment of the Directors who made the call or any other matter whatsoever.

- (b) In this clause 9.11, reference to the term **Defendant** includes a person against whom a set-off or counter-claim is alleged by the Company and the term "action or other proceedings for the recovery of a call" is to be construed accordingly.

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## 10. No Encumbrances

A Member must not create or give any Encumbrance over its shares in favour of any person without the prior written consent of the Company, which consent may be withheld by the Company in its absolute discretion.

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## 11. Transfer of shares

### 11.1 General

- (a) If there is only one Member at any particular time, the Member may transfer any Shares they hold to any other party in their absolute discretion.



- (b) Where there are two or more Members in the Company at any time, then unless all Members have otherwise agreed in writing, no Member may dispose of any Shares except in accordance with the remaining provisions of this clause 11.
- (c) Where there are two or more Members in the Company at any time, if a Member wishes to transfer or dispose of any Shares they hold, it must transfer or dispose of any Shares they hold to existing Members of the Company first.

## 11.2 Restriction

A Member must not:

- (a) Transfer any of its Shares without complying with this clause 11; or
- (b) grant an encumbrance over any of its Shares without the written consent of all other Members.

## 11.3 Transfer Notice

A Member wanting to Transfer any of its Shares (**Seller**) must serve on each other Member (**Offeree**) on the same day a notice in writing (**Transfer Notice**) (with a copy to the Board) stating:

- (a) that the Seller wants to Transfer a specified number (which may be all or some only of its total holding) of Shares (**Sale Shares**);
- (b) the class or classes of the Sale Shares;
- (c) the number of Sale Shares that the Offeree is entitled to buy pursuant to the formula in clause 11.4;
- (d) the cash price per Sale Share (**Specified Price**);
- (e) the name of the proposed third party transferee (if applicable); and
- (f) any other terms of sale of the Sale Shares.

## 11.4 Pre-emption

Each Offeree shall be entitled to buy the number of the Sale Shares calculated in accordance with the following formula:

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

where:

- N = the number of Sale Shares the Offeree may buy;
- A = the total number of Sale Shares;
- B = the number of Shares held by the Offeree;
- C = the total number of issued Shares held by all Shareholders on the date of the Transfer Notice; and
- D = the number of Shares held by the Seller, including the Sale Shares.

### 11.5 Response to Transfer Notice

- (a) Within 20 Business Days after receiving a Transfer Notice (**Day 20**), each Offeree must give notice to the Seller (with a copy to the Board) stating:
  - (i) whether it accepts all, or a specified number of, Sale Shares contained in the offer made to it in the Transfer Notice, or rejects in full the offer made to it in the Transfer Notice; and
  - (ii) if it wants to buy a greater number of Sale Shares if the other Offerees do not accept in full the offer made to them.

For the avoidance of doubt, each Offeree may only specify a number of Sale Shares under clause 11.5(a)(ii) up to the total number of Sale Shares minus the number of Sale Shares the subject of the Offeree's acceptance in clause 11.5(a)(i).

- (b) Offerees that give notice under clause 11.5(a)(ii) may buy (on a pro rata basis to their acceptances under clause 11.5(a)(i)) Sale Shares that are not agreed to be purchased under clause 11.5(a)(i).

### 11.6 If Offerees do not agree to buy all Sale Shares

If the Offerees do not agree to buy all Sale Shares under clause 11.5, the Seller must within five Business Days after Day 20, give notice to the Offerees:

- (a) withdrawing all offers contained in the Transfer Notice; or
- (b) advising that the Seller wants to proceed with the sale:
  - (i) to accepting Offerees of that number of Sale Shares for which acceptances has been received, in which case each accepting Offeree must buy and the Seller must sell, within five Business Days after the Offeree receives the notice, at the Specified Price the number of Sale Shares agreed to buy under clause 11.5(a)(i) plus the number of Sale Shares the accepting Offeree agreed to, and is entitled to, buy under clause 11.5(a)(ii); and/or
  - (ii) to a third party of those Sale Shares for which there are no accepting Offerees.

### 11.7 Sale to a Third Party

If the Seller serves a notice under clause 11.6(b)(ii), the Seller may sell those Sale Shares that are not transferred to accepting Offerees under clause 11.6(b)(i) (**Remaining Shares**):

- (a) at any time no sooner than 11 Business Days, but within 60 Business Days, after serving the Transfer Notice;
- (b) at a price per Remaining Share not less than the Specified Price; and
- (c) on terms no more favourable than those offered to the Offerees.

### 11.8 Drag along

- (a) Notwithstanding anything else in this Constitution, where a third party makes a bona fide offer to purchase Shares which comprise 100% of the issued Share capital of the Company, Members holding at least '60% of all Shares on issue, may within 15 Business Days of giving a Transfer Notice, give notice (**Drag Along Notice**) to all of the other Members (**Drag Along Members**) requiring them to sell all of the Shares held by them (**Drag Along Shares**) free from Encumbrances to the third party at the

same price and on the same terms, provided that the terms on which the Drag Along Members are required to sell their Shares must be no less favourable to the Drag Along Members than the terms on which the accepting Members are selling their Shares. The Drag Along Notice must specify the details of the third party buyer, the consideration payable for the shares and the other terms and conditions that apply to the acquisition and must be accompanied by a copy of the sale document.

- (b) Upon receipt of a Drag Along Notice, each Drag Along Member agrees to do all things and execute such documentation necessary or required to consummate the proposed sale of the Drag Along Shares, including delivering to the purchaser of those Drag Along Shares duly executed transfers and share certificates in respect of the Drag Along Shares.
- (c) Completion of the sale and transfer of the Sale Shares and the Drag Along Shares (including payment of the relevant purchase price) will take place as agreed between the parties, provided that the date must not be less than 15 Business Days after the date of the Transfer Notice.
- (d) The Drag Along Members are not obliged to sell their Drag Along Shares if the selling Members do not complete the sale of their Shares as set out in the Drag Along Notice, to the third party buyer substantially on the same terms and conditions set out in the Drag Along Notice.
- (e) The rights of pre-emption under this clause 11 will not apply with respect to the issuance of a Drag Along Notice.

#### **11.9 Tag along**

- (a) Subject to clause 11.9(c), each Offeree may, within 10 Business Days after receiving a notice under clause 11.6(b)(ii), give notice (**Tag Along Notice**) to the Seller of its wish to sell on the terms in the notice under clause 11.6(b)(ii), any or all of its Shares (**Tag Along Shares**).
- (b) If an Offeree serves a Tag Along Notice to the Seller, the Seller may only sell the Remaining Shares, if at the same time as the sale of the Remaining Shares, all Tag Along Shares specified in the Tag Along Notice are sold at the Specified Price per Share and on the same terms as the Remaining Shares are sold.
- (c) Offerees shall only be permitted to submit Tag Along Notices in accordance with clause 11.9(a) if the aggregate of the Remaining Shares and the Tag Along Shares represent 20% or more of the issued Share capital of the Company.
- (d) Completion of the sale and transfer of the Remaining Shares and the Tag Along Shares to a third party (including payment of the relevant purchase price) will take place as agreed by the parties, provided that the date must not be less than 10 Business Days after the date of the notice under clause 11.6(b)(ii).
- (e) The rights of pre-emption under this clause 11 will not apply with respect to the issuance of a Tag Along Notice.

#### **11.10 Completion**

At completion of the sale of any Shares under this clause 11:

- (a) each buyer must pay the purchase price to each Seller for the Shares that it has agreed to buy from that Seller; and
- (b) each Seller must Transfer title to the Shares it is selling to the buyer free from encumbrances.

#### **11.11 No revocation**

Subject to clause 11.6(a), a Member may only revoke or withdraw a Transfer Notice or a Sale Notice once served if all other Members consent to the revocation or withdrawal (except where a Transfer Notice has been taken to be given under clause 11.3).

#### **11.12 Attorney**

Each Member severally and irrevocably appoints the Company as its agent and attorney with power to complete the sale as contemplated in this clause 11, including the power for any two Directors together to execute all necessary documents to complete the sale on behalf of that Member.

#### **11.13 Permitted Transfers**

This clause 11 (except this clause 11.13) does not apply to:

- (a) a Transfer by a Member to an Affiliate of the Member; or
- (b) a Transfer from an Affiliate of a Member to another Affiliate of the Member,

provided that if an Affiliate of a Member ceases to be an Affiliate of a Member, any Shares that have been transferred to that Affiliate shall be transferred back to the relevant Member.

#### **11.14 Form of Transfer**

The instrument or transfer of any Shares must be in writing in any usual or common form or in any other form which the Directors may approve. The instrument must be executed by or on behalf of both the transferor and the transferee. The transferor remains the holder of the Shares transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Shares transferred.

#### **11.15 Procedure for registration**

The instrument of transfer must be left for registration at the Registered Office, together with such fee (if any) not exceeding \$1.00 as the Directors from time to time may require, accompanied by the certificate of the Shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer, and the Company must then, subject to the powers vested in the Directors by these Rules, register the transferee as a Member and retain the instrument of transfer.

#### **11.16 Refusal to register**

The Directors may decline to register any transfer of Shares except in the case of Shares transferred in the terms of this clause 11, and except in the case of transmission without assigning any reason. In such a case, the Directors must send notice of the refusal to the transferee as may be required by the Corporations Act.

#### **11.17 Suspension of registrations**

The registration of transfers may be suspended at such times and for such periods as the Directors from time to time determine not exceeding in the whole 30 days in any year.

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## **12. Transmission of shares**

### **12.1 Transmission of shares on death**

- (a) In the case of a death of a Member, the survivor where the deceased was a joint holder, and the legal personal representative of the deceased where the deceased was a sole holder, will be the only persons recognised by the Company as having any title to or interest in the deceased's shares.
- (b) If the personal representative gives the Directors all the information they reasonably require to establish the representative's entitlement to be registered as holder of the shares:
  - (i) the personal representative may:
    - (A) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
    - (B) by giving a completed transfer form to the Company, transfer the shares to another person; and
  - (ii) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the deceased Member.
- (c) On receiving an election under clause 12.1(b)(i)(A), the Company must register the personal representative as the holder of the shares.
- (d) A transfer under clause 12.1(b)(i)(B) is subject to the provisions of this Constitution relating to the transfer of shares.
- (e) The estate of the deceased Member is not released from any liability in respect of the shares transmitted under this clause 12.1.

### **12.2 Transmission of shares on bankruptcy or insolvency**

- (a) If a person entitled to shares because of the bankruptcy or insolvency of a Member gives the Directors all the information they reasonably require to establish the person's entitlement to be registered as holder of the shares, the person may:
  - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
  - (ii) by giving a completed transfer form to the Company, transfer the shares to another person.
- (b) On receiving an election under clause 12.2(a)(i), the Company must register the person as the holder of the shares.
- (c) A transfer under clause 12.2(a)(ii) is subject to the provisions of this Constitution relating to the transfer of shares.
- (d) This clause 12.2 has effect subject to the *Bankruptcy Act 1966 (Cth)* and the Act.

### **12.3 Transmission of shares on mental incapacity**

- (a) If a person entitled to shares because of the mental incapacity of a Member gives the Directors all the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:

- (i) the person may:
    - (A) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
    - (B) by giving a completed transfer form to the Company, transfer the shares to another person; and
  - (ii) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.
  - (b) On receiving an election under clause 12.3(a)(i)(A), the Company must register the person as the holder of the shares.
  - (c) A transfer under clause 12.3(a)(i)(B) is subject to the provisions of this Constitution relating to the transfer of shares.
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## **13. Forfeiture of shares**

### **13.1 Default**

If a Member fails to pay a call or instalment of a call on or before the day appointed for payment of the call or instalment, the Directors may, at any time after that date, serve a notice on such Member requiring payment of the unpaid amount of the call or instalment, together with any interest and all expenses that the Company has incurred by reason of the non-payment.

### **13.2 Notice of forfeiture**

The notice referred to in clause 13.1 must:

- (a) specify a day at least 14 days after the date of service of notice and a place at which the call or instalment and the interest and expenses referred to in clause 13.1 are to be paid; and
- (b) state that in the event of non-payment at the time and place appointed, the share in respect of which the call was made or instalment is payable is liable to be forfeited.

### **13.3 Forfeiture**

- (a) If the requirements of a notice served under clauses 13.1 and 13.2 are not complied with, any share in respect of which the notice has been given may at any time after the date of non-compliance but before payment required by the notice has been made, be forfeited by a resolution of the Directors.
- (b) A forfeiture under clause 13.3(a) will include all dividends declared in respect of the forfeited shares and unpaid before the forfeiture.

### **13.4 Liability continues after forfeiture**

Any Member whose share is forfeited:

- (a) ceases to be a Member in respect of the forfeited share; and
- (b) remains liable to pay and must immediately pay to the Company all money that, at the date of forfeiture, was payable to the Company in respect of the share, together with interest on those amounts from the date of forfeiture until payment, at such rate as the Directors determine.

### **13.5 Statutory declaration is conclusive**

- (a) A statutory declaration that:
  - (i) the declarant is a Director or a Secretary of the Company; and
  - (ii) a share in the Company has been duly forfeited on a particular date,is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to the share.
- (b) The statutory declaration referred to in this clause 13.5 and the Company's receipt for the price of the share constitutes a good title to the share.

### **13.6 Disposal of forfeited shares**

- (a) Any forfeited shares become the Company's property and the Directors may sell or dispose of the shares as they think fit, except that in the event of sale, the Directors will pay to the Member in whose name the share was registered immediately before the forfeiture, the residue (if any) of the proceeds of sale after satisfaction of all moneys due and unpaid.
- (b) Before any forfeited share is sold or disposed of, the forfeiture may be cancelled on such terms as the Directors think fit.
- (c) In relation to any sale or disposal under this clause 13.6, the Directors may arrange for an accountant or the Company's auditor to value the forfeited share. If the sale or disposal is made within three months of the date of the valuation, the valuation is conclusive evidence against the Member of the value of that share at the time of sale or disposal.

### **13.7 Transfer of forfeited share**

- (a) The Company may receive the consideration (if any) given for a forfeited share on its sale or disposition and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (b) On the execution of the transfer, the transferee:
  - (i) will be registered as the holder of the share;
  - (ii) is not responsible for the application of any purchase money; and
  - (iii) will possess a title which is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.
- (c) After the name of the transferee is entered in the Register, no person may impeach the validity of the transfer and the remedy of any person aggrieved by the transfer is in damages only and against the Company exclusively.

### **13.8 Application to outstanding money**

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

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## **14. CSF Offers**

- (a) The Company may, from time to time, make a CSF Offer.

- (b) If at any time the Company is making a CSF Offer, or has one or more CSF Shareholders, the following rules apply:
- (i) notwithstanding anything contained in this Constitution, if the Act prohibits an act being done in connection with a CSF Offer, or as a result of the Company having one or more CSF Shareholders, the act shall not be done;
  - (ii) nothing contained in this Constitution prevents an act being done that the Act requires to be done in connection with a CSF Offer, or as a result of the Company having one or more CSF Shareholders;
  - (iii) if the Act requires an act to be done or not to be done in connection with a CSF Offer, or as a result of the Company having one or more CSF Shareholders, authority is given for that act to be done or not to be done (as the case may be);
  - (iv) if the Act requires this Constitution to contain a provision in connection with a CSF Offer, or as a result of the Company having one or more CSF Shareholders, and it does not contain such a provision, this Constitution is deemed to contain that provision;
  - (v) if the Act requires this Constitution to not contain a provision in connection with a CSF Offer, or as a result of the Company having one or more CSF Shareholders, and it does contain such a provision, this Constitution is deemed to not contain that provision; and
  - (vi) if any provision of this Constitution is or becomes inconsistent with the Act in connection with a CSF Offer, or as a result of the Company having one or more CSF Shareholders, this Constitution is deemed not to contain that provision to the extent of the inconsistency.
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## **15. Alteration of capital**

### **15.1 Power to consolidate, divide and cancel**

Subject to the Act, the Company may by resolution:

- (a) consolidate and divide all or any of its share capital into shares of larger value than its existing shares;
- (b) subdivide all or any of its shares into shares of smaller value, provided that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each such reduced share is the same as it was in the case of the share from which the reduced share is derived; and
- (c) cancel shares that, at the date of the resolution have not been taken or agreed to be taken by any person or have been forfeited and reduce its share capital by the amount of the shares so cancelled.

### **15.2 Reduction of capital**

Subject to the Act, the Company may, by resolution, reduce its share capital.



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## **16. General meetings**

### **16.1 Annual general meeting**

The Company must hold an annual general meeting of the Company in accordance with the Act.

### **16.2 Power to convene general meeting**

Any Director may, whenever the Director thinks fit, convene a general meeting of the Company's Members.

### **16.3 Notice period**

- (a) Subject to the Act and clause 16.3(b), the Company must give at least 21 days' notice of general meetings (including annual general meetings).
- (b) The Company may call, on shorter notice than that specified in clause 16.3(a):
  - (i) an annual general meeting, if all the Members entitled to attend and vote at the annual general meeting agree prior to the annual general meeting; and
  - (ii) any other general meeting, if Members holding at least 95% of the votes that may be cast at the general meeting agree prior to the general meeting.

### **16.4 Notice of general meetings**

- (a) Notice of every general meeting must be given in the manner authorised by clause 31 to:
  - (i) every Member;
  - (ii) every Director;
  - (iii) the auditor (if any); and
  - (iv) every person who establishes to the Directors' satisfaction their entitlement to a share in consequence of the death, mental incapacity, bankruptcy or insolvency of a Member and, who but for the death, mental incapacity, bankruptcy or insolvency (as the case may be) would have been entitled to receive notice of the meeting.
- (b) Notice to joint Members may be given by sending it to the joint Member named first in the Register.

### **16.5 Content of notice of general meetings**

A notice of a general meeting must:

- (a) specify the place, date and time for the meeting and, if applicable, details as to how a Member may attend electronically;
- (b) except as provided by clause 16.6, state the general nature of the business to be transacted at the meeting;
- (c) if a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and state the resolution;
- (d) contain a statement of:

- (i) each Member's right to appoint a proxy; and
- (ii) the fact that a proxy need not be a Member of the Company; and
- (e) contain a statement that, if the Member appoints more than one proxy, each proxy may be appointed to represent a specified proportion of the Member's votes.

## **16.6 Content of notice of annual general meeting**

It is not necessary for the notice of an annual general meeting to state that the business to be transacted at the meeting includes:

- (a) the consideration of the financial statements and the reports of the Directors and auditor (if any);
- (b) the election of Directors and other officers in place of those retiring;
- (c) the declaration of dividends;
- (d) the appointment and fixing of the remuneration of the auditors; and
- (e) any other business which, under this Constitution or the Act, is required to be transacted at an annual general meeting.

## **16.7 Notice of adjourned meeting**

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 30 days or more.

## **16.8 Failure to give notice**

Any resolution passed at a meeting is not invalidated by:

- (a) the accidental omission to give notice of a meeting to any Member or non-receipt of that notice by a Member; or
- (b) the accidental omission to send out the instrument of proxy to a person entitled to receive notice or non-receipt of that instrument.

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# **17. Proceedings at general meetings**

## **17.1 Circular resolutions**

- (a) A resolution may be passed without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. A body corporate's representative may sign such a circular resolution. Either member of a joint membership may sign a circular resolution.
- (b) Identical copies of the document may be distributed for signing by different Members and taken together will constitute one and the same document.
- (c) The resolution is passed when the last Member signs the document, and satisfies any requirement in this Constitution or the Act that the resolution be passed at a general meeting.

## **17.2 Sole Member resolutions**

- (a) If at any time the Company has only one Member, it satisfies any requirement in this Constitution or the Act that a resolution be passed by that sole Member recording the resolution and signing the record.
- (b) A body corporate's representative may sign a resolution referred to in clause 17.2(a).

## **17.3 Use of technology**

The Company may hold a meeting or permit Members to attend a meeting using any technology that gives Members a reasonable opportunity to participate, including through any internet-based meeting application or any analogous technology. A Member is present in person for such a meeting if that Member is participating through the internet- based meeting application.

## **17.4 Quorum**

- (a) Except as otherwise provided in this Constitution, the quorum for a general meeting of the Company is 2 Members present in person or by proxy, attorney or body corporate representative and the quorum must be present at all times during the meeting.
- (b) No business will be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
- (c) For the purpose of determining whether a quorum is present:
  - (i) each person attending as a proxy, as a body corporate's representative, or as a validly appointed attorney of a Member, is deemed to be a Member;
  - (ii) if a Member has appointed more than one proxy, attorney or representative, only one may be counted; and
  - (iii) if an individual person is attending both as a Member and as a proxy, attorney or representative, they may be counted only once.
- (d) If at any time the Company has only one Member, then that Member present in person or by proxy, attorney or body corporate representative is a quorum.

## **17.5 Effect of no quorum**

If a quorum of the Company's Members is not present within half an hour after the time appointed for the meeting in the notice:

- (a) if the meeting was convened on the requisition of Members, the meeting must be dissolved; or
- (b) in any other case:
  - (i) the meeting will be adjourned to the date, time and place that the Directors specify (or if the Directors do not specify such details, the meeting is adjourned to the same day in the next week at the same time and place) except that if the meeting is adjourned for 30 days or more, notice of the resumed meeting must be given; and

- (ii) if at a meeting resumed under clause 17.5(b)(i) a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

#### **17.6 Chairperson of general meeting**

The Directors may elect any person to chair general meetings of the Company.

#### **17.7 Vacancy in chair**

Where a general meeting is held and:

- (a) a chairperson has not been elected by the Directors as provided by clause 17.6; or
- (b) the chairperson declines to act or is not present within 15 minutes after the time appointed for the holding of the meeting,

the Members present must elect one of their number to be chairperson of the meeting or part of the meeting (as the case may be).

#### **17.8 Adjournment**

The chairperson must adjourn a general meeting if the Members present with a majority of votes at the general meeting agree or direct that the chairperson must do so.

#### **17.9 Adjourned meetings**

- (a) Only unfinished business is to be transacted at a meeting resumed after an adjournment.
- (b) A resolution passed at a meeting resumed after an adjournment is passed on the day it was in fact passed.

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### **18. Voting at general meetings**

#### **18.1 Voting**

- (a) A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded.
- (b) Before a vote is taken, the chairperson must inform the general meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (c) On a show of hands, a declaration by the chairperson is conclusive evidence of the result provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against the resolution.

#### **18.2 Voting rights**

Subject to any rights or restrictions attached to any class of shares, each Member, entitled to vote may vote in person or by proxy, attorney or body corporate representative authorised under the Act, at a meeting of the Members of the Company, and each Member has:

- (a) on a show of hands, one vote; and
- (b) on a poll, one vote for each share they hold.

### **18.3 Voting by joint holders**

If a share is held jointly and more than one Member votes in respect of that share, only the vote of the Member whose name appears first in the Register is counted.

### **18.4 No entitlement to vote if calls are unpaid**

If calls and other sums due and payable on a Member's share remain unpaid, that Member:

- (a) is not entitled to be present at any general meeting;
- (b) may not vote on any question or on a poll; and
- (c) may not be counted in a quorum.

### **18.5 Voting by persons entitled to shares**

- (a) Subject to clause 18.5(b), any person entitled to a share in consequence of the death, mental incapacity, bankruptcy or insolvency of a Member, may vote at any general meeting in respect of that share as if they were the registered holder of the share.
- (b) A person entitled to vote under clause 18.5(a) must satisfy the Directors of their right to be transferred the share at least 48 hours before the scheduled time of the meeting or adjourned meeting at which that person proposes to vote, unless the Directors have previously admitted that person's right to vote at that meeting.

### **18.6 Voting by poll**

- (a) A poll may be demanded by:
  - (i) the chairperson;
  - (ii) at least 5 Members present in person or by proxy, attorney or body corporate representative entitled to vote on the resolution; or
  - (iii) a Member or Members present in person or by proxy, attorney or body corporate representative representing at least 5% of the total votes that may be cast on the resolution on a poll.
- (b) A poll may be demanded:
  - (i) before a vote is taken; or
  - (ii) before or immediately after the voting results on a show of hands are declared.
- (c) The percentage of votes that each Member holds is to be determined as at the close of business on the day before the poll is demanded.
- (d) The demand for a poll may be withdrawn.
- (e) If a poll is duly demanded, it must be taken in such manner and, subject to clause 18.6(f), either immediately or after an interval or adjournment or otherwise as the chairperson directs. The result of the poll is the resolution of the meeting at which the poll was demanded.
- (f) A poll is to include the votes of Members voting electronically at a meeting at which Members participate electronically using technology that includes an internet-based meeting application or any analogous technology.

- (g) A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.
- (h) The demand for a poll does not prevent a meeting continuing for the transaction of any business other than the question on which a poll has been demanded.

### **18.7 Casting vote of Managing Director**

In the case of an equality of votes, whether on a show of hands or on a poll, the Managing Director has a casting vote (in addition to any vote that the Managing Director may have had as a member).

### **18.8 Objection to qualification of a voter**

- (a) An objection to a person's right to vote at a general meeting:
  - (i) may only be raised at a general meeting or adjourned meeting at which the vote objected to is given or tendered; and
  - (ii) must be determined by the chairperson of the meeting, whose decision is final.
- (b) A vote not disallowed under an objection referred to in clause 18.8(a) is valid for all purposes.

### **18.9 Votes counted in error**

If any vote is counted which ought not to have been counted or might have been rejected, the error will not invalidate the resolution unless the error is:

- (a) detected at the same meeting; and
- (b) of sufficient magnitude, in the opinion of the chairperson, as to invalidate the resolution.

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## **19. Proxies**

### **19.1 Who can appoint a proxy**

- (a) A Member who is entitled to attend and vote at a general meeting may appoint a person as that Member's proxy to attend and vote for that Member at a meeting of the Company. A proxy need not be a Member of the Company.
- (b) The appointment may specify the proportion or number of votes that the proxy may exercise.
- (c) If the Member is entitled to cast more than one vote at a meeting, the Member may appoint 2 proxies. If the Member appoints 2 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 Member's votes.
- (d) Any fractions of votes resulting from the application of clauses 19.1(b) or 19.1(c) must be disregarded.

### **19.2 Execution and form of proxies**

- (a) An instrument appointing a proxy is valid if it is in the form specified by the Directors from time to time and is:

- (i) signed by or on behalf of the Member of the Company making the appointment; and
- (ii) contains the following information:
  - (A) the Member's name and address;
  - (B) the Company's name;
  - (C) the proxy's name or the name of the office held by the proxy; and
  - (D) the meetings at which the appointment may be used.
- (b) The proxy form must provide for the Member to vote for or against each resolution and may provide for abstention to be indicated.
- (c) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution. Where it does so, the proxy is not entitled to vote on the resolution except as specified in the instrument. A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.
- (d) An instrument appointing a proxy confers authority to demand or join in demanding a poll.
- (e) Despite clause 18.3, where an instrument of proxy is signed by all of the joint holders of any Shares, the votes of the proxy so appointed must be accepted in respect of those Shares to the exclusion of any votes tendered by a proxy for any one of those joint holders.

### **19.3 Member's attorney**

A Member may appoint an attorney to act, or to appoint a proxy to act, at a general meeting. If the appointor is an individual, the power of attorney must be signed in the presence of at least 1 witness.

### **19.4 Life of proxy**

An instrument appointing a proxy will not be valid after 12 months from the date of its execution, unless it is expressly stated to be a standing appointment or to extend for a longer period.

### **19.5 Lodgement of proxies and powers of attorney**

- (a) If a Member appoints a proxy or an attorney, the following documents must be given to the Company at the Office or at the place specified for the purpose in the notice calling the general meeting:
  - (i) the proxy's appointment; and
  - (ii) if the appointment is signed by the appointor's attorney, the authority under which the form was signed or a certified copy of the authority; and
  - (iii) in the case of an attorney, the power of attorney or a certified copy of it.
- (b) The appointment of a proxy or an attorney is valid for a meeting if the appointment and any authority are given to the Company at least 24 hours before the general meeting at which the proxy is to be used.

## **19.6 Corporate representative**

A Member that is a body corporate may appoint an individual to act as its representative at general meetings as permitted by the Act.

## **19.7 Validity of proxy vote**

A vote cast in accordance with the terms of an instrument of proxy or of a power of attorney is valid if no notice in writing of:

- (a) the previous death of the appointing Member;
- (b) the mental incapacity of the appointing Member;
- (c) the revocation of the proxy's appointment;
- (d) the revocation of the authority under which the proxy was appointed; or
- (e) the transfer of the share in respect of which the proxy was given,

has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the proxy is used or exercised.

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## **20. Appointment and removal of Directors**

### **20.1 Number**

- (a) For so long as the Company has 1 or more CSF Shareholders, and during any period in which the Company is making a CSF Offer:
  - (i) the Company must have at least 2 Directors (or such other minimum number prescribed by the Act); and
  - (ii) the majority of the Directors (or such other number or proportion prescribed by the Act), excluding Alternates, must ordinarily reside in Australia.
- (b) Unless clause 20.1 applies, the Company must have at least 1 Director.
- (c) Unless otherwise determined by ordinary resolution, the Company must not have more than 5 Directors. .

### **20.2 Appointment by Directors**

- (a) The Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided that the total number of Directors does not at any time exceed the maximum number of Directors permitted under this Constitution.
- (b) A person appointed under clause 20.2(a) holds office until the next annual general meeting of Members following their appointment and is eligible for election at that meeting.

### **20.3 Appointment by Company**

The Company may by ordinary resolution passed in a general meeting appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided that the total number of Directors does not at any time exceed the maximum number of Directors permitted under this Constitution.



## **20.4 Removal by Company**

The Company may by ordinary resolution:

- (a) remove any Director from office; and
- (b) appoint another person as a Director instead.

## **20.5 Term of office**

Each of the Directors will hold office until the Director vacates office or is removed under this Constitution.

## **20.6 Share qualification**

A Director need not be a Member of the Company.

## **20.7 Vacation of office**

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

- (a) ceases to be a Director by virtue of the Act or this Constitution;
- (b) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (c) is prohibited from being a Director by reason of any order made under the Act;
- (d) becomes physically or mentally incapable of performing the Director's duties;
- (e) resigns by written notice to the Company;
- (f) is absent from Directors' meetings (without appointing an Alternate Director) without the consent of the other Directors for a period of more than 6 months; or
- (g) without the prior or subsequent consent of the other Directors, is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the Director's interest as required by the Act.

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# **21. Remuneration of Directors**

## **21.1 Remuneration of Directors**

- (a) The Directors are to be paid such Directors' fees as the Company determines by ordinary resolution.
- (b) The Company may also pay the Directors travelling and other expenses that they properly incur:
  - (i) in attending meetings of the Directors or any committee of the Directors;
  - (ii) in attending any general meetings of the Company; or
  - (iii) in connection with the business of the Company.

## **21.2 Remuneration of Managing Director**

A Managing Director appointed under clause 24 will (subject to the provisions of any contract between the Managing Director and the Company) receive such remuneration, whether by

way of salary, commission or participation in profits of the Company or of any other company in which the Company is interested or by any or all of these modes as determined by the Directors.

### **21.3 Additional remuneration of chairperson**

In addition to the ordinary remuneration as Director, the chairperson of Directors elected under clause 23.8(a) is entitled to such additional remuneration as may be fixed by the Directors by ordinary resolution, provided that they are not entitled to any such additional remuneration by virtue of also holding the office of Managing Director.

### **21.4 Remuneration of Directors for extra services**

Any Director who performs special services or goes or resides abroad for any purpose of the Company will be paid such extra remuneration, whether by way of salary, commission or participation in profits of the Company or of any other company in which the Company is interested or by any or all these modes as determined by the Directors by ordinary resolution.

### **21.5 Effect of cessation of office**

Unless otherwise required by the Act, Directors are not entitled to any remuneration by the Company upon vacation of office or if the Director is removed under this Constitution.

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## **22. Powers and duties of Directors**

### **22.1 General management power**

Subject to the Act, this Constitution and any resolution of the Company, the Directors:

- (a) will manage the business of the Company;
- (b) may exercise all such powers of the Company that are not, by the Act or this Constitution, required to be exercised by the Company in general meeting, provided that no resolution of the Company in general meeting will invalidate any prior act of the Directors which would have been valid if such a resolution had not been made; and
- (c) may be reimbursed all reasonable expenses incurred in promoting and forming the Company.

### **22.2 Act in the best interests of a Holding Company**

As contemplated by section 187 of the Act, a Director may act in good faith in the best interests of any Holding Company of the Company.

### **22.3 Attorneys**

- (a) The Directors may, by power of attorney under deed, appoint any person or persons to be the attorney or attorneys of the Company with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.
- (b) Any such power of attorney may contain provisions for the protection and convenience of persons dealing with the attorney and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

## **22.4 Power to borrow and give security**

- (a) Without limiting the generality of clause 22.1, the Directors may for the purposes of the Company:
  - (i) borrow money, with or without giving security for it; and
  - (ii) guarantee the performance of any obligation of the Company or of any other person.
- (b) The Directors may borrow or provide security as they think fit and in particular by the issue of bonds, debentures or debenture stock or any mortgage, charge or other security on the undertaking of the whole or part of the property of the Company (both present and future) including its uncalled capital.
- (c) Debentures, debenture stock, bonds or other securities may be:
  - (i) made assignable free from any equities between the Company and the person to whom the same has been issued; or
  - (ii) issued at a discount, premium or otherwise and with any special privileges as to redemption, surrender, drawings, allotment of shares, attending and voting at general meetings of the Company, appointment of Directors and otherwise, and any debentures may be re-issued notwithstanding that they may have been made paid off or satisfied.

## **22.5 Indemnity**

Subject to clause 33 and to the extent permitted by the Act, if any of the Directors or any other person becomes personally liable for the payment of any sum primarily due from the Company, the Directors may execute a mortgage, charge or security over the whole or any part of the assets of the Company by way of indemnity to secure the Directors or persons so becoming liable from any loss in respect of the liability.

## **22.6 Other offices of Directors**

Subject to the Act, a Director may hold any other office or offices under the Company (except that of auditor) in conjunction with the office of Director and on such terms as to remuneration and otherwise as the Directors may arrange.

## **22.7 Director may act in professional capacity**

- (a) Subject to the Act and clause 22.7(b), any Director (or the Director's firm) may act in a professional capacity for the Company and the Director (or the Director's firm) is entitled to remuneration for professional services as if the Director were not a Director.
- (b) A Director (or the Director's firm) must not act as the Company's auditor.

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# **23. Proceedings of Directors**

## **23.1 Calling and holding Directors' meetings**

- (a) A Director may call a Directors' meeting by giving at least 48 hours' notice to each Director.
- (b) A notice of a Directors' meeting may be given as the Directors may determine, either in writing, orally or by using technology.

### **23.2 Circulating resolutions**

- (a) The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Identical copies of the document may be distributed for signing by different Directors and taken together will constitute one and the same document.
- (c) The resolution is passed when the last Director signs the document.

### **23.3 Directors' meetings by technology**

- (a) For the purposes of the Act, each Director, by consenting to be a Director (or by reason of the adoption of this Constitution), consents to the use of each of the following technologies for holding a Directors' meeting:
  - (i) video;
  - (ii) telephone;
  - (iii) any other technology that permits each Director to communicate with every other Director; or
  - (iv) any combination of these technologies.
- (b) Where the Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors:
  - (i) the participating Directors are, for the purpose of every provision of this Constitution concerning meetings of the Board, taken to be assembled together at a meeting and to be present at that meeting; and
  - (ii) all proceedings of those Directors conducted in that manner are as valid and effective as if conducted at a meeting at which all of them were physically present in the one location.
- (c) A Director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that Director has previously obtained the express consent of the chairperson to leave the meeting.

### **23.4 Directors' resolutions**

- (a) Subject to this Constitution, a resolution of the Directors must be passed by a majority of the votes of Directors present and entitled to vote on the resolution.
- (b) In case of an equality of votes, the Managing Director, in addition to his or her deliberative vote (if any), has a casting vote.

### **23.5 Minutes**

- (a) The Directors must cause minutes to be made of:
  - (i) all appointments of Directors, Alternate Directors and officers;
  - (ii) the names of the Directors present at each meeting of the Directors;
  - (iii) all orders made by the Directors;

- (iv) all declarations made or notices given by any Director (either generally or specifically) of his or her interest in any contract or proposed contract or of his or her holding of any office or property whereby any conflict of duty or interest may arise; and
- (v) all resolutions and proceedings of meetings of Members and classes of Members and of the Directors,

and retain the minutes in a minute book for a period of at least 10 years or such other period as may be required under the Act.

- (b) The minutes of a meeting must be signed by the chairperson of the meeting or the chairperson of the next meeting.
- (c) In the absence of evidence to the contrary, contents of the minute book that is recorded and signed in accordance with this clause 23.5 is evidence of the matters shown in the minute.

### **23.6 Director's personal interests**

If a Director has a material personal interest in a matter that relates to the affairs of the Company other than an interest that does not have to be disclosed under section 191(2) of the Act and the Director discloses the nature and extent of the interest and its relation to the affairs of the Company to the other Directors, in accordance with section 191 of the Act and the Directors (other than the Director with the personal interest) approve the participation of that Director in the matter and permits that Director to vote on the matter, then:

- (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:
  - (i) the Director may retain benefits under the transaction even though the Director has the interest; and
  - (ii) the Company cannot avoid the transaction merely because of the existence of the interest.

### **23.7 Quorum**

- (a) At a meeting of Directors properly convened the number of Directors whose presence is necessary to constitute a quorum is 2.
- (b) If the office of a Director becomes vacant, the remaining Directors may act but, if the total number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, the Directors may act only for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum or for the purpose of convening a general meeting of the Company.
- (c) A quorum of Directors must be present throughout each Director's meeting. If a quorum is not present at any time the meeting is not validly convened but without affecting the validity of any business conducted before the absence of a quorum occurs.
- (d) Despite any other provision in this Constitution, if no quorum is present within 30 minutes after the time appointed for the meeting:
  - (i) the meeting is adjourned for 24 hours;

- (ii) the quorum for that rescheduled meeting is 1; and
- (iii) if no Director attends that adjourned meeting, the meeting is regarded as dissolved.

### **23.8 Chairperson**

- (a) The Directors must elect a Director to chair their meetings and may determine the period for which the Director is to be the chairperson.
- (b) Where a meeting of the Directors is held and:
  - (i) a Director has not already been elected to chair that meeting under clause 23.8(a); or
  - (ii) the previously elected chairperson declines to act or is not present within 15 minutes after the time appointed for the holding of the meeting,

the Directors present must elect one of their number to chair the meeting or part of the Meeting (as the case may be).
- (c) The chairperson does not have a casting vote in addition to any vote the chairperson has as a Director.

### **23.9 Delegation to Committees**

- (a) The Directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.
- (b) A committee must exercise the powers delegated to it in accordance with any directions of the Directors. The effect of the committee exercising a power in this way is the same as if it had been exercised by the Directors.
- (c) The members of a committee may elect one of their number as chairperson of their meetings.
- (d) Where a meeting of a committee is held and:
  - (i) a chairperson has not already been elected to chair that meeting under clause 23.9(c); or
  - (ii) the previously elected chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act,

the members present may elect one of their number to be chairperson of the meeting.
- (e) A committee may meet and adjourn as it thinks fit unless otherwise directed by the Directors.
- (f) Questions arising at a meeting of a committee must be determined by a majority of votes of the members present and voting.
- (g) In the case of an equality of votes, the Managing Director has a casting vote, in addition to any vote the Managing Director has in the Managing Director's capacity as a member of the committee (if any).

### **23.10 Acts of Directors valid despite defective appointment**

Any act done at any meeting of the Directors or of a committee of Directors by any person acting as a Director is, although it is later discovered that there was some defect in the

appointment of any such Director or that the Director was disqualified, is valid as if the Director had been duly appointed and was qualified to be a Director or to be a member of the committee.

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## **24. Managing Director**

### **24.1 Appointment and tenure**

- (a) The Directors may appoint one Director to be Managing Director of the Company. The appointment of Managing Director will be for such period and on such terms as the Directors think appropriate.
- (b) The Directors may, subject to the terms of any agreement entered into in a particular case, revoke any appointment of Managing Director.

### **24.2 Ceasing to hold office**

A Managing Director:

- (a) is subject to the same provisions as to resignation and removal as a Director as the other Directors of the Company; and
- (b) immediately ceases to be a Director if he or she ceases to be a Managing Director.

### **24.3 Powers**

- (a) The Directors may on such terms and conditions and with such restrictions as they think appropriate, confer on a Managing Director any of the powers exercisable by the Directors.
  - (b) Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Directors.
  - (c) The Directors may at any time withdraw or vary any of the powers so conferred on a Managing Director.
  - (d) The Managing Director has a casting vote in addition to any vote the Managing Director has as a Director.
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## **25. Alternate Directors**

### **25.1 Power to appoint an Alternate Director**

- (a) Subject to clause 25.1(b) and with the other Directors' prior written approval, a Director (**Appointing Director**) may appoint an Alternate Director to exercise some or all of the Appointing Director's powers either indefinitely or for a specified period. An Alternate Director need not be a Director or Member.
- (b) A Managing Director must not appoint an Alternate Director to act as Managing Director.

### **25.2 Appointment**

The appointment of an Alternate Director must be in writing and a copy given to the Company.

### **25.3 Rights and powers**

- (a) An Alternate Director:
  - (i) is entitled to notice of each Directors' meeting and if the Appointing Director is not present at any such meeting, the Alternate Director may attend and vote at that meeting in the Appointing Director's place; and
  - (ii) is otherwise entitled to exercise all the powers of the Appointing Director in the Appointing Director's place (unless the appointment was limited to some only of the Appointing Director's powers, in which case the Alternate Director may only exercise those powers).
- (b) When an Alternate Director exercises the Appointing Director's powers, the exercise of the powers is just as effective as if the powers were exercised by the Appointing Director.

### **25.4 Alternate Director is not agent of appointor**

An Alternate Director is responsible to the Company for his or her own acts and defaults as if the Alternate Director were an ordinary Director and is not deemed to be an agent of the appointing Director.

### **25.5 Termination of appointment**

- (a) The Appointing Director may terminate the Alternate Director's appointment at any time.
- (b) The termination of an Alternate Director must be in writing and is not effective until a copy is given to the Company.
- (c) In any case, the appointment of an Alternate Director terminates when the Appointing Director ceases to hold office as Director.

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## **26. Secretary**

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

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## **27. Records and inspection**

- (a) The Directors must ensure that proper accounting and other records of the Company are kept and where required, distributed, in accordance with the requirements of the Act.
- (b) The Directors must determine whether and on what terms the accounting records and other documents of the Company or any of them will be open to the inspection of Members other than Directors.
- (c) A Member other than a Director does not have the right to inspect any document of the Company except as provided by the Act or authorised by the Directors or by the Company in general meeting.



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## **28. Dividends and reserves**

### **28.1 Declaration**

- (a) Subject to the Act, the Directors (without the sanction of a general meeting) or the Company in general meeting on the recommendation of the Directors, may determine that a dividend be payable and specify:
  - (i) the amount;
  - (ii) the time for payment; and
  - (iii) the method of payment.
- (b) A dividend declared by the Company in general meeting must not exceed the amount recommended by the Directors.
- (c) Subject to clause 4, dividends may be declared in respect of any class of shares to the exclusion of shares in any other class or classes provided that the shares in any one class so participate equally among themselves in the dividends.
- (d) If a dividend is declared on more than one class of shares, the dividend declared on the shares of any particular class may be at a higher, lower or at the same rate as the dividend declared on the shares of other classes provided that the shares in any one class participate equally among themselves in any dividend declared in respect of that class.
- (e) There will be no objection to any resolution which declares a higher rate of dividend on the shares of a particular class or classes than the dividend declared on the shares of any other class or classes.

### **28.2 Interim dividends**

Subject to the Act, the Directors may authorise the payment to the Members of such interim dividends as in their judgment appear to be justified.

### **28.3 Interest on dividends**

Interest is not payable by the Company in respect of any dividend.

### **28.4 Reserves**

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

### **28.5 Entitlement to dividends**

- (a) Subject to this Constitution, all dividends must be apportioned and paid proportionately to the amounts paid or credited as paid on the shares.

- (b) Where any share is issued on terms providing that it will rank for dividend as from a particular date, that share ranks for dividend accordingly.
- (c) An amount paid or credited as paid on a share in advance of a call must not be taken for the purposes of this clause 28.5 to be paid or credited as paid on the share and will not confer a right to participate in profits.

#### **28.6 Deduction from dividends of money owing**

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

#### **28.7 Retention of dividends and transmission**

The Directors may retain dividends payable on a share in respect of which any person under clauses 12.1, 12.2 or 12.3 is entitled to become a Member or any person is otherwise entitled to take a transfer of that share, until the person becomes a Member in respect of that share.

#### **28.8 Payment of dividends by distribution of property**

- (a) When declaring a dividend, the Directors, or a general meeting on the recommendation of the Directors, may by resolution direct payment of the dividend wholly or in part by the distribution of specific assets, including paid up shares in, or debentures of, any other corporation, and the Directors must give effect to such a resolution.
- (b) Where a difficulty arises in regard to such a distribution under clause 28.8(a), the Directors may do any one or more of the following:
  - (i) settle the matter as they consider expedient;
  - (ii) fix the value for distribution of the specific assets or any part of those assets;
  - (iii) determine that cash payments be made to any Members on the basis of the value fixed in order to adjust the rights of all parties; and
  - (iv) vest any such specific assets in trustees as the Directors consider expedient.

#### **28.9 Payment of dividends by cash**

- (a) Any dividend, interest or other money payable in cash in respect of shares may be paid, at the Directors discretion and at the sole risk of the intended recipient:
  - (i) by cheque sent by post directed to:
    - (A) the address of the Member as shown in the Register or, in the case of joint holders, to the address shown in the Register as the address of the joint holder first named in the Register; or
    - (B) any other address as the Member or joint holders directs or direct in writing; or
  - (ii) by electronic funds transfer to an account with a bank or other financial institution nominated in writing by the Member and acceptable to the Company; or
  - (iii) by any other means determined by the Directors.
- (b) The Directors may decide to use different payment methods for different Members.

- (c) Every cheque sent under clause 28.9(a)(i) must be made payable to the person to whom it is sent and will be sent at that person's risk.

#### **28.10 Unclaimed dividends**

Subject to the Act and any legislation relating to unclaimed money, all dividends unclaimed for one year after having been declared may be used by the Directors for the benefit of the Company until claimed.

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### **29. Capitalisation of profits**

#### **29.1 Authority to capitalise**

The Company may, by ordinary resolution in general meeting and on the recommendation of the Directors, 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 profit and loss account or otherwise available for distribution to Members; and
- (b) that sum may be applied, in any of the ways mentioned in clause 29.2, 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.

#### **29.2 Appropriation and application**

A sum distributed to Members in accordance with clause 29.1 may be applied:

- (a) in paying up any amounts unpaid on shares held by Members; or
- (b) in paying up in full unissued shares or debentures to be issued to Members as fully paid.

#### **29.3 Adjustment of Members' rights**

The Directors must do all things necessary to give effect to a resolution referred to in clause 29.1 and, in particular, to the extent necessary to adjust the rights of the Members among themselves, may:

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

and any agreement made under an authority referred to in clause 29.3(b) is effective and binding on all the Members concerned.

#### **29.4 Distribution**

- (a) If a distribution of capitalised profits is made on more than one class of shares, the distribution made on the shares of any particular class may be at a higher, lower or at the same rate as the distribution made on the shares of another class,

provided that the shares in any one class participate equally among themselves in any distribution made of capitalised profits in respect of that class.

- (b) There can be no objection to any resolution which declares a higher rate of distribution on the shares of any class or classes than the distribution made on the shares of any other class or classes.

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## **30. Power of Attorney**

### **30.1 Appointment of Attorney**

- (a) Each Member (**Appointor**) irrevocably appoints the Company (**Attorney**), as its agent and attorney, with power to do everything necessary or expedient in the name of the Appointor and on its behalf to give effect to any of the transactions contemplated by this Constitution to the extent that the Appointor has failed to act in the manner required by this Constitution, including to:
  - (i) settle, execute and deliver in the name of the Appointor and on its behalf all documents necessary to give effect to the transactions contemplated by this Constitution and all documents that are contemplated by or reasonably, ancillary or incidental to any such document, including conveyances, assignments, novations and transfers;
  - (ii) do everything necessary or expedient in the name of the Appointor and on its behalf to complete the transactions contemplated by this Constitution; and
  - (iii) exercise any rights attaching to the Appointor's shares, including voting rights, rights to appoint a proxy or representative, rights to attend and speak at a meeting of members of the Company and agree to such meetings being called on short notice.
- (b) The Attorney may:
  - (i) appoint or remove any substitute, delegate or sub-attorney at any time; and
  - (ii) exercise its rights and powers under this clause 30:
    - (A) in its own name or in the name of the Appointor; and
    - (B) even if it benefits from the exercise of the rights or powers.

### **30.2 Further acts**

The Appointor declares that all acts and things done by the Attorney and its substitutes, delegates and sub-attorneys in exercising rights and powers under this clause 30 will be as good and valid as if they had been done by the Appointor and agrees to:

- (a) ratify and confirm whatever the Attorney and its substitutes, delegates and sub-attorneys do, or cause to be done, in lawfully exercising their rights and powers under this clause 30;
- (b) indemnify the Attorney and its substitutes, delegates and sub-attorneys against all claims, demands, costs, charges, expenses, outgoing, losses and liabilities arising in any way in connection with the lawful exercise of their rights and powers under this clause 30; and
- (c) deliver to the Attorney on demand any power of attorney, instrument of transfer or other instruments as the Attorney may require for the purposes of this clause 30.

### **30.3 Irrevocable**

The Appointor declares that the rights and powers granted to the Attorney under this clause 30 are given for valuable consideration and are irrevocable.

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## **31. Notices**

### **31.1 How notice to be given**

- (a) A Member may, by written notice to the Secretary left at or sent to the Office, require that all notices to be given by the Company or the Directors be served on the Member's representative at an address specified in the notice.
- (b) The Company may give a notice to any Member by:
  - (i) serving it on the Member personally;
  - (ii) properly addressing, prepaying and posting the notice to the Member or leaving it at the Member's address as shown in the Register or the address supplied by the Member to the Company for the giving of notices;
  - (iii) serving it in any manner contemplated in this clause 31.1 on a Member's representative as specified by the Member in a notice given under clause 31.1(a);
  - (iv) sending it by email to an email address nominated by the Member;
  - (v) sending it via any other electronic means permitted by the Act and nominated by the Member for the giving of notices, including providing an electronic link to the notice; or
  - (vi) giving it by any other means permitted or contemplated by this clause 30 or the Act.

### **31.2 When notice is given**

A notice is deemed to be given by the Company and received by the Member:

- (a) if delivered in person, when delivered to the Member;
- (b) if posted, on the day after the date of posting to the Member, whether delivered or not; or
- (c) if sent by email or other electronic means, on the day after the date of its transmission,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am (addressee's time) on the next Business Day.

### **31.3 Notice to joint holders**

A notice may be given by the Company to joint Members by sending the notice to the joint Member first named in the Register or to an alternative address (if any) nominated by that Member.

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## 32. Winding up

Subject to clause 4, if the Company is wound up, the liquidator may, with the sanction of a Special Resolution of the Company:

- (a) divide among the Members in specie or in kind the whole or any part of the property of the Company and may for that purpose set such value as they consider fair on any property to be divided and may determine how the division will be carried out as between the Members or different classes of Members; or
- (b) vest the whole or any part of the Company's property in trustees on such trusts for the benefit of the contributories 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,

or do both.

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## 33. Indemnity

### 33.1 Interpretation

In this clause 33:

- (a) **proceedings** means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act in their capacity as an officer of the Company (including proceedings alleging that they were guilty of negligence, default, breach of trust or breach of duty in relation to the Company); and
- (b) **officer** has the meaning given to that term in section 9 of the Act.

### 33.2 Scope of indemnity

In addition to any other indemnity provided to an officer of the Company in accordance with the Act, and to the extent permitted by the Act and any applicable Law:

- (a) every officer of the Company will be indemnified out of the assets of the Company against any liability incurred by them in relation to the execution of their office;
- (b) no officer of the Company is liable for any loss or damage incurred by the Company in relation to the execution of his or her office;
- (c) every officer of the Company will be indemnified out of the assets of the Company against any liability which he or she incurs:
  - (i) in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the officer or in which the officer is acquitted;
  - (ii) in connection with any application, in relation to any such proceedings, in which relief is granted under the Act to the officer by the Court; and
- (d) every officer of the Company will be indemnified out of the assets of the Company against any liability to another person (other than the Company or a Related Body Corporate of the Company) where the liability is incurred by the officer in their capacity as an officer of the Company, provided that this indemnity will not apply where the liability arises out of conduct involving a lack of good faith.

### **33.3 Insurance**

In addition to the payment of any other insurance premium by the Company in accordance with the Act, and to the extent permitted by the Act and any applicable Law, the Company may pay the premium in respect of a contract insuring an officer of the Company against a liability:

- (a) incurred by the officer of the Company in his or her capacity as officer, provided that the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of sections 182 or 183 of the Act; or
- (b) for costs and expenses incurred by that officer of the Company in defending proceedings, whatever their outcome.