

# **Constitution**

**of**

## **Seeing Machines Limited**

**ACN 093 877 331**

Approved at the Annual General Meeting on 29 October 2015.

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**Constitution**  
**of**  
**Seeing Machines Limited**  
**(ACN 093 877 331)**  
**A company limited by shares**

**Part 1 - Preliminary**

**1.1 Name**

The name of the Company is Seeing Machines Limited.

**1.2 Definitions**

In this Constitution:

**Act** means the Corporations Act 2001 (*Cth*).

**AIM** means the market of that name operated by the London Stock Exchange.

**AIM Company** means a company whose securities are admitted to trading on AIM.

**AIM Rules** means the AIM rules for companies published by the London Stock Exchange and as amended from time to time which are applicable while the Company's shares are admitted to trading on AIM.

**Alternate Director** means a person appointed as an alternate Director in accordance with Rule 6.11.

**Board** means the Directors of the Company from time to time.

**Business Day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in Canberra, Australian Capital Territory, Australia.

**default shares** has the meaning given in Rule 4.6(c)(i).

**Direction Notice** has the meaning given in Rule 4.6(c).

**Director** means:

- (a) a person appointed and acting in the position of a director of the Company; or
- (b) an Alternate Director appointed in accordance with this Constitution acting in the capacity of a director of the Company.

**Disclosure Notice** has the meaning given in Rule 4.6(a).

**dividend** includes interim dividend.

**Excluded Holder** has the meaning given in Rule 2.1(c)(i).

**London Stock Exchange** means London Stock Exchange plc.

**Managing Director** means a Director appointed as managing director in accordance with Rule 6.16.

**present in person** means present in person, by proxy, by attorney or, in the case of a corporation, by representative or, in the case of an individual envisaged in Rule 4.4 or 5.11(g), by legal personal representative, committee, trustee or other proper appointee (as relevant).

**Qualifying Financial Instruments** means transferable securities and options, futures, swaps, forward rate agreements and any other derivative contracts provided that they result in an entitlement to acquire, on the holder's own initiative alone, under a formal agreement, shares already issued by the Company to which voting rights are attached.

**register** means any register of members of the Company wherever located.

**Register of Substantial Interests** has the meaning given in Rule 4.5(d).

**Relevant System** means any computerised or electronic share system in which the Act permits the Company to participate, which enables title to units of a security, or any instrument which represents a security, to be evidenced and transferred without a written instrument.

**Secretary** means any person appointed to perform the duties of a secretary of the Company in accordance with Rule 6.17.

**Three Year Period** has the meaning given in Rule 4.6(a)(i).

**Threshold** has the meaning given in Rule 4.5(a)(i).

**Uncertificated Securities** means a security, title to which is recorded on the register as being held in uncertificated form, and title to which may be transferred by means of a Relevant System including by means of the creation of depositing interests.

### **1.3 Application of the Act and the AIM Rules**

- (a) This Constitution is to be interpreted subject to the Act and while the Company is an AIM Company, the AIM Rules.
- (b) The Company and the Directors must, notwithstanding any contrary provision in this Constitution, comply with the obligations imposed on them under the Act and while the Company is an AIM Company, the AIM Rules.
- (c) The Company and the Directors must, while the Company is an AIM Company, exercise their powers in such a way to ensure that the AIM Rules are complied with unless to do so would be unlawful or a breach of duty. This obligation does not detract or alter the power of the Company and its Directors to cause the Company to cease to be an AIM Company.
- (d) Unless the contrary intention appears, an expression in this Constitution which is defined by or that deals with a matter dealt with by:
  - (i) a provision of the Act, has the meaning given to that expression in that provision of the Act; or
  - (ii) a provision of the AIM Rules, has the meaning given to

that expression in that provision of the AIM Rules.

- (e) For so long as the Company is a company registered under the Act, the following clauses apply:
  - (i) notwithstanding anything contained in this Constitution, if the Act prohibits an act being done, the act must not be done;
  - (ii) nothing contained in this Constitution prevents an act being done that the Act require to be done;
  - (iii) if the Act requires an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
  - (iv) if the Act requires this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
  - (v) if the Act requires this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision; and
  - (vi) if any provision of this Constitution is or becomes inconsistent with the Act, this Constitution is deemed not to contain that provision to the extent of the inconsistency.
  
- (f) Subject to the Act, for so long as the Company is an AIM Company, the following clauses apply:
  - (i) notwithstanding anything contained in this Constitution, if the AIM Rules prohibit an act being done, the act must not be done;
  - (ii) nothing contained in this Constitution prevents an act being done that the AIM Rules require to be done;
  - (iii) if the AIM Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
  - (iv) if the AIM Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
  - (v) if the AIM Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision; and
  - (vi) if any provision of this Constitution is or becomes inconsistent with the AIM Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.
  
- (g) While any of the securities in the Company are Uncertificated Securities, the Company must comply with the rules of any Relevant System.

#### **1.4 Exercise of Powers**

The Company may exercise any power which under the Act a company limited by shares may exercise if authorised by its constitution.

#### **1.5 Exclusion of Replaceable Rules**

The replaceable rules applicable to a public company contained in the Act do not apply to the Company.

#### **1.6 Interpretation**

In this Constitution, unless the contrary intention appears:

- (a) a reference to a Rule is a reference to a rule of this Constitution;
- (b) a reference to a statute, ordinance, code or other law includes without limitation regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (c) the singular includes the plural and vice versa;
- (d) the word "**person**" includes a firm, a body corporate and an unincorporated association or an authority;
- (e) a reference to a "**person**" includes a reference to the person's executors, administrators, successors, substitutes and assigns;
- (f) other parts of speech and grammatical forms of a word defined in this Constitution have a corresponding meaning;
- (g) if any action under this Constitution must be completed on a Business Day, it must be completed before 5:00pm (Canberra time) on that Business Day;
- (h) a reference to the AIM Rules or the rules of a Relevant System is to have effect only if at the relevant time the Company is an AIM Company;
- (i) a reference in a Rule relating to partly paid shares to a call or an amount called in respect of a share includes a reference to a sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date;
- (j) headings and cross references to legislation are inserted for convenience and do not affect the interpretation of this Constitution;
- (k) the word "**includes**" in any form is not a word of limitation; and
- (l) a word indicating a gender includes every other gender.

#### **1.7 Enforcement**

- (a) Each member submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory, the Federal Court of Australia and the courts competent to determine appeals from those courts with respect to any proceedings that may be brought at any time relating to this Constitution.



- (b) If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect pursuant to the law of any jurisdiction, then that does not affect or impair:
  - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
  - (ii) the legality, validity or enforceability pursuant to the law of any other jurisdiction of that or any other provision of this Constitution.

## Part 2 – Share Capital

### 2.1 Power of Board to issue shares

- (a) Subject to this Constitution and the Act, all the unissued shares are under the control of the Board who may, by passing a resolution in accordance with Rules 6.7 or 6.14, allot, issue, grant options over, or otherwise dispose of, the unissued shares on the terms and conditions, with the rights and restrictions, for the consideration and at the time the Board resolves.
- (b) Unless one of the exceptions in Rule 2.1(c) applies, without the approval of the members in general meeting, the Company may not issue or agree to issue more shares or other securities with rights of conversion to more shares than the number calculated in accordance with the following formula:

$$(A \times B) - C$$

where:

- A is the number of fully paid ordinary shares on issue 12 months before the date of issue or agreement plus:
  - (i) the number of fully paid ordinary shares issued in that 12 months under an exception in Rule 2.1(c);
  - (ii) the number of partly paid ordinary shares which became fully paid shares in that 12 months; and
  - (iii) the number of fully paid ordinary shares issued in that 12 months with the approval of the Company in general meeting in accordance with this Rule 2.1(b),
 and less the number of fully paid ordinary shares cancelled in that 12 months,
- B is 15%, and
- C is the number of ordinary shares issued or agreed to be issued in that 12 months and the number of ordinary shares into which other securities with rights of conversion to ordinary shares issued or agreed to be issued in that 12 months may be converted, in each case before the date of the issue or agreement concerned otherwise than under an exception in Rule 2.1(c) or with approval under this Rule 2.1(b).

- (c) The exceptions to Rule 2.1(b) are as follows:
- (i) an issue to holders of securities made under a pro rata issue, and an issue to holders of other securities to the extent that the terms of issue of those other securities permit participation in any such pro rata issue, conducted as follows:
    - (A) the Company must offer the securities to all holders of those securities (and to all holders of other securities to the extent that the terms of issue of those other securities permit participation in the offer) as set out on the register, unless the following conditions are met in respect of a particular holder or group of holders (**Excluded Holders**):
      - the Board determines that it is unreasonable to make the offer to the Excluded Holders having regard to the number of Excluded Holders in the relevant jurisdiction, the number and value of securities those Excluded Holders would be offered, and the cost of complying with the legal requirements, and requirements of a regulatory authority, in respect of each offer to an Excluded Holder in the relevant jurisdiction;
      - the Company sends each Excluded Holder details of the issue and advice that the Company will not offer securities to the holder; and
      - in the case of a renounceable pro rata issue, the Company also appoints a nominee to arrange for the sale of the entitlements that would have been given to those Excluded Holders and to account to them for the net proceeds of the sale, and advises each holder not given the entitlements that a nominee will arrange for sale of the entitlements and, if they are sold, for the net proceeds to be sent to the holder.
  - (ii) an issue under an underwriting agreement to an underwriter of an offer of the kind referred to in Rule 2.1(c)(i) if the underwriter receives the shares or other securities within 15 Business Days after the close of the offer;
  - (iii) an issue made within 3 months of the close of an offer of the kind referred to in Rule 2.1(c)(i) to make up the shortfall in respect of such an offer where the issue price is not less than the issue price under that offer and the offer documentation expressly reserves the right for the Board to issue that shortfall at its discretion;
  - (iv) an issue on the conversion of convertible securities where the securities concerned were issued in compliance with this Rule 2.1;
  - (v) an issue under an off-market bid that is required to comply with the Act or under a merger by way of scheme of arrangement under Chapter 5, Part 5.1 of the Act;
  - (vi) an issue, the terms of which are disclosed in the relevant takeover or scheme documents, to fund the cash consideration payable by the Company in respect of an off-market bid that is required to comply with the Act, when the offer becomes unconditional; a market bid which is required to comply with the Act, when the bid is announced under Section 635 of the Act; or a merger by way of scheme of arrangement under Chapter 5, Part 5.1 of the Act, when

- the arrangement is approved by the court under Section 411(4) of the Act;
- (vii) an issue under a dividend or distribution plan excluding an issue to the plan's underwriters, where the dividend or distribution plan does not impose a limit on participation;
  - (viii) an issue under an employee share plan if, within 3 years before the date of the issue, the Company in general meeting has approved the issue of securities under the scheme as an exception to this rule;
  - (ix) an issue of preference shares that do not have any rights of conversion into another class of equity security;
  - (x) the reissue of forfeited shares within 6 weeks after the day on which the call was due and payable;
  - (xi) an issue on the exercise of options to an underwriter of the exercise where the options were issued in accordance with this Constitution and the underwriter receives the underlying securities within 10 Business Days of the expiry of the option;
  - (xii) an issue under an agreement to issue securities where this Rule 2.1 was complied with when the agreement was entered into; and
  - (xiii) an issue of securities which has been approved by the Company in general meeting for any other purpose.
- (d) If securities are convertible to shares based on a price for ordinary shares at a future date or on another basis which makes the number of shares into which the securities may be converted unable to be calculated until a future date, the number of ordinary shares into which those securities may be converted will be taken to be the maximum number of ordinary shares into which they could be converted if that price were the market price for ordinary shares at the time of issue or agreement to issue the relevant securities or the facts and circumstances by reference to which that number is to be calculated were the equivalent facts and circumstances prevailing at the time of issue or agreement to issue the relevant securities.
- (e) A person who may participate in a proposed issue, a person who might obtain a benefit (other than a benefit solely in the capacity of a holder of ordinary shares) if the resolution is passed, or a person who is an associate of any of such persons (within the meaning applicable in Chapter 7 of the Act, but read as if that meaning was not confined to Chapter 7 of the Act) may not vote on a resolution put to a general meeting of the Company to approve an issue or agreement to issue shares or other securities and any vote which such a person casts shall be disregarded.
- (f) The making of an agreement which is conditional on the Company in general meeting approving an issue of shares or other securities before it is made does not breach Rule 2.1(c).
- (g) An issue of shares or other securities without the approval of the Company in general meeting shall be treated as having been made with that approval for the purposes of Rule 2.1(c) if the issue did not breach Rule 2.1(c) and the Company in general meeting subsequently

approves it.

## **2.2 Grant of Options**

Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, but subject to this Constitution and the Act, the Company may grant options over shares in and other securities of the Company as the Board determines.

## **2.3 Class rights**

- (a) Subject to the Act and the terms of issue of shares in a particular class, the Company may vary or cancel rights attached to shares in that class:
  - (i) by a special resolution passed at a meeting of the members holding shares in that class; or
  - (ii) with the written consent of members who are entitled to at least 75% of the votes that may be cast in respect of shares in that class.
- (b) Subject to the Act, this Constitution and the terms of issue of a class of shares, any shares of a class may be converted to shares of any other class by agreement between the Company and all the holders of the shares to be converted on such terms as the Board determines.
- (c) The issue of any new shares ranking equally, or any conversion of existing securities to shares ranking equally, with existing shares is not a variation of the rights conferred on the holders of the existing shares, unless otherwise provided by the terms of issue of the existing shares or required by the Act.
- (d) Any issue of securities ranking in priority, or any conversion of existing securities to securities ranking in priority to an existing class of shares constitutes a variation of the rights attached to that existing class of shares.

## **2.4 Brokerage and commission**

- (a) The Company may exercise the powers to pay brokerage or commission conferred by the Act in the manner provided by the Act.
- (b) The brokerage or commission may be satisfied by the payment of cash or 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.

## **2.5 Recognition of third party interests**

- (a) Except as required by law or provided by this Constitution, the Company is entitled to treat the registered holder of a share as the absolute owner of that share and must not recognise a person as holding a share upon any trust.
- (b) The Company:
  - (i) is not compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial claim to or interest in any share or unit of a share; or

- (ii) is not compelled to recognise any other right in respect of a share except an absolute right of legal ownership in the registered holder,

even if the Company has notice of that claim or interest.

- (c) If the Company registers two or more persons as the registered holders of a share, those persons are taken to hold that share as joint tenants.

## **2.6 Certificates**

- (a) The Board may determine:

- (i) not to issue a certificate for a share or option; or
- (ii) to cancel a certificate for a share or option, without issuing a replacement certificate,

if it is not contrary to the Act or the rules of a Relevant System.

- (b) Where the Board has determined under Rule 2.7(a) not to issue a certificate or to cancel a certificate, a member is entitled to receive a statement of the holdings of the member setting out the number of shares and the issue price and any other matter which the Company is required to give under this Constitution, the Act, or the rules of a Relevant System. Each member is entitled without payment to receive a certificate for shares issued as required under the Act unless that member's shares are held as Uncertificated Securities.

## **2.7 Power to alter capital**

- (a) The Company may alter its share capital in any manner provided by the Act, including:

- (i) by consolidating and dividing all or any of its share capital into shares of larger amounts than its existing shares;
- (ii) by subdividing all or any of its shares into shares of smaller amounts, but so that, in the subdivision, the proportion between the amount paid and the amount (if any) unpaid on each share of a smaller amount is the same as it was in the case of the share from which the share of a smaller amount is derived;
- (iii) by cancelling shares that, at the date of the passing of the resolution to that effect, have not been taken or agreed to be taken by any person or that have been forfeited, and by reducing its share capital by the amount of the shares so cancelled;
- (iv) by reclassifying or converting shares from 1 class to another, subject to the Act, this Constitution and the terms of issue of a class of shares; or
- (v) by reducing, altering or buying-back its share capital in any manner permitted by the Act.

- (b) The Board may do anything which is required to give effect to any resolution authorising a reduction, alteration or buy-back of the share capital of the Company, including where a member becomes entitled to a

fraction of a share on a consolidation or subdivision:

- (i) making cash payments;
- (ii) ignoring fractions;
- (iii) appointing a trustee to deal with any fractions on behalf of members; and
- (iv) rounding up each fractional entitlement to the nearest whole share by capitalising any amount available for capitalisation pursuant to Rule 8.7 even though only some members participate in the capitalisation.

## **2.8 Employee share plan**

The Board may:

- (a) implement an employee share and/or option plan on such terms as it thinks fit under which securities of the Company or of a related body corporate may be issued or otherwise provided to or for the benefit of any officer (including, without limitation, any Director) of the Company or of a related body corporate or to a relative of that officer or to an entity in which that officer or a relative of that officer has an interest;
- (b) amend, suspend or terminate any employee share and/or option plan implemented by it; and
- (c) give financial assistance in connection with the acquisition of securities of the Company or of a related body corporate under any employee share and/or option plan in any matter permitted by the Act.

## **Part 3 - Calls, Forfeiture, Indemnity and Lien**

### **3.1 Calls**

- (a) Subject to the Act and the terms of issue of the shares, the AIM Rules and the rules of any Relevant System, the Company may by resolution of the Board make calls on the members in respect of any money unpaid on the shares of the members and not by the terms of issue of those shares made payable at fixed times.
- (b) On receiving at least 10 Business Days' notice specifying the time and place of payment, each member must pay to the Company the amount called on his shares at the time and place so specified.
- (c) A call is taken to have been made at the time when the resolution of the Board authorising the call was passed.
- (d) A call may be required to be paid by instalments.
- (e) The joint holders of a share are jointly and severally liable to pay all calls in respect of that share.
- (f) The Company may by resolution of the Board revoke or postpone a call or extend the time for payment.
- (g) The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any member does not invalidate a call.

- (h) In a proceeding to recover a call, or an amount payable due to the failure to pay or late payment of a call, proof that:
  - (i) the name of the person is entered in the register of members as a registered holder of the share on which the call was made;
  - (ii) there is a record in the minute books of the Company of the resolution making the call or the fixed amount payable by the terms of issue of the relevant shares; and
  - (iii) notice of the call was given or taken to be given to the person in accordance with this Constitution,

is conclusive evidence of the obligation of that person to pay the call.

- (i) If a sum called or otherwise payable to the Company in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due must pay interest on the sum from the due date to the time of actual payment, at a rate determined by the Board from time to time. The Board may waive payment of that interest wholly or in part.
- (j) Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date, for the purposes of this Constitution is taken to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable and, in the case of non-payment, all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise apply as if that sum had become payable by virtue of a call duly made and notified.
- (k) On the issue of shares, the Company may differentiate between the holders as to the amount of calls to be paid and the times of payment.

### **3.2 Prepayments of calls**

- (a) The Company may by resolution of the Board accept from a member the whole or a part of the amount unpaid on a share although no part of that amount has been called up.
- (b) The Company may by resolution of the Board authorise payment by the Company of interest on the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the prescribed rate, as is agreed between the Board and the member paying the sum.
- (c) For the purposes of Rule 3.2(b), the prescribed rate of interest is:
  - (i) if the Company has fixed a rate by resolution, the rate so fixed; and
  - (ii) in any other case, a rate determined by the Board from time to time.
- (d) The Company may by resolution of the Board repay the whole or any part of the amount so accepted at any time.

### **3.3 Liability to forfeiture**

- (a) If a member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, during such time as any part of the call or instalment remains unpaid, the Company may serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued.
- (b) A notice under Rule 3.3(a) must name a further day (not earlier than the expiration of 10 Business Days from the date of service of the notice) on or before which the payment required by the notice is to be made and must state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.
- (c) Subject to the law, the Company may accept the surrender of any fully paid share by way of compromise of any question as to the holder of it being properly registered in respect of it or in satisfaction of any payment due to the Company and may accept the gratuitous surrender of any fully paid share. Any share so surrendered may be disposed of in the same manner as a forfeited share.
- (d) If the requirements of a notice served under Rule 3.3(a) are not complied with, any share in respect of which the notice has been given may at any time afterwards, but before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect.
- (e) A forfeiture under Rule 3.3(d) includes all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

### **3.4 Powers of the Board in respect of forfeited shares**

- (a) Subject to the Act, a forfeited share may be sold or cancelled pursuant to this Constitution and the terms on which the share is on issue, or otherwise disposed of on such terms and in such manner as the Board so resolves and, at any time before a sale or disposal, the forfeiture may be cancelled on such terms as the Board so resolves.
- (b) A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares but remains liable to pay to the Company all money that, at the date of forfeiture, was payable by him to the Company in respect of the shares (including interest at a rate determined by the Board from time to time from the date of forfeiture on the money for the time being unpaid, if the Board thinks fit to enforce payment of the interest), but this liability ceases if and when the Company receives payment in full of all the money (including interest) so payable in respect of the shares.
- (c) If a share is forfeited, the Company must give notice in writing of the forfeiture to the member registered as its holder before the forfeiture and record the forfeiture with the date of forfeiture in the register of members. Failure by the Company to comply with any requirement in this Rule does not invalidate the forfeiture.
- (d) A statement in writing declaring that the person making the statement is a Director or a Secretary and that:
  - (i) a share in the Company has been duly forfeited on a date stated in the statement; or



- (ii) a particular sum is payable by a member or former member to the Company as at a particular date in respect of a call or instalment of a call (including interest),

is conclusive evidence of the facts stated in the statement as against all persons claiming to be entitled to the share and against the member or former member who remains liable to the Company as envisaged in Rule 3.4(b).

- (e) A person whose shares have been forfeited has no claims or demands against the Company in respect of those shares, and has no other rights or entitlements in respect of those shares, except the rights that are provided by the Act or saved by this Constitution.

### **3.5 Transfers after forfeiture and sale**

- (a) The Company may receive the consideration (if any) given for a forfeited share on any sale or disposal of the share and may execute or effect a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (b) On the execution of the transfer, the transferee must be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.
- (c) The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.
- (d) A notice in writing from the Company signed by a Director or Secretary that a share was sold, disposed of or reissued in accordance with Rule 3.4 is conclusive evidence of those matters.

### **3.6 Lien on shares**

- (a) The Company has a first-ranking and paramount lien on every share (not being a fully paid share) for:
  - (i) all money called and due but unpaid in respect of that share;
  - (ii) any amount which remains outstanding under loans made by the Company to acquire that share under an employee share plan, to the extent permitted by the Act;
  - (iii) all amounts that the Company is required by law to pay, and has paid, in respect of that share; and
  - (iv) all interest and expenses due and payable to the Company in respect of the unpaid amounts.
- (b) The Company may by resolution of the Board at any time exempt a share wholly or in part from the provisions of this Rule 3.6.
- (c) The Company's lien (if any) on a share extends to all dividends payable and entitlements deriving in respect of the share. The Company may retain any dividends or entitlements and may apply them in or towards satisfaction of all money due to the Company in respect of which the lien exists.

- (d) No person is entitled to exercise any rights or privileges as a member in respect of a share until he has paid all calls and instalments of calls for the time being payable in respect of that share.
- (e) The Company's lien on a share is released if a transfer of that share is registered by the Company without the Company giving written notice of the lien to the transferee of that share.

### **3.7 Exercise of lien**

- (a) Subject to Rule 3.7(b), the Company may sell any shares on which the Company has a lien in such manner as the Board thinks fit.
- (b) A share on which the Company has a lien may not be sold unless:
  - (i) a sum in respect of which the lien exists is presently payable; and
  - (ii) not less than 5 Business Days before the date of the sale the Company has given to the registered holder for the time being of the share or the person entitled to the share by reason of the death or bankruptcy of the registered holder a notice in writing setting out and demanding payment of such part of the amount in respect of which the lien exists as is presently payable.
- (c) Nothing in this Rule 3.7 affects any right or remedy which any law confers on the Company.

### **3.8 Completion of sale**

- (a) For the purpose of giving effect to a sale pursuant to Rule 3.7, the Board may authorise a person to transfer the shares sold to the purchaser of the shares.
- (b) The Company must register the purchaser as the holder of the shares comprised in any such transfer, whereupon the validity of the sale may not be impeached by any person, and the Company is not bound to see to the application of the purchase money.
- (c) The title of the purchaser to the shares is not affected by any irregularity or invalidity in connection with the sale.
- (d) The remedy of any person aggrieved by any such sale is in damages only and against the Company exclusively.
- (e) A notice in writing from the Company signed by a Director or Secretary that a share was sold, disposed of or reissued in accordance with Rule 3.7 is conclusive evidence of those matters.

### **3.9 Application of proceeds of sale**

- (a) The Company must apply the proceeds of any sale of any shares pursuant to Rules 3.4 and 3.7 in the following order:
  - (i) the expenses of the sale;
  - (ii) the amounts due and unpaid in respect of those shares; and
  - (iii) subject to the terms of issue of the shares and any lien pursuant to Rule 3.6 for an amount unpaid in respect of the shares, the balance

(if any) to or at the direction of the person entitled to the shares immediately prior to the sale, on delivery by that person of any evidence of ownership of or entitlement to those shares as the Board requires.

- (b) The Company is not required to pay interest on any amount payable pursuant to Rule 3.9(a)(iii).

### **3.10 Indemnity for Taxation**

If any law, regulation, order or other directive for the time being of any place (international, national, state or local) imposes or purports to impose any immediate, future or possible liability on the Company to make any payment or empowers any government (international, national, state or local), government official or taxing or other government authority to require the Company to make any payment in respect of any shares registered in the name of the member in the register (whether solely or jointly with others) or in respect of any dividends, interest, bonuses or other moneys or distributions paid or payable or entitlements derived or deriving in respect of any such shares or for or on account or in respect of any member (whether in consequence of the death of that member, the non-payment of any income or other tax by that member, the non-payment of any estate, probate, succession, death, stamp or other duty by the member or by the executor or administrator of the estate of that member or otherwise):

- (a) that member or his estate must fully indemnify the Company from and against all liability;
- (b) the Company has a lien on the shares registered in the name of that member for all moneys paid or payable by the Company in respect of those shares under or in consequence of any such law, regulation, order or other directive; and
- (c) the Company may recover, as a debt due from that member or his estate, any such sum (together with interest on the sum from the day of payment of the sum by the Company to the time of actual repayment by the member or his estate, at a rate determined by the Board from time to time. The Board may waive payment of that interest wholly or in part).

Nothing in this Rule 3.10 prejudices or affects any right or remedy which may be conferred on the Company at law.

## **Part 4 – Transfer and Transmission of Shares**

### **4.1 Transferability of shares**

- (a) Subject to this Constitution, the AIM Rules and the Act, a member may transfer all or any of his shares by a transfer document in any form approved by the Board and except where required or permitted by the Act, the AIM Rules, the rules of a Relevant System and/or this Constitution, there is no restriction on the transfer of shares.
- (b) The Company may not charge a fee on the transfer of any shares.
- (c) A transferor of shares remains the holder of the shares transferred until the transfer is:
  - (i) effected in accordance with the rules of the Act and the Relevant System; or

- (ii) registered and the name of the transferee is entered in the register of members in respect of the shares.
- (d) An instrument of transfer must be signed by or on behalf of both the transferor and the transferee unless the transfer:
  - (i) relates only to fully paid shares and signature by the transferee has been dispensed with by the Board; or
  - (ii) is a sufficient transfer of marketable securities for the purposes of the Act.
- (e) An instrument of transfer must be duly stamped if required by law to be stamped.

#### **4.2 Registration of transfers**

- (a) A transfer document must be left for registration at the registered office of the Company or at the address where the register is kept on which the shares to which such transfer relates are registered (or such other place as the Board may determine) together with the certificate (if any) for the shares to which it relates and such other information as the Board properly requires to show the right of the transferor to make the transfer.
- (b) Subject to this Constitution, on compliance with Rule 4.2(a) the Company must register the transferee as a member.
- (c) The Company may decline to register a transfer of shares if the Act so permits and if the Board so resolves in the following circumstances:
  - (i) the Company has a lien on the transferred shares;
  - (ii) the transfer is not in registrable form;
  - (iii) the registration of the transfer may breach Australian law or a court order;
  - (iv) the transfer does not comply with the terms of an employee share plan;
  - (v) the Company is otherwise permitted or required to do so pursuant to the terms of issue of the shares; or
  - (vi) where the Act or a law about stamp duty requires the Company to do so or this Constitution otherwise requires.
- (d) In relation to securities of the Company which are Uncertificated Securities:
  - (i) subject to Rules 4.2(d)(ii) to (iii), the Company must not prevent, delay or in any way interfere with the registration of any transfer in accordance with the rules of any Relevant System;
  - (ii) the Company may refuse to register a transfer where permitted to do so by the Act or the AIM Rules and must refuse to register a transfer if required to do so by the Act or the AIM Rules; and
  - (iii) the Company may refuse to register a transfer where the transfer

is not in registrable form.

- (e) If the Company refuses to register any transfer of shares, it must give to the transferee and to the stockbroker (if any) by whom the transfer was lodged for registration, written notice within 5 Business Days after the transfer was lodged with the Company, stating that the Company has so refused and the reasons for the refusal.

#### **4.3 Suspension of transfers**

Subject to the AIM Rules and the rules of any Relevant System, the registration of transfers may be suspended at such times and for such periods as the Board from time to time decides provided that such suspension does not exceed in aggregate 30 days in any calendar year.

#### **4.4 Transmission of Shares**

- (a) In the case of the death of a member, the only persons recognised by the Company as having any title to the deceased member's interest in the shares are:
  - (i) the survivor or survivors where the deceased was a joint holder; and
  - (ii) the legal personal representatives of the deceased, where the deceased was a sole holder.
- (b) This Rule does not release the estate of a deceased holder from any liability in respect of a share that had been held by him solely or jointly with other persons.
- (c) Subject to the Bankruptcy Act 1966 (Cth) and the Act, a person becoming entitled to a share in consequence of:
  - (i) if the member is an individual, the death or bankruptcy of that member, or that member becoming of unsound mind or becoming a person whose property is liable to be dealt with pursuant to a law about mental health; or
  - (ii) if the member is a body corporate, the deregistration of the member pursuant to the laws of the jurisdiction of its registration or the succession by another body corporate to the assets and liabilities of the member,(each, a **Transmission Event**), may, on the production of such information as is properly required by the Board, elect either to be registered as holder of the share or to have some other nominated person registered as the transferee of the share.
- (d) If a person becoming entitled elects to be registered himself, he must deliver or send to the Company a notice in writing signed by him stating that he so elects. If he elects to have another person registered, he must execute a transfer of the share to that other person.
- (e) All the limitations, restrictions and provisions of this Constitution relating to the right to transfer and the registration of transfer of shares are applicable to any such notice or transfer as if the Transmission Event had not occurred in respect of the member and the notice or transfer were a transfer signed by that member.

- (f) Where the registered holder of a share dies or becomes bankrupt, his legal personal representative or the trustee of his estate, as the case may be, on the production of such information as is properly required by the Board is entitled to the same dividends, entitlements and other advantages and to the same rights (whether in relation to meetings of the Company or to voting or otherwise) as the registered holder would have been entitled to if he had not died or become bankrupt.
- (g) Where 2 or more persons are jointly entitled to any share in consequence of the death of the registered holder, for the purpose of this Constitution they are taken to be joint holders of the share.

#### **4.5 Notification of Interests**

- (a) A person must notify the Company of the percentage of voting rights held if the percentage of voting rights in the Company which he holds directly or indirectly as member or through his direct or indirect holding of Qualifying Financial Instruments (or a combination of such holdings):
  - (i) reaches, exceeds or falls below 3 per cent and each 1 per cent threshold thereafter up to 100 per cent (each a **Threshold**); or
  - (ii) reaches, exceeds or falls below a Threshold as a result of events changing the breakdown of voting rights and on the basis of information disclosed by the Company to AIM,

such notification to be made to the Company without delay and in any event before the end of the second business day on which the obligation arises.

- (b) A notification given by a person to the Company in accordance with Rule 4.5(a) shall include the following information:
  - (i) the resulting situation in terms of voting rights and the date on which the relevant Threshold was reached or crossed;
  - (ii) if applicable, the chain of controlled undertakings through which voting rights are effectively held;
  - (iii) so far as known, the identity of the member, even if that member is not entitled to exercise voting rights, and of the person entitled to exercise voting rights on behalf of that member;
  - (iv) the price, amount and class of shares concerned;
  - (v) in the case of a holding of Qualifying Financial Instruments:
    - (A) for Qualifying Financial Instruments with an exercise period, an indication of the date or time period where shares will or can be acquired, if applicable;
    - (B) the date of maturity or expiration of the Qualifying Financial Instruments;
    - (C) the identity of the holder;
    - (D) the name of the underlying company; and

- (E) the detailed nature of the Qualifying Financial Instruments, including full details of the exposure to shares; and
  - (vi) any other information required by the Company.
- (c) If the Company determines that a person required to make a notification pursuant to Rule 4.5(a) has not notified the Company as required, it shall have the right, but not the obligation, to serve the person in default a direction notice in accordance with Rule 4.6.
- (d) The Board shall keep a register for the purposes of Rule 4.5(a) and 4.5(b) (**Register of Substantial Interests**) and shall procure that, whenever the Company receives information from a person pursuant to Rule 4.5(a), that information is promptly written up in the Register of Substantial Interests against that person's name, together with the date of the inscription.
- (e) In this Rule 4.5, a person's percentage interest in voting rights is to be calculated on the basis of all the shares to which voting rights are attached even if the exercise of such rights is suspended and the number of voting rights to be considered when calculating whether a Threshold has been reached, exceeded or fallen below is the number of voting rights in existence according to the Company's most recent disclosure made to AIM of total voting rights.
- (f) For the purposes of this Rule 4.5, a person is an indirect holder of shares to the extent that he is entitled to acquire, to dispose of, or to exercise voting rights in any of the following cases or a combination of them:
- (i) voting rights held by a third party with whom that person has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the Company;
  - (ii) voting rights held by a third party under an agreement concluded with that person providing for the temporary transfer for consideration of the voting rights in question;
  - (iii) voting rights attaching to shares which are lodged as collateral with that person provided that person controls the voting rights and declares its intention of exercising them;
  - (iv) voting rights attaching to shares in which that person has the life interest;
  - (v) voting rights which are held, or may be exercised within the meaning of Rules 4.5(f)(i) to 4.5(f)(iv) or, in cases 4.5(f)(vi) and 4.5(f)(viii) by a person undertaking investment management, or by a management company, by an undertaking controlled by that person;
  - (vi) voting rights attaching to shares deposited with that person which the person can exercise at its discretion in the absence of specific instructions from the members;
  - (vii) voting rights held by a third party in his own name on behalf of that person; and
  - (viii) voting rights which that person may exercise as a proxy where

that person can exercise the voting rights at his discretion in the absence of specific instructions from the members.

- (g) For the purposes of this Rule 4.5, voting rights attaching to the following shares are to be disregarded for the purposes of determining whether a person has a notification obligation pursuant to Rule 4.5(a):
- (i) shares acquired for the sole purpose of clearing and settlement within a settlement cycle not exceeding the period beginning with the transaction and ending at the close of the third trading day following the day of the execution of the transaction (irrespective of whether the transaction is conducted on-exchange);
  - (ii) shares held by a custodian (or nominee) in its custodian (or nominee) capacity (whether operating from an establishment in Australia, the United Kingdom or elsewhere) provided such a person can only exercise the voting rights attached to such shares under instructions given in writing or by electronic means;
  - (iii) shares held by a market maker on the AIM market acting in that capacity subject to the percentage of such shares not being equal to or in excess of 10%; and
  - (iv) shares held, or shares underlying financial instruments to the extent that such financial instruments are held, by a credit institution or investment firm provided that:
    - (A) the shares, or financial instruments, are held within the trading book of the credit institution or investment firm;
    - (B) the voting rights attached to such shares do not exceed 5%; and
    - (C) the credit institution, or investment firm, ensures that the voting rights attached to shares in, or related to financial instruments in, the trading book are not exercised or otherwise used to intervene in the management of the Company;
- (h) shares held by a collateral taker under a collateral transaction which involves the outright transfer of securities provided the collateral taker does not declare any intention of exercising (and does not exercise) the voting rights attaching to such shares; and
- (i) shares acquired by a borrower under a stock lending agreement provided that:
- (i) such shares (or equivalent stock) are on-lent or otherwise disposed of by the borrower by not later than close of business on the next trading day; and
  - (ii) the borrower does not declare any intention of exercising (and does not exercise) the voting rights attaching to the shares.

#### **4.6 Company's power to require disclosure**

- (a) The Company may give to a member or to any person appearing to be interested in a share a notice (**Disclosure Notice**) requiring any of the following information:



- (i) confirmation as to whether such person is or was, at any time during the three years immediately preceding the date on which the Disclosure Notice is issued (**Three Year Period**), interested in shares comprised in the Company's share capital;
  - (ii) if he is or was so interested, particulars of his own past or present interest in shares comprised in the share capital of the Company held by him at any time during the Three Year Period;
  - (iii) if he is presently interested in shares comprised in the Company's share capital and any other interest in the shares persists (or in any case where another interest in the shares subsisted during the Three Year Period at any time when his own interest subsisted), such particulars (so far as lies within his knowledge) with respect to that other interest as may be required by the Disclosure Notice; and
  - (iv) if he was interested in shares comprised in the Company's share capital during the Three Year Period but is no longer interested, particulars (so far as lies within his knowledge) of the identity of the person who had that interest immediately upon him ceasing to hold it.
- (b) If a Disclosure Notice is given by the Company to a person appearing to be interested in any share, a copy shall at the same time be given to the holding member, but the accidental omission to do so or the non-receipt of the copy by the member shall not prejudice the operation of the provisions of this Rule 4.6.
- (c) If at any time the Board is satisfied (in its absolute discretion) that any member, or any other person appearing to be interested in shares held by such member, has been duly served with a Disclosure Notice and has not, within 14 days from the date the notice was served, supplied to the Company the information required by the Disclosure Notice, or, in purported compliance with a Disclosure Notice, has made a statement which is false or inadequate in a material particular, then the Board may, in its absolute discretion at any time thereafter by notice to such member (**Direction Notice**) direct that:
- (i) in respect of the shares in relation to which the default occurred (**default shares**) the member shall not be entitled to vote at a general meeting either personally or by proxy or to exercise any other right conferred by membership in relation to meetings of the Company;
  - (ii) where the default shares represent at least 0.25 per cent of the total number of shares of the class concerned:
    - (A) except in a liquidation of the Company, no payment shall be made of any sums due from the Company on the default shares, whether in respect of capital or dividend or otherwise and the Company shall not meet any liability to pay interest on any such payment when it is finally paid to the member;
    - (B) no other distribution shall be made on the default shares; and

- (C) no transfer of any of the shares held by such member shall be registered unless:
  - a. the member is not himself in default as regards supplying the information requested and the transfer when presented for registration is accompanied by a certificate by the member in such form as the Board may in its absolute discretion require to the effect that after due and careful enquiry the member is satisfied that no person in default as regards supplying such information is interested in any of the shares the subject of the transfer; or
  - b. the transfer is an approved transfer (as defined in Rule 4.6(g)(ii)).
- (d) The Company shall send to each other person appearing to be interested in the shares the subject of any Direction Notice a copy of the Direction Notice, but the failure or omission by the Company to do so or non-receipt by the person of the Direction Notice shall not invalidate or otherwise affect such notice.
- (e) Any Direction Notice shall cease to have effect:
  - (i) in relation to any shares which are transferred by such member, on the registration of the transfer in accordance with this Constitution; or
  - (ii) when the Board is satisfied (in its absolute discretion) that such member, and any other person appearing to be interested in shares held by such member, has given to the Company the information required by the relevant Disclosure Notice.
- (f) The Board may at any time give notice cancelling a Direction Notice.
- (g) For the purposes of this Rule 4.6:
  - (i) a person shall be treated as appearing to be interested in any shares if the member holding such shares has given to the Company a notification which either (i) names such person as being so interested or (ii) fails to establish the identities of all those interested in the shares and (after taking into account any such notification and any other relevant information) the Company knows or has reasonable cause to believe that the person in question is or may be interested in the shares;
  - (ii) a transfer of shares is an approved transfer only if:
    - (A) it is a transfer of shares to an offeror by way or in pursuance of acceptance of a takeover offer, meaning an offer to acquire all the shares, or all the shares of any class or classes in the Company (other than shares which at the date of the offer are already held by the offeror), being an offer on terms which are the same in relation to all the shares to which the offer relates or, where those shares include shares of different classes, in relation to all the shares of each class; or
    - (B) the Board is satisfied that the transfer is made pursuant to

a sale of the whole of the beneficial ownership of the shares the subject of the transfer to a party unconnected with the member and with other persons appearing to be interested in such shares; or

- (C) the transfer results from a sale made through any investment exchange on which the Company's shares are normally traded including AIM.
- (h) If any dividend or other distribution is withheld under this Rule 4.6, the member shall be entitled to receive it as soon as practicable after the restrictions contained in this Rule 4.6 cease to apply.
- (i) If, while any of the restrictions referred to in Rule 4.6(c) apply to a share, another share is allotted as of right pursuant to the rights attached to such share, the same restrictions shall apply to that other share as if it were a default share. For this purpose, shares which the Company allots, or procures to be offered, pro rata (disregarding fractional entitlements) to holders of shares of the same class as the default share shall be treated as shares allotted as of right of existing shares from the date on which the allotment is unconditional or, in the case of shares so offered, the date of the acceptance of the offer.

## **Part 5 – General Meetings**

### **5.1 Convening of General Meetings**

- (a) A general meeting may be convened by:
  - (i) the Directors by resolution of the Board; or
  - (ii) members of the Company in accordance with the Act.
- (b) A general meeting must be convened by the Directors where required by the Act.
- (c) Subject to the Act, the Board may, by notice to AIM, postpone, cancel or change the venue for a general meeting.
- (d) The Company may give such notice of a cancellation or postponement or change of place of a meeting of members as the Board resolves. Failure to give notice of a cancellation or postponement or change of place of a meeting of members or the failure to receive any notice of the meeting does not invalidate the cancellation, postponement or change of place of a meeting or anything done (including the passing of a resolution) at a postponed meeting or a meeting at a new place.
- (e) The only business that may be transacted at a meeting of members the holding of which is postponed is the business specified in the original notice calling the meeting.
- (f) A general meeting may be held at 2 or more venues using any technology that gives the members, as a whole, a reasonable opportunity to participate.

### **5.2 Notice of General Meetings**

- (a) Subject to this Constitution and to the rights or restrictions attached to any shares or class of shares, notice of a general meeting must be given

within the time limits prescribed by the Act and in the manner authorised by Rule 9.1 to each person who is at the date of the notice:

- (i) a member;
- (ii) a Director; or
- (iii) an auditor of the Company,

and, while the Company is an AIM Company, notice must be given to AIM within the time limits (if any) prescribed by the AIM Rules.

- (b) All notices convening general meetings must specify the place, or places, date and hour of the meeting and the general nature of the business to be transacted at the meeting and any other matters required by the Act.
- (c) The non-receipt of a notice convening a general meeting by or the accidental omission to give such notice to any person entitled to receive such notice does not invalidate the proceedings at or any resolution (ordinary, special or otherwise) passed at any such meeting.
- (d) A person's attendance at a general meeting waives any objection that person may have to a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting.

### **5.3 Admission to General Meetings**

The chairperson of a general meeting may refuse admission to or require to leave and remain out of the general meeting, any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of an article considered by the chairperson of the meeting to be dangerous, offensive or liable to cause disruption;
- (d) who refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
- (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (f) who is not a member, Director or auditor of the Company,

or any other person at the absolute discretion of the chairperson of the meeting.

### **5.4 Business of meetings**

Except with the approval of the Board, with the permission of the chairperson of the meeting or pursuant to the Act, no person may move at any meeting of members:

- (a) any resolution (except in the form set out in the notice of meeting given pursuant to Rule 5.2); or
- (b) any amendment of any resolution; or
- (c) any amendment of a document which relates to any resolution of which a copy has been made available to members to inspect or obtain.

## **5.5 Quorum**

- (a) No business may be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Except as otherwise provided in this Constitution, three members present in person constitutes a quorum.
- (b) If a quorum is not present within 30 minutes from the time appointed for the meeting:
  - (i) where the meeting was convened on the requisition of members, the meeting must be dissolved; or
  - (ii) in any other case:
    - (A) the meeting stands adjourned to such day and at such time and place as the Board determines or, if no determination is made by the Board, to the same day in the next week at the same time and place; and
    - (B) if at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the meeting must be dissolved.

## **5.6 Chairperson of General Meetings**

- (a) If the Directors have elected 1 of their number as chairperson of their meetings, he or, in his absence, the deputy chairperson must preside as chairperson at every general meeting.
- (b) Where a general meeting is held and:
  - (i) a chairperson has not been elected as provided by Rule 5.6(a); or
  - (ii) the chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act,

the Directors present may choose 1 of their number or, in the absence of all Directors or if the Directors present are unwilling so to act, the members present in person must elect 1 of their number to be chairperson of the meeting.

## **5.7 Adjournments**

- (a) The chairperson may with the consent of any meeting at which a quorum is present and may if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place and new business of which notice is given in accordance with Rule 5.2.
- (b) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- (c) Except as provided by Rule 5.7(b) and the AIM Rules, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (d) Failure to give notice of an adjournment of a meeting of members or

the failure to receive any notice of the meeting does not invalidate the adjournment or anything done (including the passing of a resolution) at a resumed meeting.

### **5.8 Conduct of meeting of members**

- (a) Subject to the Act, the chairperson of a meeting of members is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The chairperson of a meeting of members may make rulings without putting the question (or any question) to the vote if that action is required to ensure the orderly conduct of the meeting.
- (c) The chairperson of a meeting of members may determine the procedures to be adopted for proper and orderly discussion or debate at the meeting, and the casting or recording of votes at the meeting.
- (d) The chairperson of a meeting of members may determine any dispute concerning the admission, validity or rejection of a vote at the meeting.
- (e) The chairperson of a meeting of members may, subject to the Act, at any time terminate discussion or debate on any matter being considered at the meeting and require that matter be put to a vote.
- (f) The chairperson of a meeting of members may refuse to allow debate or discussion on any matter which is not business referred to in the notice of that meeting or is not business of the meeting permitted pursuant to the Act without being referred to in the notice of meeting.
- (g) The chairperson of a meeting of members may delegate any power conferred by this Rule 5.8 to any person.
- (h) Nothing contained in this Rule 5.8 limits the powers conferred by law on the chairperson of a meeting of members.

### **5.9 Meetings of a class of members**

All the provisions of this Constitution relating to a meeting of members apply so far as they are capable of application and with any necessary changes to a meeting of a class of members required to be held pursuant to this Constitution or the Act except that:

- (a) a quorum is two attending members who hold (or whose shareholder that they represent holds) shares of the class, or if only one person holds all the shares of the class, that person (or an attending person representing that person); and
- (b) any attending member who holds (or whose member that they represent holds) shares of that class may demand a poll.

### **5.10 Voting at General Meetings**

- (a) Except in the case of any resolution which as a matter of law or under this Constitution requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the members present in person at the meeting and any such decision is for all purposes a decision of the members.

- (b) At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:
- (i) by the chairperson;
  - (ii) by at least 5 members present in person and having the right to vote on the resolution; or
  - (iii) members present in person and representing not less than 5% of the total voting rights of all the members having the right to vote on the resolution on a poll.
- (c) Unless a poll is so demanded, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (d) A demand for a poll may be withdrawn.
- (e) If a poll is properly demanded, it must be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairperson directs and the result of the poll is the resolution of the meeting at which the poll was demanded.
- (f) A poll may not be demanded on the election of a chairperson or on a question of adjournment.
- (g) The demand of a poll does not prevent the continuance of a meeting for the transaction of any business, other than the question on which a poll has been demanded.
- (h) In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded, has a casting vote except that where the chairperson is also a member of the Company he does not have a casting vote in addition to his deliberative vote.
- (i) If a poll has been taken the chairperson of the meeting may close the meeting, provided that the results of any such poll must be declared by notice in appropriate newspapers nominated, at the meeting, by the chairperson of the meeting within 2 Business Days of closure of the meeting.
- (j) The Board may determine that members entitled to attend and vote at a meeting of members or at a meeting of a class of members may vote at that meeting without being present at that meeting (and voting in this manner is referred to in this Rule 5.10 as **direct voting**). The Board may determine rules and procedures in relation to direct voting, including the class of members entitled to cast a direct vote, the manner in which a direct vote may be cast, the circumstances in which a direct vote will be valid and the effect of a member casting both a direct vote and a vote in any other manner. Where a notice of meeting specifies that direct voting may occur by eligible members, a direct vote cast by an eligible member is taken to have been cast by that person at the meeting if the rules and procedures for direct voting determined by the Board (whether set out in the notice of meeting or otherwise) are complied with.

## 5.11 Representation and Voting of Members

Subject to the Act, this Constitution (other than Rule 5.12) and any rights or restrictions for the time being attached to any class of shares:

- (a) at meetings of members or classes of members each member entitled to attend and vote may attend and vote in person or by proxy, representative or attorney or by other appointee envisaged in Rule 4.4 or 5.11(g);
- (b) on a show of hands, every member present in person (whether or not in 1 or more capacities) has 1 vote;
- (c) where a person present at a general meeting represents personally or by proxy, attorney or representative more than 1 member on a show of hands:
  - (i) the person is entitled to 1 vote only despite the number of members the person represents;
  - (ii) that vote will be taken as having been cast for all the members the person represents; and
  - (iii) for a person who has been appointed as a proxy under 2 or more instruments that specify different ways to vote on a resolution, the person may not vote as a proxy on a show of hands, however, if the person is a member, the person may vote on a show of hands without regard to the proxy the person holds;
- (d) on a poll, every member present in person has the following voting rights:
  - (i) in the case of fully paid shares, 1 vote for each share held by the member; and
  - (ii) in the case of partly paid shares, for each share, a fraction of a vote equivalent to the proportion which the amount paid up bears to the total issue price for the share;
- (e) where the Board has determined other means (including electronic) permitted by law for the casting and recording of votes by members on any resolution to be put at a meeting of members, each member having a right to vote on the resolution has:
  - (i) 1 vote for each fully paid up share that the member holds; and
  - (ii) a fraction of 1 vote for each partly paid up share that the member holds. The fraction is equal to the proportion which the amount paid up bears to the total issue price of that share. Any amounts paid up in advance of the applicable due date for payment are ignored when calculating the proportion.
- (f) in the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, representative or attorney, may be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority of joint holders will be decided by the order in which the names stand in the register;



- (g) if a member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health or is a minor, his committee or trustee or such other person as properly has the management or guardianship of his estate may exercise any rights of the member in relation to a general meeting as if the committee, trustee or other person were the member;
- (h) a member is not entitled to vote at a general meeting in respect of a share in the Company held by him unless all calls and other sums presently payable by him in respect of that share in the Company have been paid; and
- (i) an objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered. Any such objection must be referred to the chairperson of the meeting, whose decision is final. A vote not disallowed pursuant to such an objection is valid for all purposes.

## **5.12 Proxies**

- (a) Subject to the Act, a member who is entitled to attend and vote at a general meeting may appoint not more than 2 proxies, neither of whom need be a member.
- (b) An instrument appointing a proxy must be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised.
- (c) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy does:
  - (i) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
  - (ii) if the proxy has 2 or more appointments that specify different ways to vote on the resolution - the proxy must not vote on a show of hands;
  - (iii) if the proxy is the chairperson - the proxy must vote on a poll and must vote that way; and
  - (iv) if the proxy is not the chairperson - the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.
- (d) An instrument appointing a proxy confers authority to demand or join in demanding a poll.
- (e) Subject to the Act, an instrument appointing a proxy must be in a form in accordance with the Act, and which accompanies the relevant notice of meeting or in such other form as the Board accepts.
- (f) Notwithstanding Rule 5.11(e), 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 1 of those joint holders.

- (g) Subject to the Act, an instrument appointing a proxy is not valid unless the instrument and the power of attorney or other authority (if any) under which the instrument is signed or a certified copy of that power or authority is or are deposited, not less than 48 hours (or such lesser period as the Board may permit) before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote and, in the case of a poll, not less than 48 hours (or such lesser period as the Board may permit) before the time appointed for the taking of the poll:
  - (i) at such place within Australia as is specified for that purpose in the notice convening the relevant meeting or e-mail specified for the purpose in the notice of meeting; or
  - (ii) at the Company's registered office.

For the purposes of this Rule, an email is deemed to be deposited in accordance with this Rule and is taken to be given when the email is sent, unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of this Rule.

- (h) A vote given in accordance with the terms of an instrument of proxy or of a power of attorney or other relevant instrument of appointment is valid notwithstanding the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power or the transfer of the share in respect of which the instrument or power is given, if no intimation in writing of the death, unsoundness of mind, revocation or transfer has been received by the Company at a place referred to in Rule 5.12(g) before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.
- (i) No instrument appointing a proxy is invalid merely because it does not contain the address of the appointor or of a proxy or is not dated or does not contain in relation to any or all resolutions an indication of the manner in which the proxy is to vote and, in any case where the instrument does not contain the name of a proxy, the instrument is not for that reason invalid and is taken to be given in favour of the chairperson of the meeting.

### **5.13 Rights of Officers and Advisers to Attend General Meeting**

- (a) A Director who is not a member, is entitled to be present and to speak at any general meeting.
- (b) A Secretary who is not a member is entitled to be present and to speak at any general meeting.
- (c) The auditor of the Company from time to time and any assistant of the auditor who is not a member, is entitled to be present and to speak at any general meeting on any part of the meeting's business that concerns the auditor in the capacity as auditor of the Company.
- (d) Any professional adviser of the Company (including, without limitation, a solicitor, or financial adviser), at the request of any Director, is entitled to be present and, at the request of the chairperson, to speak at any general meeting. However, the Company is not obliged to send a notice of meeting to any such professional adviser.

## Part 6 – Directors and Officers

### 6.1 Number of Directors

- (a) The number of Directors will be the number determined by the Board from time to time and must be not less than 3 and not more than 10.
- (b) The Board must not determine a maximum which is less than the number of Directors in office at that time.

### 6.2 Appointment of Directors

- (a) Subject to the Act, the Company may from time to time by resolution:
  - (i) remove any Director from office; or
  - (ii) appoint an additional Director or additional Directors.
- (b) A person may only be elected as a Director at a general meeting if:
  - (i) the person is a Director retiring from office under Rule 6.4(a) or 6.2(c) and standing for re-election at that meeting;
  - (ii) the person has been nominated by the Board for election at that meeting;
  - (iii) the person has been otherwise validly nominated under the Act; or
  - (iv) the person has been nominated by:
    - (A) members holding shares representing not less than 5% of the total voting rights of all the members having the right to vote on a resolution to appoint a Director; or
    - (B) at least 100 members entitled to vote on a resolution to appoint a Director,

and who have given the Company notice under the Act.

- (c) The Board may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, but so that the total number of Directors does not at any time exceed the maximum number determined in accordance with this Constitution. Any Director so appointed holds office only until the end of the next following general meeting and is eligible for re-election at that meeting.
- (d) No share qualification is required of a Director.

### 6.3 Remuneration

- (a) Subject to Rule 6.9(c), the Directors (other than any Managing Director or Director who is a salaried officer) may be paid or provided with such remuneration determined from time to time by:
  - (i) the Company in general meeting; or
  - (ii) the Board, in an amount or value which does not in any financial year exceed in aggregate the amount or value last determined by the Company in general meeting,

which for the avoidance of doubt may include securities in the Company or any other non-cash benefit.

- (b) Remuneration payable to Directors accrues from day to day, except remuneration in the form of a non-cash benefit which is taken to accrue at the time the benefit is provided to the relevant Director, subject to the terms on which the benefit is provided.
- (c) Unless the Board determines otherwise, the aggregate remuneration determined by the Company in accordance with Rule 6.3(a)(i) must be divided equally among the Directors (other than any Managing Director or Director who is a salaried officer).
- (d) To the extent that remuneration comprises securities in the Company or other non-cash benefits, the Board shall determine the manner in which the value of any such securities or non-cash benefits is to be calculated.
- (e) The Directors may also be paid all travelling and other expenses properly incurred by them in attending and returning from Board meetings or any committee of the Directors or general meetings of the Company or otherwise in connection with the business or affairs of the Company or its subsidiaries.
- (f) If any Director with the concurrence of the Board performs extra services or makes any special exertions for the benefit of the Company, the Board may cause that Director to be paid out of the property of the Company such special and additional remuneration (not including a commission on or percentage of profits or operating revenue or turnover) as the Board thinks fit having regard to the value to the Company of the extra services or special exertions.
- (g) A Director may hold any other office or place of profit (other than auditor) in or of the Company in conjunction with his Directorship and may be appointed to that office on such terms as to remuneration, tenure of office and otherwise as may be agreed by the Board.
- (h) Subject to Rule 6.16(d), a Director must not be paid a commission on or percentage of profits or operating revenue.
- (i) The Company may pay to each Director who is a salaried officer an amount of remuneration determined by the Board, or pursuant to any agreement with the Company approved by the Board.

#### **6.4 Retirement at each annual general meeting**

- (a) Subject to Rule 6.16(c), at every annual general meeting, one third of the Board or, if the number of Directors is not a multiple of 3, then the number nearest to one third, must retire from office and be eligible for re-election.
- (b) The Directors to retire in every year are the Directors longest in office since last being elected or re-elected. Between Directors who were elected on the same day, the Director to retire, if they cannot otherwise agree, must be determined by lot. A retiring Director is eligible for re-election without needing to give any prior notice of his intention to submit himself for re-election and acts as Director throughout the meeting at which he retires. A Director appointed and vacating office under Rule 6.2(c) must not be taken into account in determining either the number or

identity of the Directors to retire by rotation.

## **6.5 Vacation of office**

The office of a Director becomes vacant:

- (a) in the circumstances prescribed by the Act; or
- (b) by virtue of this Constitution:
  - (i) if the Director becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (ii) if the Director resigns his office by notice in writing to the Company; or
  - (iii) if the Director is absent from all Board meetings held during a period of 3 months without the consent of the Board.

## **6.6 Powers of the Board**

- (a) Subject to the Act and this Constitution, the business of the Company must be managed by the Board who may pay all expenses incurred in promoting and forming the Company and may exercise all powers of the Company as are not, by the Act, the AIM Rules or this Constitution, required to be exercised by the Company in general meeting.
- (b) Without limiting the generality of Rule 6.6(a) and subject as hereinafter provided and to the provisions of the Act, the Board may exercise all the powers of the Company to borrow money, to mortgage or charge its undertaking, any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security whether outright or as collateral security for a debt, liability or obligation of the Company or of any other person.
- (c) The Board may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Board), for such period and subject to such conditions as it thinks fit.
- (d) Any power of attorney granted under Rule 6.6(c) may contain such provisions for the protection and convenience of persons dealing with the attorney as the Board thinks fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him.
- (e) All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, by such persons and in such manner as the Board decides and, unless so decided, by any 2 Directors.

## **6.7 Board meetings**

- (a) The Board may meet either in person or otherwise for the dispatch of business and adjourn and otherwise regulate its meetings as it thinks fit.

- (b) A Director may at any time and, on the request of a Director, a Secretary must convene a meeting of the Directors.
- (c) Reasonable notice must be given to every Director of the place, date and hour of every Board meeting but, where any Director is for the time being outside of Australia, notice may also be given to any Alternate Director in Australia whose appointment by him is for the time being in force. Such notice may be given in person, by post, by telephone or by other electronic means.
- (d) 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 the holding of a Board meeting:
  - (i) telephone;
  - (ii) video;
  - (iii) any other technology which permits each Director to communicate with every other participating Director; or
  - (iv) any combination of these technologies.
- (e) If a Board meeting is held in 2 or more places linked together by any technology:
  - (i) a Director present at one of the places is taken to be present at the meeting unless and until the Director states to the chairperson of the meeting that the Director is discontinuing his participation in the meeting; and
  - (ii) the chairperson of that meeting may determine at which of those places the meeting will be taken to have been held.
- (f) Subject to this Constitution, questions arising at a Board meeting must be decided by a majority of votes of Directors present and voting and any such decision is taken to be a resolution of the Board.
- (g) Subject to Rule 6.7(h), in the case of an equality of votes, the chairperson of the meeting has a casting vote in addition to his deliberative vote.
- (h) The chairperson of a meeting does not have a casting vote either where 2 Directors form a quorum and only 2 Directors are present at the relevant meeting or where only 2 Directors are competent to vote on the question at issue.

## **6.8 Quorum at Board meetings**

At a Board meeting, the number of Directors whose presence is necessary to constitute a quorum is the number determined by the Board and, unless so determined, is 2.

## **6.9 Chairperson of meetings**

- (a) The Board may elect a Director as chairperson of its meetings and may decide the period for which he is to hold such office.

- (b) Where a meeting is held and:
  - (i) a chairperson has not been elected as provided by Rule 6.9(a); or
  - (ii) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act, the Directors present may elect 1 of their number to be the chairperson of the meeting.
- (c) Subject to Rule 6.3, the remuneration of the chairperson may be determined by the Board.

#### **6.10 Disclosure of interests**

- (a) A Director is not disqualified by reason only of being a Director (or the fiduciary obligations arising from that office) from:
  - (i) holding an office (except auditor) or place of profit or employment in the Company or a related body corporate of the Company;
  - (ii) holding an office or place of profit or employment in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest;
  - (iii) being a member, creditor or otherwise be interested in any body corporate (including the Company), partnership or entity, except auditor of the Company;
  - (iv) entering into any agreement or arrangement with the Company; or
  - (v) acting in a professional capacity (or being a member of a firm which acts in a professional capacity) for the Company, except as auditor of the Company.
- (b) Each Director must comply with the Act in relation to the disclosure of the Director's interests.
- (c) A Director who has a material personal interest in a matter that is being considered at any Board meeting must not be present while the matter is being considered at the meeting nor vote on the matter, except where permitted by the Act.
- (d) If a Director has an interest in a matter, then subject to this Constitution (including Rules 6.10(c) and 6.10(e)):
  - (i) that Director may be counted in a quorum at the Board meeting that considers matters that relate to the interest provided that Director is entitled to vote on at least one of the resolutions to be proposed at that Board meeting;
  - (ii) that Director may participate in and vote on matters that relate to the interest;
  - (iii) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;

- (iv) the Director may retain the benefits pursuant to any transaction that relates to the interest even though the Director has the interest; and
  - (v) the Company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- (e) If an interest of a Director is required to be disclosed pursuant to Rule 6.10(b), Rule 6.10(d)(iv) applies only if the interest is disclosed before the transaction is entered into.

#### **6.11 Alternate Directors**

- (a) Subject to the Act and this Constitution, a Director may appoint a person (whether a member of the Company or not) to be an Alternate Director in his place during any period that he thinks fit.
- (b) An Alternate Director is entitled to notice of Board meetings and, if the appointor is not present at a meeting, is entitled to attend and vote in his stead.
- (c) An Alternate Director may exercise any powers that the appointor may exercise and the exercise of any power by the Alternate Director (including, without limitation, executing a document) is taken to be the exercise of the power by the appointor. Where the Alternate Director is another Director, that Director is entitled to cast a deliberative vote on his own account and on account of each person by whom he has been appointed as an Alternate Director.
- (d) The appointment of an Alternate Director may be terminated at any time by the appointor notwithstanding that the period of the appointment of the Alternate Director has not expired and terminates in any event if the appointor vacates office as a Director.
- (e) An appointment or the termination of an appointment of an Alternate Director must be effected (in the case of an appointment, subject to Rule 6.11(a)) by service on the Company of a notice in writing signed by the Director who makes or made the appointment.
- (f) Except with the approval of the Board, but subject to Rule 6.3, an Alternate Director is not entitled to any remuneration from the Company in respect of holding that position.

#### **6.12 Vacancies**

In the event of a vacancy or vacancies in the office of a Director, the remaining Directors may act but, notwithstanding Rule 6.8, if the number of remaining Directors is not sufficient to constitute a quorum at a Board meeting, they or, if 1 only, he may act only for the purpose of increasing the number of Directors to the minimum number sufficient both to comply with Rule 6.1(a) and to constitute such a quorum or for the purpose of convening a general meeting of the Company.

#### **6.13 Delegations to committees**

- (a) The Board may delegate any of its powers to a committee or committees consisting of such of its number as it thinks fit and may authorise the delegate to sub-delegate all or any of the powers so delegated.



- (b) A committee to which any powers have been so delegated may exercise the powers delegated in accordance with any directions of the Board and a power so exercised is taken to have been exercised by the Board.
- (c) The members of such a committee may elect 1 of their number as chairperson of their meetings.
- (d) Where a meeting is held and:
  - (i) a chairperson has not been elected as provided by Rule 6.13(c); or
  - (ii) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act,
 the members present may elect 1 of their number to be chairperson of the meeting.
- (e) A committee may meet and adjourn as it thinks fit.
- (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 equality of votes, the chairperson of a committee has a casting vote in addition to his deliberative vote.
- (h) Minutes of all the proceedings and determinations of every committee must be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act to be made, entered and signed.
- (i) Where a committee consists of 1 Director only, a document signed by him and recording a determination of that committee is as valid and effectual as a determination made under Rule 6.13(f) at a meeting of that committee and that document constitutes, for the purposes of Rule 6.13(h), a minute of that determination.

#### **6.14 Circular resolutions**

- (a) If a document containing a statement to the effect that the signatories to it are in favour of a resolution in the terms set out or otherwise identified in the document has been signed by a majority of the Directors (excluding each Director, if any, who would not be entitled to vote on that resolution at a Board meeting), but not less than the number required for a quorum at a Board meeting, a resolution in those terms is taken to have been passed at a Board meeting held on the day on which and at the time at which the document was last signed by a Director.
- (b) For the purposes of Rule 6.14(a):
  - (i) 2 or more separate documents containing statements in identical terms each of which is signed by 1 or more Directors together constitute 1 document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents;
  - (ii) a reference to a majority of the Directors does not include a reference to an Alternate Director whose appointor has signed the document, but an Alternate Director may sign the document

in the place of his appointor; and

- (iii) any message transmitted by electronic means which is received by the Company and which contains a statement affirming a resolution by or on behalf of a Director or Alternate Director is deemed to be a document signed by the relevant Director or Alternate Director, provided that:
  - (A) the message emanates from the Director or Alternate Director's nominated email address or mobile number; and
  - (B) the message indicates the resolution of which the Director or Alternate Director is in favour,

such document is taken to be signed by that Director or Alternate Director at the time of receipt of the electronic message by the Company.

### **6.15 Defects in appointments**

Notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director or a member of a committee or to act as a Director or that a person so appointed was disqualified, all acts done by any Board meeting or of a committee of the Board or by any person acting as a Director are as valid as if the person had been duly appointed and was qualified to be a Director or to be a member of the committee.

### **6.16 Managing Director**

- (a) The Board may from time to time appoint a Director to the office of Managing Director for such period and on such terms as it thinks fit and, subject to the terms of any agreement entered into in a particular case, may revoke any such appointment.
- (b) A Managing Director's appointment automatically terminates if he ceases for any reason to be a Director.
- (c) The provisions of Rule 6.4 do not apply to a Managing Director or a Director who is a salaried officer.
- (d) Subject to the terms of any agreement entered into in a particular case, a Managing Director may receive such remuneration (whether by way of salary, commission or participation in profits or partly in 1 way and partly in another) as the Board decides.
- (e) The Board may confer upon a Managing Director any of the powers exercisable by them on such terms and conditions and with such restrictions as it thinks fit.
- (f) Subject to Rule 6.16(g), any powers conferred may be concurrent with the powers of the Board.
- (g) The Board may at any time withdraw or vary any of the powers conferred on a Managing Director.

### **6.17 Secretary**

- (a) A Secretary holds office on such terms and conditions, as to remuneration and otherwise, as the Board determines.

- (b) The Board may at any time terminate the appointment of a Secretary.

#### **6.18 Other officers**

- (a) The Board may from time to time create any other position in the Company (including, without limitation, the offices of Chief Executive and Deputy Chief Executive) with such powers and responsibilities as the Board may from time to time confer and the Board may appoint any person, whether or not a Director, to any such position or positions.
- (b) The Board may at any time terminate the appointment of a person holding such a position and may abolish the position.

### **Part 7 - Execution and Inspection of Documents**

#### **7.1 Execution of documents**

The Company may execute a document (including, without limitation, a deed) if the document is signed by:

- (a) 2 Directors;
- (b) a Director and a Secretary;
- (c) an attorney duly appointed by the Company in accordance with this Constitution; or
- (d) any other method permitted by law.

#### **7.2 Signing of certificates**

The Board may determine either generally or in a particular case that the signature of any Director or Secretary is to be affixed to any certificate for securities in the Company by some mechanical or other means.

#### **7.3 Inspection of records**

- (a) The Board may decide whether and to what extent, at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of members (other than those who are Directors).
- (b) A member other than a Director does not have the right to inspect any document of the Company except as provided by law (including any order of a court of competent jurisdiction) or if authorised by the Board or by the Company in general meeting.

### **Part 8 - Distribution of Profits**

#### **8.1 Powers to declare dividends and pay interest**

- (a) Subject to the Act, this Constitution and any preferential, special, deferred or other rights with which any shares may be issued or may from time to time be held, the Board may from time to time declare such dividends to be paid to members. The Board may fix the amount of the dividend, the time for determining entitlements to the dividend, the time for the payment of the dividend and the method of payment of the dividend.

- (b) Subject to the Act, the Board may declare and authorise the payment by the Company to members of interim dividends.
- (c) Subject to the rights or restrictions attached to a class of shares, the Board may determine that dividends be paid on shares of one class but not another class, and at different rates for different classes of shares.
- (d) No dividend bears interest against the Company.
- (e) The Board may, subject to the AIM Rules, fix a record date in respect of a dividend.
- (f) A transfer of shares does not pass the right to any dividend declared on the shares unless the transfer is registered or left with the Company for registration in accordance with this Constitution on or before:
  - (i) where the Board has fixed a record date in respect of that dividend, that date; or
  - (ii) where the Board has not fixed a record date in respect of that dividend, the date the dividend was declared.
- (g) The Board 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.

## **8.2 Differential dividends**

- (a) Subject to Rule 8.1, except where the resolution for the payment of the dividend otherwise directs, every dividend must:
  - (i) be paid in respect of all shares (if the resolution for the payment of the dividend otherwise directs, it must be paid in respect of some shares to the exclusion of others);
  - (ii) be paid according to the amounts paid or credited as paid on the shares in respect of which it is to be paid (if the resolution for the payment of the dividend otherwise directs, it must be paid at different rates or in different amounts upon the shares in respect of which it is to be paid); and
  - (iii) be apportioned and paid proportionately to the amounts paid or credited as paid on the shares in respect of which the dividend is to be paid during any part or parts of the period in respect of which the dividend is paid (unless a share is issued on terms providing that it will rank for dividend as from a particular date, in which case the share ranks for dividends from that date only).

An amount paid or credited as paid on a share in advance of a call must not be taken for the purposes of this Rule 8.2(a) to be paid or credited as paid on the share.

- (b) Subject to Rules 8.1 and 8.2(a) and the AIM Rules, but otherwise in its absolute discretion, the Board may from time to time resolve that dividends (to be paid by the Company in accordance with this Constitution) are to be paid out of a particular source or particular sources as permitted under the Act. Where the Board so resolves, it may, in its absolute discretion:

- (i) allow each or any member of the Company to elect from which specified sources (profits or otherwise) that particular member's dividend may be paid by the Company; and
- (ii) where such elections are permitted and any member fails to make such an election, the Board may, in its absolute discretion, identify the particular source from which dividends will be payable.

### **8.3 Reserves**

- (a) The Board may, before declaring any dividend or at any other time, set aside out of the profits of the Company such sums as it thinks proper as reserves which at the discretion of the Board, may be applied for any purpose to which the profits of the Company may be properly applied.
- (b) Pending any such application, the reserves may, at the discretion of the Board, either be employed in the business of the Company or be invested in such investments as the Board may from time to time think fit.
- (c) The Board may, without placing these profits to a reserve, carry forward any profits which it may think prudent not to divide.

### **8.4 Distribution of specie**

- (a) The method of payment by the Company of a dividend, a return of capital by a reduction of capital, a share buy-back or otherwise, may include, by resolution, direct payment wholly or partly by the distribution of specific assets, including, without limitation, paid up shares in or debentures of any other corporation, and the Board must give effect to such a resolution.
- (b) Where a difficulty arises in regard to such a distribution, the Board may settle the matter as it considers fit and fix the value for distribution of the specific assets or any part of those assets and may determine that cash payments will be made to any members on the basis of the value so fixed in order to adjust the rights of all parties and may vest any such specific assets in trustees as the Board considers fit.
- (c) The Board may authorise any person to make, on behalf of all members entitled to any financial products as a result of a distribution, an agreement with the relevant body corporate or trust providing for the issue or transfer to them of those financial products (including an agreement to become a member of that body corporate) and, in executing any such document, the person acts as agent and attorney for those members.

### **8.5 Election to reinvest or forgo dividend**

- (a) The Board may from time to time, in respect of any dividend declared by the Company, resolve that each member, to the extent his shares are fully paid, may have an option:
  - (i) to elect to have his dividend reinvested by subscription for fully paid shares; or
  - (ii) to elect to forgo his right to receive such dividend and to receive instead an issue of fully paid shares,in each case, to the extent and within the limits and on such terms and

conditions as the Board may from time to time determine, but subject to this Rule 8.5.

- (b) The Board may from time to time:
  - (i) establish 1 or more plans whereby some or all members may elect in terms of 1 or more of the following for a period or periods as provided in the plan:
    - (A) that dividends to be paid in respect of some or all of the shares from time to time held by the member will be satisfied by the issue of fully paid shares of the same class as shares so held;
    - (B) that dividends will not be declared or paid in respect of some or all of the shares from time to time held by the member, but that the member will receive an issue of fully paid shares of the same class as the shares so held in accordance with the plan; or
    - (C) if elections in terms of each of paragraph (A) and paragraph (B) are available under the plan, in terms of paragraph (A) as to some of the shares from time to time held by the member and in terms of paragraph (B) as to others of them;
  - (ii) upon or after establishment of any such plan, extend participation in it, in whole or in part, to some or all of the holders of debentures, notes, bonds or other debt obligations of the Company in respect of interest upon such debentures, notes, bonds or other debt obligations in like manner as if that interest were dividends; and
  - (iii) vary, suspend or terminate any such plan.
- (c) Any plan so established has effect in accordance with its terms and the Board must do all things necessary and convenient for the purpose of implementing the plan, including, without limitation, the making of each necessary allotment of shares and of each necessary appropriation, capitalisation, application, payment and distribution of funds which may lawfully be appropriated, capitalised, applied, paid or distributed for the purpose of the allotment.
- (d) Any plan may be terminated and any authority given to the Board under Rule 8.5(b) may be revoked or varied.
- (e) The Board is under no obligation to admit any member as a participant in any plan nor to comply with any request made by a member who is not admitted as a participant in a plan.
- (f) For the purpose of giving effect to any such plan, appropriations, capitalisations, applications, payments and distributions may be made and the powers of the Board pursuant to Rule 8.7 apply and may be exercised (with such adjustments as may be required) on the basis and notwithstanding that only some of the members or holders of shares of any class participate in the appropriation, capitalisation, application, payment or distribution.

## **8.6 Payment of distributions**

- (a) The Company may pay a person entitled to an amount payable in respect of a share (including a dividend) by any of the following means, at the Board's discretion and at the sole risk of the person so entitled:
- (i) crediting an account nominated in writing by that person and acceptable to the Board;
  - (ii) drawing a cheque made payable to the bearer, the person entitled to the amount or any other person the entitled person directs in writing and who is acceptable to the Board; or
  - (iii) any other manner as the Board resolves.
- (b) The Company may post a cheque referred to in Rule 8.6(a)(ii) to:
- (i) the address in the register of members of the member of the share, or in the case of a jointly held share, the address of the member whose name appears first in the register of members in respect of the share; or
  - (ii) any other address which the entitled person directs in writing.
- (c) The Company may make a payment of an amount payable in respect of a share (including a dividend) in any other currency determined by the Board. The Company may make payments in different currencies to different members. The Board may determine the appropriate exchange rate and time of calculation of the amount of a payment made in a currency other than Australian dollars. A determination of the Board pursuant to this Rule 8.6(c) is final in the absence of manifest error.
- (d) If more than one member of a jointly held share gives a permitted nomination or direction pursuant to Rule 8.6(a), only the nomination or direction by the member whose name appears first in the register of members in respect of that share is valid.
- (e) Any one of the members of a jointly held share may give receipt of any payment to those members in respect of that share.

## **8.7 Capitalisation of profits**

Subject to the Act and any rights and restrictions attaching to any shares or any class of shares, the Board may capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to members, in the proportions to which those members would have been entitled in a distribution of that sum by way of dividend, unless the Board determines in a particular case that the capitalisation should not be pro rata.

## **8.8 Ancillary powers**

For the purpose of giving effect to any resolution for the satisfaction of a dividend by the distribution of specific assets or the capitalisation of any amount under this Constitution, the Board may:

- (a) settle as it thinks fit any difficulty that may arise in making the distribution or capitalisation and, in particular, determine that amounts or fractions of less than a particular value determined by the Board may be

disregarded in order to adjust the rights of all parties;

- (b) fix the value for distribution of any specific assets;
- (c) pay cash or issue debentures to any members in order to adjust the rights of all parties;
- (d) vest any such specific assets or cash or debentures in trustees on such trusts for the persons entitled to the dividend or capitalised amount as may seem fit to the Board; and
- (e) authorise any person to make, on behalf of all the members entitled to any further shares or other securities as a result of the distribution or capitalisation, an agreement with the Company or another body corporate providing:
  - (i) for the issue to them of such further shares or other securities; or
  - (ii) for the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their shares by the application of their respective proportions of the sum resolved to be capitalised.

## **8.9 Bonus share plan**

The Board may:

- (a) implement a bonus share plan on such terms as it thinks fit under which participants may elect to forego the whole or any part of any dividend due to them on their shares and, in lieu of that dividend, be issued bonus shares in the Company; and
- (b) amend, suspend or terminate any bonus share plan so implemented.

## **Part 9 - Notices**

### **9.1 Notices generally**

- (a) A notice may be given by the Company to any member either by serving it on him personally or by sending it by post to him at his address as shown in the register or the address supplied by him to the Company for the giving of notices to him or by sending an email to the electronic address nominated by him for the giving of notices to him. Notice to a member whose address for notices is outside Australia must be sent by post, air courier or by email.
- (b) Where a notice is sent by post, service of the notice is taken to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected 3 Business Days after the date of its posting.
- (c) Where a notice is sent by email, service of the notice is taken to be effected by properly addressing and sending the notice and to have been effected when it is sent, unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified.



- (d) A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the register in respect of the share.
- (e) A notice may be given by the Company to a person entitled to a share in consequence of the death or bankruptcy of a member by serving it on him personally or by sending it to him by post addressed to him by name or by the title of representative of the deceased or assignee of the bankrupt or by any like description at the address (if any) within Australia supplied for the purpose by the person or, if such an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred or by sending a facsimile to the facsimile number supplied by him to the Company or, if such a facsimile number has not been supplied, to the facsimile number to which the notice might have been sent if the death or bankruptcy had not occurred.
- (f) At least 21 days' notice of every general meeting must be given in the manner provided by this Rule 9.1 provided that a meeting may be called by shorter notice if so permitted by the Act.

## **Part 10 - Winding Up**

### **10.1 Winding up**

- (a) If the Company is wound up, the liquidator may, with the sanction of a special resolution, divide among the members in kind the whole or any part of the property of the Company and may for that purpose set such value as he considers fair upon any property to be so divided and may determine how the division is to be carried out as between the members or different classes of members.
- (b) The liquidator may, with the sanction of a special resolution, vest the whole or any part of any such property in trustees upon 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.

## **Part 11 - Protection of Certain Officers**

### **11.1 Indemnity**

- (a) Every person who is or has been a Director or other officer of the Company is to be indemnified, to the maximum extent permitted by law, out of the property of the Company against any liabilities for costs and expenses incurred by the person in defending any proceedings (whether civil or criminal) relating to that person's position with the Company in which judgment is given in that person's favour or in which that person is acquitted or which are withdrawn before judgment, in connection with any administrative proceedings relating to that person's position with the Company except proceedings which give rise to proceedings (whether civil or criminal) against that person in which judgment is not given in that person's favour or in which that person is not acquitted or which arise out of conduct involving a lack of good faith or in connection with any application in relation to any proceedings (whether civil or criminal) relating to that person's position with the Company in which relief is granted to that person under the Act by the court.
- (b) Every person who is or has been a Director or other officer of the Company is to be indemnified, to the maximum extent permitted by law,

out of the property of the Company against any liabilities to another person (other than the Company or its related bodies corporate) as such an officer unless the liabilities arise out of conduct involving a lack of good faith.

- (c) To the extent permitted by law, the Company may pay a premium for a contract insuring a person who is or has been a Director or officer of the Company or its related bodies corporate against:
  - (i) any liability incurred by that person as such a Director or officer; and
  - (ii) any liability for costs and expenses incurred by that person in defending proceedings (whether civil or criminal) relating to that person's position with the Company and whatever their outcome.
- (d) Amounts paid by the Company by way of indemnity or premium in accordance with this Rule 11.1 do not form part of the remuneration of the relevant Director or officer for the purposes of this Constitution (including, without limitation, Rule 6.3).
- (e) The indemnity in this Rule 11.1 does not apply in respect of liability incurred by a person in his capacity as an employee of the Company.
- (f) Subject to this Rule 11.1 and the Act, if any Director or other officer of the Company becomes personally liable for the payment of any sum primarily due from the Company, the Board may, notwithstanding the interest (if any) of the Director or any of them, execute or cause to be executed a mortgage, charge or security over or affecting the whole or any part of the assets or undertaking of the Company by way of indemnity to secure the Director or other officer so becoming liable from any loss in respect of that liability.
- (g) To the extent permitted by law, the Company may enter into an agreement or deed with the relevant Director or officer, or person who was an officer of the Company, pursuant to which the Company must do all or any of the following:
  - (i) keep books of the Company and allow either or both that person and that person's advisers access to those books on the terms agreed;
  - (ii) indemnify that person against any liability and legal costs of that person; and
  - (iii) make a payment (whether by way of advance, loan or otherwise) to that person in respect of legal costs of that person; and
- (h) keep that person insured in respect of any act or omission by that person while a Director or an officer of the Company, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).