



## ASX ANNOUNCEMENT

### AMENDED CONSTITUTION

**SYDNEY, Friday, 25 November 2011: Cellmid Limited (ASX: CDY)** provides the market with its amended Constitution approved by shareholders at its Annual General Meeting today.

End

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#### **Cellmid Limited (ASX: CDY)**

Cellmid is an Australian biotechnology company developing innovative novel therapies and diagnostic tests for inflammatory diseases, heart attack and cancer. Cellmid holds the largest and most comprehensive portfolio of intellectual property related to midkine and midkine antagonists globally. The Company's most advanced clinical development program is for the treatment of acute myocardial infarction (AMI) utilising the midkine protein. Cellmid is also developing anti-midkine antibodies for the treatment of inflammatory and autoimmune disorders. In addition, Cellmid is commercialising midkine as a biomarker for cancer diagnosis. Elevated midkine concentration in the blood and other body fluids is strongly indicative of cancer. Cellmid's first product, the MK-ELISA, is a blood test that sensitively and accurately measures serum midkine levels.

#### **Midkine (MK)**

Midkine is a multifunctional growth factor that is highly expressed during embryonic development. Midkine modulates many important biological interactions such as cell growth, cell migration and cellular adherence. These functions are relevant to cancer, inflammation, autoimmunity, ischemia, nerve growth/repair and wound healing. Midkine is barely detectable in healthy adults and only occurs as a consequence of the pathogenesis of a number of different disorders. Midkine expression is often evident very early in disease onset, even before any apparent physical symptoms. Accordingly, midkine is an important early marker for diagnosing cancers and autoimmune diseases. Finally, because midkine is only present in a disease context, targeting midkine does not harm normal healthy tissues.

# Constitution

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# Cellmid Limited

ACN 111 304 119

## Constitution

### Part 1 - Preliminary

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#### 1. Name

The Company's name is Cellmid Limited or other name adopted from time to time.

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#### 2. Nature of Company

The Company is a public company limited by shares.

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#### 3. Replaceable rules

The replaceable rules in the Corporations Act do not apply to the Company.

### Part 2 - Shares

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#### 4. Issue of shares

Without limiting the Company's powers under the Corporations Act, the Company (under the control of the Directors) may:

- (a) issue shares in the Company; and
- (b) grant options over unissued shares in the Company,

on any terms, with any rights or restrictions attached to the shares, at any time, and for any consideration the Directors decide.

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#### 5. Preference shares

- (a) The Company may issue any preference shares, with or without such identifiers such as "Series 1" or "Series 2", if the rights of the holders of the preference shares with respect to repayment of capital, participation in surplus assets and profits, cumulative or non cumulative dividends, voting and priority of payment of capital and dividend in relation to other shares or other classes of preference shares are set out in this constitution including its schedules.
  - (b) The rights of the holders of preference shares issued by the Company will be those set out in schedule 1 and such other rights as are conferred by the terms of issue of the preference shares as determined by the Directors.
  - (c) Subject to the Corporations Act, the Company may issue preference shares which are, or at the option of the Company or the holder are to be liable, to be redeemed on
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such terms and conditions set out in their terms of issue and in such manner as the Directors determine before the issue of those preference shares.

- (d) Where the Company proposes to issue preference shares and those preference shares are to rank equally with or in priority to preference shares already issued, unless that is expressly permitted by the conditions of issue of the preference shares already issued, the issue or conversion will be deemed to be a modification of the rights attached to the preference shares already issued.
- (e) Notwithstanding clauses 7.5(a) to (d) and schedule 1, the Company may not issue a preference share which confers upon the holder rights which are inconsistent with those specified in the Listing Rules, except to the extent of any waiver of the Listing Rules by ASX.
- (f) A preference share which, in accordance with its terms of issue, may be converted into an ordinary share will, at the time of conversion and without any further act, have (subject to the terms of issue of the preference share in relation to entitlement to ordinary dividends paid after conversion) the same rights as a fully paid ordinary share and rank pari passu with other fully paid ordinary shares then on issue.

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## **6. Variation of classes and class rights**

6.1 Subject to the Corporations Act, the Company may:

- (a) vary or cancel rights attached to shares in a class of shares; and
- (b) convert shares from one class to another by:
  - (1) special resolution of the Company; and
  - (2) approval of the holders of shares in that class by:
    - (A) special resolution passed at a meeting of the holders of shares in that class; or
    - (B) the written consent of shareholders with at least 75% of the votes in that class.

6.2 Part 5 of this constitution (with the necessary changes) applies to meetings of holders of a class of shares.

6.3 The Company may issue new shares that rank equally with existing shares. The new issue is taken not to vary the rights attached to the existing shares.

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## **7. Alteration of share capital**

The Company in general meeting may convert its shares into a larger or smaller number of shares.

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## **8. Reduction of capital and buy backs**

Subject to the Corporations Act and the Listing Rules if the Company is listed, the Company may:

- (a) reduce its share capital; and
- (b) buy back shares in itself.

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## **9. Brokerage**

The Company may pay brokerage or commission if a person takes up securities in the Company.

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## **10. Joint holders**

- 10.1 Two or more persons may hold a share only as joint tenants.
- 10.2 Subject to the Corporations Act and the Listing Rules if the Company is listed, the Company need not register more than three persons as joint holders of a share.

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## **11. Trust not recognised**

Except as required by law or this constitution, the Company need not recognise:

- (a) that a person holds a share on trust; or
- (b) any interest in a share except the registered holder's absolute ownership of the whole share.

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## **12. Share and option certificates and statements**

- 12.1 When the Company registers securities of any class to a shareholder or option holder, the Company must issue to the shareholder or option holder, without charge, in the discretion of the Directors:
  - (a) one or more certificates for those securities;
  - (b) if the Company is bound by the operating rules of a prescribed CS facility in relation to those securities, a statement of holdings or similar required by the operating rules; or
  - (c) any other document that confirms ownership of the securities as the Directors decide.
- 12.2 If the Corporations Act so permits, the Company:
  - (a) need not issue a certificate for the securities; and
  - (b) may cancel a certificate and not issue a replacement.
- 12.3 The Company must comply with the Corporations Act, the Listing Rules if the Company is listed, and the operating rules of a prescribed CS facility if the Company is bound by those rules, in issuing those certificates, statements of holdings or other documents.



- 12.4 If required to issue a certificate, the Company need issue only one certificate for securities registered in more than one name. The Company must deliver that certificate to any one of the registered holders.
- 12.5 Subject to the Corporations Act, the Listing Rules if the Company is listed, and the operating rules of a prescribed CS facility if the Company is bound by those rules, the Company must issue a replacement certificate for a defaced, worn out, lost or destroyed certificate.

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### 13. Restricted securities

- 13.1 If the Company is listed on ASX, then despite any other provision in this constitution:
- (a) if ASX requires or determines that any securities be restricted securities, then the holder of those securities must enter into any Restriction Agreement or escrow agreement required by ASX. In respect of that requirement or determination;
  - (b) restricted securities cannot be disposed of during the escrow period except as permitted by the Listing Rules or ASX;
  - (c) the Company may ask ASTC to apply a holding lock to prevent a transfer;
  - (d) the Company must refuse to acknowledge a disposal (including registering a transfer) of restricted securities during the escrow period except as permitted by the Listing Rules or ASX; and
  - (e) during a breach of the Listing Rules relating to restricted securities, or a breach of a Restriction Agreement, the holder of the restricted securities is not entitled to any Dividend or distribution, or voting rights, in respect of the restricted securities.
- 13.2 In this clause:
- (a) **dispose** has the same meaning as in the Listing Rules; and
  - (b) **restricted securities** has the same meaning as in the Listing Rules.

## Part 3 - Calls, liens and forfeiture

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### 14. Calls

- 14.1 Subject to the Listing Rules if the Company is listed, and subject to the terms of issue, the Directors may make calls on the holder of a share for any unpaid portion of the issue price of that share at any time.
- 14.2 The Directors may make a call payable by instalments.
- 14.3 While the Company is listed on ASX, the Directors must give to the shareholder:
- (a) the period of notice of the call required by the Listing Rules; and
  - (b) a call notice containing the information required by the Listing Rules.

While the Company is not listed on ASX, the Company must give to the shareholder at least 14 days' notice of a call, specifying the amount payable, and the time and place of payment.

- 14.4 A call is made when the Directors resolve to make the call.
- 14.5 The Directors may revoke or postpone a call or extend the time for payment.
- 14.6 A call is still valid if either or both:
- (a) a shareholder does not receive notice of the call; or
  - (b) the Company accidentally does not give notice of the call to a shareholder.
- 14.7 A shareholder must pay to the Company:
- (a) the amount called, by the time and at the place specified;
  - (b) if the amount called is not paid by that time, interest at the rate fixed in this Part on an unpaid call (or instalment) from the date the call (or instalment) becomes presently payable until and including the date of payment; and
  - (c) costs incurred by the Company in respect of the non payment or late payment of the call.
- 14.8 Joint holders of a share and their respective personal representatives are all jointly and severally liable to pay all calls on the share.
- 14.9 If, by the terms of issue of a share, an amount is payable on issue or at a fixed date, the Company is taken to have properly called that amount and given proper notice of it.
- 14.10 The Directors may waive all or any part of an amount payable under this clause or the terms of issue of a share.
- 14.11 The Directors may recover an amount presently payable under this clause from a shareholder in all or any of the following ways:
- (a) by suing the shareholder for debt;
  - (b) by enforcing the lien on the share; or
  - (c) by declaring forfeit the share.
- 14.12 A debt is sufficiently proved by evidence that:
- (a) the shareholder is registered as a holder or a joint holder of the share; and
  - (b) the resolution for the call is recorded in the minute book.
- 14.13 The Directors may authorise the Company:
- (a) to accept from a shareholder an amount paid before call;

- (b) to pay interest on the amount paid before call, at any rate the Directors decide, from the date of payment until and including the date the call becomes presently payable; and
- (c) to repay the amount to the shareholder.

14.14 An amount paid before call is ignored in determining a Dividend or surplus in a winding up.

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## **15. Indemnity from taxation**

15.1 If the Company is required by law to pay an amount (including a tax) in respect of a shareholder or a share held by that shareholder or a Dividend in respect of a share held by that shareholder:

- (a) the shareholder or the shareholder's personal representative must:
  - (1) indemnify the Company against that liability; and
  - (2) on demand, reimburse the Company for any payment by the Company, and pay to the Company interest on it at the rate fixed under this Part from the date of payment by the Company until and including the date the shareholder reimburses the Company and pays any costs incurred by the Company because of the payment; and
- (b) subject to clause 24, the Company may refuse to register a transfer of any shares by or to the shareholder or the shareholder's personal representative until payment of all amounts presently payable under this clause.

15.2 The Directors may waive any of the Company's rights under this clause.

15.3 The Directors may recover an amount presently payable under this clause from a shareholder in both or either of the following ways:

- (a) by suing the shareholder for debt; or
  - (b) by enforcing the lien on the share.
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## **16. Forfeiture**

16.1 The Directors may resolve that a shareholder's share is forfeited if:

- (a) the shareholder does not pay a call or instalment on the share when presently payable;
  - (b) the Company gives the shareholder notice:
    - (1) requiring payment of that call or instalment, any interest on it and any costs incurred by the Company because of the non payment; and
    - (2) stating that the share will be forfeited if the shareholder does not pay to the Company, at the place named, the total amount within 14 days (or any longer period stated) after the notice is given; and
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- (c) the shareholder does not pay the total amount within that period.
- 16.2 When a share is forfeited, the Company must:
- (a) notify the former holder that the share is forfeited; and
  - (b) record the forfeiture and date of forfeiture in the register of shareholders.
- A failure to do this does not invalidate the forfeiture.
- 16.3 The former holder of a forfeited share must pay to the Company:
- (a) all calls, instalments, interest and costs in respect of the share to the date of forfeiture; and
  - (b) interest at the rate fixed in this Part on those amounts from the date of forfeiture until and including the date of payment.
- 16.4 The forfeiture of a share extinguishes:
- (a) the former shareholder's interest in the share; and
  - (b) all claims against the Company in respect of the share, including all Dividends presently payable by the Company on the share.
- 16.5 Subject to the Listing Rules if the Company is listed, the Company may sell or otherwise dispose of a forfeited share on any terms and in any way the Directors decide.
- 16.6 A certificate by a Director or secretary of the Company that the share was forfeited on a specified date is sufficient evidence of the matter, unless it is proved to be incorrect.
- 16.7 The Directors may:
- (a) waive any of the Company's rights under this clause; and
  - (b) before sale or re issue of a forfeited share, annul the forfeiture on any terms the Directors decide.

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## **17. Lien**

- 17.1 The Company has a first ranking lien on:
- (a) each share registered to a shareholder;
  - (b) Dividends on the share; and
  - (c) proceeds of sale of the share,
- for:
- (d) an unpaid call or instalment that is due but unpaid on the share;
  - (e) if the share was acquired under an employee incentive scheme or an employee share or option plan, an amount owing to the Company for acquiring the share;

- (f) any amounts the Company is required by law to pay (and has paid) in respect of the shares of that shareholder or deceased former shareholder; and
- (g) any indemnity amount or any interest and costs presently payable to the Company under this Part.

17.2 The Company may sell a share to enforce the lien if:

- (a) an amount secured by the lien is presently payable;
- (b) the Company gives the shareholder notice:
  - (1) requiring payment of that amount, any interest on it and any costs incurred by the Company because of the non payment; and
  - (2) stating that the share will be sold if the shareholder does not pay to the Company, at the place named, the total amount within 14 days (or any longer period stated) after service of the notice; and
- (c) the shareholder does not pay the total amount within that period.

17.3 The Directors may waive any of the Company's rights under this clause.

17.4 Registration by the Company of a transfer of a share releases any lien on that share, insofar as the lien relates to money owing by the transferor or previous transferor, unless the Company gives the transferee notice of its claim.

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## **18. Sale**

18.1 The Directors may authorise a person to sign a transfer of a forfeited share or a share sold to enforce a lien.

18.2 The Company must apply the sale price from:

- (a) the sale of a forfeited share; and
- (b) the sale of a share sold to enforce a lien,

in the following order:

- (c) to the costs of the sale;
- (d) to the amount presently payable by the former holder to the Company; and
- (e) to the former holder or the former holder's personal representative, on receipt of the certificate for the share.

18.3 The Company must register the purchaser of the share as the holder of the share.

18.4 The purchaser need not enquire whether the Company:

- (a) properly exercised its powers in respect of the share; or
- (b) properly applied the sale price for the share.

These matters do not affect the title of the purchaser.

- 18.5 Unless expressly agreed, the purchaser is not liable for calls and other amounts presently payable in respect of the share before the sale.

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## **19. Interest**

- 19.1 A shareholder must pay interest under this Part to the Company:
- (a) at a rate the Directors decide; or
  - (b) if the Directors do not decide a rate, at 10% per annum.
- 19.2 Interest payable to the Company accrues daily.
- 19.3 The Company may capitalise interest monthly or at any other intervals the Directors decide.

## **Part 4 - Transfer of shares**

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### **20. Instruments of transfer**

Subject to this constitution, a shareholder may transfer a share:

- (a) in the case of transfers effected through a prescribed CS facility, in accordance with the operating rules of the CS facility;
- (b) by an instrument of transfer in any common form or other form approved by the Directors; and
- (c) by any other method of transferring securities recognised by the Corporations Act and ASX if the Company is listed, and also approved by the Directors.

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### **21. Registration**

- 21.1 If a security transfer is effected through a prescribed CS facility, the Company must comply with the operating rules of the prescribed CS facility in respect of that transfer and must not fail to register or give effect to the transfer if it is a proper ASTC transfer of that security.
- 21.2 If an instrument of transfer is used, it must be:
- (a) a proper instrument of transfer for the purpose of the Corporations Act; and
  - (b) delivered to the Company's share registry, together with any evidence the Directors require to prove:
    - (1) the title of the transferor;
    - (2) the transferor's right to transfer the shares; and
    - (3) it is a proper instrument of transfer for the purpose of the Corporations Act.

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## **22. Effect of transfer**

Subject to the operating rules of the CS facility if the Company is bound by those rules, a transferor of shares remains the holder of the shares until the transfer is registered and the name of the transferee is entered in the register of shareholders as the owner of the shares.

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## **23. No charge**

The Company must not charge a fee to register a transfer.

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## **24. Refusal to register transfer**

24.1 If the Company is not listed on ASX, the Directors may refuse to register a transfer of shares only if:

- (a) any of clauses 15, 20 or 21 are not complied with;
- (b) the shares are not fully paid;
- (c) the Company has a lien on the shares; or
- (d) the transfer is not a proper instrument of transfer for the purpose of the Corporations Act.

24.2 If the Company is listed on ASX, the Company must not prevent, delay or interfere with the generation of a proper ASTC transfer. However, the Company may ask ASTC to apply a holding lock to prevent a proper ASTC transfer where permitted by the Corporations Act or the Listing Rules. The Company must ask for the application of such a holding lock if the Corporations Act or the Listing Rules so require.

24.3 The Directors must give notice of any refusal to the security holder and any broker lodging the transfer. The notice must set out the reason for the refusal. Failure to do so does not invalidate the decision of the Directors.

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## **25. Suspension of registration**

Subject to the Corporations Act, the Listing Rules if the Company is listed, and the operating rules of the prescribed CS facility if the Company is bound by those rules, the Directors may suspend registration of transfers of shares in the Company at the times and for the periods they decide. The periods of suspension must not exceed an aggregate total of 30 days in any calendar year.

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## **26. Company retains instrument of transfer**

26.1 The Company may keep an instrument of transfer after registration.

26.2 If demand is made within 12 months after the Company gives notice of a refusal to register and there is no allegation of fraud, the Company must return the instrument of transfer to the transferor.

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## **27. Death of shareholder**

- 27.1 If a shareholder (other than a joint shareholder) dies, the Company must recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder's shares.
- 27.2 If a shareholder who owns shares jointly dies, the Company must recognise only the survivor as being entitled to the deceased shareholder's interest in the shares.
- 27.3 Whether the deceased shareholder owned the shares solely or jointly, the estate of the deceased shareholder is not released from any liability in respect of the shares.

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## **28. Transmission**

- 28.1 If a person is entitled to shares because of a Transmission Event and gives the Directors the information they reasonably require to establish the person's entitlement:
- (a) the person may:
    - (1) by giving notice to the Company, elect to be registered as the holder of the shares; or
    - (2) by giving a completed instrument of transfer to the Company, transfer the shares to another person; and
  - (b) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the shareholder or deceased shareholder.
- 28.2 On receiving a notice under clause 28.1(a)(1), the Company must register the person as the holder of the shares.
- 28.3 A transfer under clause 28.1(a)(2) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

## **Part 5 - Proceedings of shareholders**

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### **29. One shareholder**

While the Company has only one shareholder:

- (a) it may pass a resolution by the shareholder recording it and signing the record; and
- (b) the rest of this Part does not apply.

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### **30. Annual general meetings**

Subject to the Corporations Act, the Company must hold an annual general meeting at least once in each calendar year and within 5 months after the end of its financial year.



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## **31. Who may call meetings of shareholders**

- 31.1 A Director may call and arrange a meeting of shareholders at such reasonable time and place as the Director decides.
- 31.2 The Directors may call and arrange a meeting of shareholders at such reasonable time and place as the Directors decide.
- 31.3 The Directors must call and arrange a meeting of shareholders when requested by the shareholders as specified in the Corporations Act.
- 31.4 The shareholders specified in the Corporations Act may call a meeting of shareholders.

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## **32. How to call meetings of shareholders**

- 32.1 When required by the Corporations Act, at least 28 days' notice must be given of a general meeting. If 28 days' notice is not required by the Corporations Act, at least 21 days' notice must be given of a general meeting. However, unless prohibited by the Corporations Act, the Company may call on shorter notice:
- (a) an annual general meeting, if all the shareholders entitled to attend and vote at the annual general meeting agree beforehand; and
  - (b) any other general meeting, if shareholders with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 32.2 Notice of a meeting must be given to shareholders, Directors, the auditor and, if the Company is listed on ASX, such other persons as may be required by the Listing Rules.
- 32.3 A notice of a general meeting must:
- (a) set out the place, date and time for the meeting;
  - (b) state the general nature of the meeting's business;
  - (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
  - (d) contain a statement setting out the following information:
    - (1) that the shareholder has the right to appoint a proxy;
    - (2) that the proxy need not be a shareholder of the Company; and
    - (3) that a shareholder who is entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise;
  - (e) if the Company is listed on ASX, specify a place and a fax number, and may specify an electronic address, for the purposes of receipt of proxy appointments;
  - (f) if the Company is listed on ASX, contain a proxy form in accordance with the requirements (if any) of the Listing Rules; and

- (g) contain anything else required by the Corporations Act or, if the Company is listed on ASX, the Listing Rules.
- 32.4 The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:
- (a) the consideration of the annual financial report, Directors' report and auditor's report;
  - (b) the election of Directors;
  - (c) the appointment of the auditor; or
  - (d) the fixing of the auditor's remuneration.
- 32.5 Non receipt of notice of a meeting, or failure to give proper notice of a meeting to a person entitled to receive it, does not invalidate anything done at the meeting if:
- (a) the failure was accidental;
  - (b) the person gives notice to the Company that the person waives proper notice or agrees to the thing done at the meeting; or
  - (c) the person attends the meeting and:
    - (1) does not object at the start of the meeting to the holding of the meeting; or
    - (2) if the notice omitted an item of business (including an item of business referred to in clause 32.4), does not object to the consideration of the business when it is presented to the meeting.

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### **33. The right to attend meetings**

The chairman of the meeting may refuse any person's (other than a Director) admission to a meeting or require any person (other than a Director) to leave or remain out of the meeting, without limitation, if that person:

- (a) in the opinion of the chairman, is not complying with the reasonable directions of the chairman;
- (b) has any audio or visual recording device;
- (c) has a placard or banner;
- (d) has an article the chairman considers to be dangerous, offensive or liable to cause destruction;
- (e) refuses to comply with security measures undertaken by the Company at the meeting;
- (f) behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (g) is not:
  - (1) a Director;

- (2) a member;
- (3) a proxy, attorney or representative of a shareholder; or
- (4) the auditor.

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### **34. Membership at a specified time**

For the purpose of a particular general meeting, the Directors may decide that the shareholders at a specified time before the meeting, are taken to be the shareholders at the time of the meeting.

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### **35. Quorum**

- 35.1 A quorum for a meeting of shareholders is two shareholders entitled to vote (counting joint holders of a share as one shareholder).
- 35.2 In determining whether a quorum is present, the chairman must count shareholders, proxies, attorneys, body corporate representatives and any other persons entitled to vote. However, if a shareholder has more than one proxy, attorney or body corporate representative, the chairman must count only one of them. If an individual is attending both as a shareholder and as a proxy, attorney or body corporate representative, or in any other capacity, the chairman must count them only once.
- 35.3 If a quorum is not present within 15 minutes after the time appointed for the meeting:
- (a) if the meeting was called on the request of shareholders or by shareholders, the meeting is dissolved; and
  - (b) any other meeting is adjourned to any day, time and place the Directors decide.
- 35.4 If a quorum is not present within 15 minutes after the time appointed for an adjourned meeting, the meeting is dissolved.

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### **36. Chairman**

- 36.1 The chairman of Directors is entitled to chair all meetings of shareholders.
- 36.2 If there is no chairman of Directors, or if the chairman is not present within 15 minutes after the time appointed for the meeting or is unable or unwilling to act, the deputy chairman of Directors may chair the meeting. If there is no deputy chairman, or if the deputy chairman is not present within 15 minutes after the time appointed for the meeting or is unable or unwilling to act, the Directors present must elect one of themselves to chair the meeting. If they do not do so, the shareholders present must elect a person to chair the meeting.

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### **37. Regulation of meetings**

- 37.1 Subject to the Corporations Act, the chairman may regulate the meeting of shareholders in any way consistent with this constitution. Without limitation, the chairman of a meeting of shareholders:

- (a) is responsible for the general conduct of, and the procedures to be adopted at, the meeting;
- (b) may make rulings or adjourn the meeting without putting a question (or any question) to the vote if that action is required to ensure the orderly conduct of the meeting;
- (c) may determine the procedures to be adopted for the casting or recording of votes;
- (d) may determine any dispute concerning the admission, validity or rejection of a vote at the meeting;
- (e) may terminate debate or discussion on any matter being considered at the meeting and require that matter to be put to a vote;
- (f) may refuse to allow debate or discussion on any matter which is not business referred to in the notice of meeting or is not business referred to in clause 32.4;
- (g) may refuse to allow any amendment to be moved to a resolution set out in the notice of meeting; and
- (h) may delegate to any person any power conferred by this clause 37.

37.2 The powers conferred on the chairman of a meeting of shareholders pursuant to this clause 37 shall not limit the powers otherwise conferred by law.

37.3 Unless the approval of the chairman of the meeting of shareholders is obtained, no person may move at any meeting of shareholders any resolution or any amendment of a resolution.

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## **38. Adjournment**

38.1 The chairman may adjourn a meeting of shareholders to any day, time and place with the consent of the shareholders able to vote at the meeting on a show of hands or a poll.

38.2 The chairman must adjourn a meeting of shareholders if the shareholders able to vote and holding a majority of votes at the meeting agree or direct the chairman to do so. The chairman may adjourn the meeting to any day, time and place.

38.3 When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for more than a month.

38.4 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

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## **39. How shareholders make decisions at meetings**

39.1 A meeting of shareholders makes a decision by passing a resolution. A resolution is passed if more than 50% of the votes cast by the shareholders entitled to vote are in favour of the resolution (unless the law requires a special resolution).

39.2 A special resolution is passed if:

- (a) the notice of the meeting sets out an intention to propose the special resolution and states the resolution; and

- (b) it is passed by at least 75% of the votes cast by shareholders entitled to vote on the resolution.

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## **40. How voting is carried out**

- 40.1 Unless a poll is properly requested, a resolution put to the vote at a meeting of shareholders must be decided on a show of hands.
- 40.2 If a poll is properly requested, the result of the poll is the resolution of the meeting.
- 40.3 A declaration by the chairman that a resolution is passed, or passed by a particular majority, or lost, and an entry to that effect in the minutes, are sufficient evidence of that fact, unless proved incorrect.

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## **41. Polls**

- 41.1 A poll may be requested on any resolution.
- 41.2 A poll may be requested by:
  - (a) at least five shareholders entitled to vote on the resolution;
  - (b) shareholders with at least 5% of the votes that may be cast on the resolution on a poll; or
  - (c) the chairman.
- 41.3 A poll may be requested:
  - (a) before a vote is taken;
  - (b) before the voting results on a show of hands are declared; or
  - (c) immediately after the voting results on a show of hands are declared.
- 41.4 A request for a poll may be withdrawn.
- 41.5 A poll requested on a matter other than the election of a chairman or the question of an adjournment must be taken when and how the chairman directs.
- 41.6 A poll on the election of a chairman or the question of an adjournment must be taken immediately.
- 41.7 A request for a poll does not prevent the meeting dealing with other business.

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## **42. How many votes a shareholder has**

- 42.1 Subject to the Listing Rules if the Company is listed, this constitution and any special rights or restrictions attached to a share, at a meeting of shareholders:
  - (a) on a show of hands, each shareholder present (in person, by proxy, attorney or representative) has one vote; and

- (b) on a poll, each shareholder present (in person, by proxy, attorney or representative) has:
  - (1) one vote for each fully paid share they hold; and
  - (2) a fraction of a vote for each partly paid share they hold. The fraction must be equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited). Amounts paid in advance of a call are ignored.

42.2 In the case of an equality of votes, on a resolution at a meeting of shareholders (whether on a show of hands or on a poll), the chairman of the meeting has a casting vote in addition to any vote that the chairman of the meeting has in respect of that resolution.

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

42.4 The parent or guardian of an infant shareholder may vote that infant's share, if the parent or guardian satisfies the Directors of the relationship or appointment before the meeting. If the infant's parent or guardian votes the share, the infant shareholder must not vote.

42.5 A person may vote a share if:

- (a) the person is entitled to be registered as the holder of the share because of a Transmission Event; and
- (b) the person satisfies the Directors of that entitlement before the meeting.

The shareholder must not vote a share if another person does so under this sub clause.

42.6 A shareholder must not vote a share if:

- (a) a call or other amount is presently payable in respect of the share;
- (b) the shareholder is in breach of a Restriction Agreement in respect of the share; or
- (c) the Listing Rules or the Corporations Act require the Company to disregard the shareholder's vote in respect of the share.

42.7 The chairman must disregard any vote by a shareholder who is not entitled to vote.

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### **43. Challenging a right to vote**

43.1 A challenge to a right to vote at a meeting of shareholders may only be made:

- (a) before the meeting, to the Directors; or
- (b) at the meeting, to the chairman of the meeting.

43.2 The challenge must be decided by the Directors or the chairman (as the case may be), which decision is final.

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## 44. Proxies, attorneys and representatives

44.1 A shareholder, who is entitled to vote at a meeting of shareholders, may vote:

- (a) on a show of hands:
  - (1) personally;
  - (2) by one proxy;
  - (3) by one attorney; or
  - (4) if a shareholder is a body corporate, by its representative, or by one proxy; or
- (b) on a poll:
  - (1) personally;
  - (2) if the shareholder is entitled to cast two or more votes at the meeting, by not more than two proxies;
  - (3) by one attorney; or
  - (4) if a shareholder is a body corporate, by its representative, or if the shareholder is entitled to cast two or more votes at the meeting, by not more than two proxies.

44.2 A proxy, attorney or representative need not be a shareholder of the Company.

44.3 A shareholder may appoint a proxy, attorney or representative for all or for particular meetings of shareholders.

44.4 An appointment of an attorney or representative must be in a form approved by the Directors.

44.5 An appointment of a proxy is valid if it is signed by the shareholder making the appointment and it contains the following information:

- (a) the shareholder's name and address;
- (b) the Company's name;
- (c) the proxy's name or the name of the office held by the proxy; and
- (d) the meetings at which the appointment may be used.

The chairman may decide to accept a proxy even if it contains only some of that information.

44.6 Unless otherwise specified in the appointment, the proxy, attorney or representative may:

- (a) agree to short notice for the meeting;
- (b) even if the appointment directs how to vote on a particular resolution:

- (1) vote on an amendment to the particular resolution, a motion not to put the particular resolution or any similar motion; and
  - (2) vote on a procedural motion, including a motion to elect the chairman, to vacate the chair or adjourn the meeting;
  - (c) speak at the meeting in respect of any resolution at a meeting at which the proxy, attorney or representative (as applicable) may vote;
  - (d) vote (but only to the extent allowed by the appointment); and
  - (e) request, or join in a request, for a poll on any resolution at a meeting of shareholders in which the proxy may vote.
- 44.7 If a person represents two or more shareholders, on a show of hands that person has only one vote for those shareholders voting in favour of a resolution and one vote for those voting against a resolution.
- 44.8 If a shareholder appoints two proxies or two attorneys in one instrument and both are present, on a show of hands only the first named proxy or attorney may vote.
- 44.9 The appointment may specify the proportion or number of votes that the proxy or attorney may exercise. If the shareholder appoints two proxies or two attorneys and the appointment does not specify the proportion or number of the shareholder's votes each proxy or attorney may exercise, on a poll each proxy or attorney may exercise half of the votes.
- 44.10 A later appointment of a proxy or attorney revokes an earlier one if both appointments could not be validly exercised at the meeting.
- 44.11 An appointment may specify the way a proxy or attorney is to vote on a particular resolution. A proxy may vote only as directed.
- 44.12 An appointment of a proxy is effective only if the Company receives the appointment (and any authority under which the appointment was signed or certified copy of the authority) at least 48 hours before the meeting or resumed meeting, unless the Directors decide to reduce that time. For the avoidance of doubt, where a meeting is resumed, any proxies received by the Company only apply to the items of business of the meeting which have not been resolved. The Company receives an appointment or authority when it is received at any of the following:
- (a) the Company's registered office;
  - (b) a fax number at the Company's registered office; or
  - (c) a place, fax number or electronic address specified for the purpose in the notice of meeting.

These requirements also apply to an appointment of an attorney.

- 44.13 Unless the Company receives written notice of the matter before the start or resumption of a meeting, a vote by a proxy, attorney or representative is valid even if:
- (a) there is a Transmission Event in respect of the shareholder;
  - (b) the appointment of the proxy, attorney or representative is revoked;



- (c) the shareholder revokes the authority under which the proxy was appointed by a third party; or
  - (d) the shareholder becomes an externally-administered body corporate.
- 44.14 A vote by a proxy, attorney or representative is valid even if the shareholder transfers the share for which the appointment was given, if the transfer is not registered at the time of the meeting (or at any earlier time fixed by the Directors so that shareholders at that time are taken to be shareholders at the time of the meeting).
- 44.15 A proxy or attorney may take part in a meeting of shareholders even if the appointor or representative is present. However, if the appointor or representative votes on a resolution, the proxy or attorney must not vote.

## **Part 6- Directors**

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### **45. Number of Directors**

- 45.1 There must be at least three Directors and at most eight Directors.
- 45.2 The Company in general meeting may:
- (a) increase or reduce the number of Directors; and
  - (b) decide in what rotation the increased or reduced number retires.

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### **46. Appointment of Directors**

- 46.1 The Directors may appoint a Director.
- 46.2 The Company in general meeting may appoint a Director.
- 46.3 A person is eligible for election as a Director at a general meeting only if:
- (a) the person is a Director retiring under the next clause and notifies the Company that he or she is available for re election; or
  - (b) the person has signed a consent to nomination and lodged it at the Company's registered office.

The Company must accept these notices and nominations up to 30 Business Days (the same in the case of a meeting that shareholders requested the Directors to call) before the general meeting. The Directors may decide to accept these notices and nominations closer to the date of the general meeting.

- 46.4 Subject to the Corporations Act, an employee of the Company may be appointed a Director and a Director of the Company may be appointed an employee of the Company.

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### **47. Compulsory retirement**

- 47.1 The following Directors automatically retire at the end of each annual general meeting:

- (a) any Director (other than a Managing Director – see clauses 47.4 and 65.3) appointed by the Directors since the last annual general meeting;
- (b) one third (or if that is not a whole number, the next lowest whole number) of the other Directors (not counting the Managing Director) provided that there must be at least one retiring Director; and
- (c) any Director (not counting the Managing Director) for whom this would be the third annual general meeting since their last appointment or three years since their last appointment (whichever is the longer).

47.2 The Directors who must retire under clause 47.1(b) are those Directors who have been longest in office since their initial appointment or their last election (whichever is later). If they became Directors on the same day, they may agree who retires. If they do not agree, they must select by lot who retires.

47.3 For the avoidance of doubt, a director appointed after an annual general meeting under clause 46.1, continues in office until the next annual general meeting at which that director retires under clause 47.1(a) and is eligible for re-election under clause 46.3 at that next annual general meeting. This is so despite there being an intervening general meeting that is not an annual general meeting.

47.4 This clause does not apply to the Managing Director.

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## **48. Vacation of office**

A Director ceases to be a Director if:

- (a) the Corporations Act so provides;
- (b) the Director resigns by notice to the Company;
- (c) the Company in general meeting removes the person as a Director;
- (d) the Director is absent, without the consent of the Directors, from all Directors' meetings over any six month period;
- (e) the Director becomes mentally incapable and the Director's estate or property has had a personal representative or trustee appointed to administer it; or
- (f) the Director automatically retires under the previous clause.

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## **49. Alternate Directors**

49.1 A Director may appoint an alternate for a specified period if the alternate is approved by a majority of Directors.

49.2 An appointment is only effective if:

- (a) it is in writing;
- (b) both the alternate and the appointor signs it; and

- (c) the Company is given notice of it.
- 49.3 The appointor may terminate the alternate's appointment at any time.
- 49.4 A termination is effective only if:
  - (a) it is in writing;
  - (b) the appointor signs it; and
  - (c) the Company is given notice of it.
- 49.5 The alternate need not be a shareholder or Director of the Company.
- 49.6 The alternate is entitled to notice of Directors' meetings.
- 49.7 If the appointor is not present, the alternate may:
  - (a) attend the Directors' meeting, be counted in the quorum, speak, and vote in the place of the appointor; and
  - (b) exercise any other powers (except the power to appoint an alternate) that the appointor may exercise.
- 49.8 A person may only act as an alternate for one Director.
- 49.9 If the appointor ceases to be a Director, the alternate cannot exercise the appointor's powers.
- 49.10 Where:
  - (a) an appointor ceases to be a Director; and
  - (b) that appointor's alternate purports to do an act as a Director,that act is as valid, in relation to a person dealing with the Company in good faith and for value and without actually knowing that the appointor has ceased to be a Director, as if the appointor had not ceased to be a Director.
- 49.11 The Company may pay an alternate remuneration in the amount the relevant appointor decides, in reduction of the appointor's remuneration.
- 49.12 While acting as a Director, an alternate is an officer of the Company and not the agent of the appointor.

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## **50. Remuneration**

- 50.1 The Company may remunerate each Director as the Directors decide, but the total amount of the remuneration of non-executive Directors may not exceed the amount fixed by the Company in general meeting for that purpose (if any).
- 50.2 A Director's remuneration may be any combination of:
  - (a) a stated salary;

- (b) a fixed sum for each attendance at a Directors' meeting; and
  - (c) if a non-executive Director, a share of the amount fixed under clause 50.1 of this clause, divided among them as the Directors decide and in default equally.
- 50.3 A Director's remuneration must not include a commission on, or percentage of, operating revenue.
- 50.4 A stated salary or a share of a fixed amount accrues from day-to-day.
- 50.5 The Company must also pay travelling and other expenses that a Director properly incurs on the Company's business.
- 50.6 If a Director performs extra or special services for the Company, the Company may pay to the Director any special remuneration the Directors decide, in addition to the Director's normal remuneration.
- 50.7 The Company may pay a former Director, or the estate of a Director who dies in office, a benefit for past services as the Directors decide. This must not exceed the amount permitted by the Corporations Act and the Listing Rules if the Company is listed.
- 50.8 The Company may establish or support superannuation or similar funds for the Directors, as the Directors decide or as required by law.
- 

## **51. Share qualification**

- 51.1 A Director need not be a shareholder of the Company.
- 51.2 A Director, who is not a shareholder, may still attend and speak at meetings of shareholders.
- 

## **52. Director's interests**

- 52.1 Subject to the Corporations Act and the Listing Rules if the Company is listed, a Director may:
- (a) hold an office or place of profit (except as auditor) in the Company, on any terms the Directors decide;
  - (b) hold an office or otherwise be interested in any related body corporate or other body corporate in which the Company is interested; and
  - (c) retain benefits for doing so.
- 52.2 Subject to the Corporations Act and the Listing Rules if the Company is listed:
- (a) a Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not be present during the consideration of the matter and may not vote on the matter;
  - (b) a Director (or a Spouse, parent or child of a Director or child of a Spouse, or any entity in which a Director or a Spouse, parent or child of a Director or child of a Spouse has an interest) may contract or make an arrangement with the Company (or a related body corporate or a body corporate in which the Company is interested) in any matter in any capacity;

- (c) a Director may sign for the Company, or attest the affixing of the common seal to, any document in respect of that contract or arrangement;
- (d) a Director may retain benefits under that contract or arrangement; and
- (e) the Company cannot avoid that contract or arrangement because of the Director's interest.

## **Part 7- Proceedings of Directors**

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### **53. Circulating resolutions**

- 53.1 The Directors may pass a resolution without a Directors' meeting being held, if all Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
  - 53.2 Separate copies of a document may be used for signing by Directors, if the wording of the resolution and statement is identical in each copy.
  - 53.3 The resolution is passed when the last of the Directors who approves the resolution signs.
  - 53.4 Passage of the resolution must be recorded in the Company's minute book.
- 

### **54. Meetings**

- 54.1 The Directors may meet, adjourn and otherwise regulate their meetings as they decide.
  - 54.2 A Directors' meeting may be held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw consent within a reasonable period before the meeting.
  - 54.3 If a Directors' meeting is held by telephone link up or other contemporaneous audio or audio visual communication, a Director is taken to be present unless the Director states to the chairman that the Director is disconnecting his or her telephone or communication device.
- 

### **55. Calling meetings**

- 55.1 Any Director may call a Directors' meeting.
  - 55.2 On the request of any Director, the company secretary must call a Directors' meeting.
- 

### **56. Notice**

- 56.1 Unless otherwise agreed, reasonable notice of a Directors' meeting must be given to each Director and each alternate.
  - 56.2 The notice must:
    - (a) specify the day, time and place of the meeting;
    - (b) state the general nature of the business to be transacted; and
-

- (c) be given at least 48 hours before the meeting, unless all Directors otherwise agree.
- 56.3 Non receipt of notice of a meeting, or failure to give notice of a meeting to a Director or an alternate, does not invalidate anything done at the meeting if:
- (a) the failure was accidental;
  - (b) the Director or alternate gives notice to the Company that he or she waives the notice or agrees to the thing done at the meeting; or
  - (c) the Director or alternate attends the meeting.
- 

## **57. Quorum**

- 57.1 The quorum for a Directors' meeting is two Directors, unless the Directors otherwise decide.
- 57.2 In determining whether a quorum is present, the chairman must count alternates. If a Director is also an alternate, the chairman must count the Director as a Director and separately as an alternate. Despite anything else in this clause 57.2, there must always be at least two persons actually present to form a quorum.
- 57.3 In determining whether a quorum is present, the chairman must not count a Director if he or she is not entitled to vote on a particular resolution under the Corporations Act, the Listing Rules or under this constitution.
- 57.4 If there are not enough Directors in office to form a quorum, the remaining Directors may act only:
- (a) to increase the number of Directors to a quorum;
  - (b) to call a general meeting of the Company; or
  - (c) in an emergency.
- 

## **58. Chairman and deputy chairman**

- 58.1 The Directors may elect a Director as chairman for any period they decide.
- 58.2 The Directors may elect a Director as deputy chairman for any period they decide.
- 58.3 The Directors may remove the chairman or deputy chairman.
- 58.4 The Directors may decide that either office is an extra or special service for the Company, for the purpose of deciding special remuneration.
- 58.5 The chairman is entitled to chair each Directors' meeting.
- 58.6 If there is no chairman, or if the chairman is not present within 10 minutes after the time appointed for the meeting or is unable or unwilling to act, the deputy chairman may chair the Directors' meeting. If there is no deputy chairman, or if the deputy chairman is not present within 10 minutes after the time appointed for the meeting or is unable or unwilling to act, the Directors present must elect one of themselves to chair the meeting.
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- 58.7 If the chairman is unable or unwilling to chair a part of the meeting, the deputy chairman may chair that part. If there is no deputy chairman, or the deputy chairman is unable or unwilling to act, the Directors present must elect one of themselves to chair that part.
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## **59. Decisions of Directors**

- 59.1 Subject to the Corporations Act, each Director has one vote.
- 59.2 If a Director is also an alternate, the Director has one vote as a Director and one vote as an alternate.
- 59.3 A resolution of the Directors is passed by a majority of votes cast.
- 59.4 Subject to the Listing Rules if the Company is listed, the chairman has a casting vote.

## **Part 8 - Directors' powers**

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### **60. General powers**

- 60.1 The business of the Company is managed by or under the direction of the Directors.
- 60.2 The Directors may exercise all the powers of the Company except any powers that the Corporations Act or this constitution requires the Company to exercise in general meeting.
- 

### **61. Execution of documents**

- 61.1 The Company may execute a document without a common seal if the document is signed by:
- (a) two Directors of the Company; or
  - (b) a Director and a company secretary of the Company.
- 61.2 If the Company has a common seal, it may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:
- (a) two Directors of the Company; or
  - (b) a Director and a company secretary of the Company.
- 61.3 The Company may execute a document if authorised by the Directors or by a committee of Directors authorised by the Directors to do so. The Directors may also authorise particular persons or classes of persons to execute documents on behalf of the Company subject to such limitations as the Directors decide.
- 61.4 The Directors may decide, generally or in a particular case, that any two Directors or any Director and company secretary may sign certificates for securities of the Company by mechanical or other means.
- 61.5 This clause does not limit the ways in which the Directors may decide that the Company may execute a document (including a deed).

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## **62. Negotiable instruments**

The Directors may decide how negotiable instruments (including cheques) may be signed, drawn, accepted, endorsed or otherwise executed.

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## **63. Committee and delegate**

- 63.1 The Directors may delegate any of their powers (including this power to delegate) to a committee of Directors or to one Director.
- 63.2 The Directors may revoke or vary that delegation.
- 63.3 A committee or delegate must exercise the powers delegated subject to any directions of the Directors. The effect of the committee or delegate exercising a power in this way is the same as if the Directors exercised it.
- 63.4 Part 7 applies with the necessary changes to meetings of a committee.
- 63.5 The Directors may decide that membership of a committee or acting as a delegate is an extra or special service for the Company, for the purpose of deciding special remuneration.

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## **64. Attorney and agent**

- 64.1 The Directors may appoint any person to be the attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) the Directors decide.
- 64.2 The Directors may delegate any of their powers (including the power to delegate) to an attorney or agent.
- 64.3 The Directors may revoke or vary:
- (a) the appointment; or
  - (b) any power delegated to the attorney or agent.

## **Part 9 - Executive officers**

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## **65. Managing Director**

- 65.1 The Directors may appoint one of themselves or another person as managing Director, for any period and on any terms (including as to remuneration) the Directors decide.
- 65.2 Subject to any agreement between the Company and the managing Director, the Directors may remove or dismiss the managing Director at any time, with or without cause.
- 65.3 The managing Director will not be subject to retirement by rotation.
- 65.4 The Directors may delegate any of their powers (including the power to delegate) to a managing Director.
- 65.5 The Directors may revoke or vary:



- (a) the appointment; or
- (b) any power delegated to the managing Director.

65.6 A managing Director must exercise the powers delegated subject to any directions of the Directors. The effect of the managing Director exercising a power in this way is the same as if the Directors exercised it.

65.7 A person automatically ceases to be managing Director if the person ceases to be a Director or an executive of the Company.

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## 66. Executive Director

66.1 A person who is an executive Director (including a managing Director) does not automatically cease to be a Director if the person ceases to be an executive of the Company.

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## 67. Company secretary

67.1 The Directors may appoint one or more company secretaries, for any period and on any terms (including as to remuneration) the Directors decide.

67.2 Subject to any agreement between the Company and the company secretary, the Directors may remove or dismiss the company secretary at any time, with or without cause.

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## 68. Indemnity

68.1 To the extent permitted by the Corporations Act, the Company:

- (a) must indemnify each person who is or has been an Officer of the Company against any liability incurred by the person as an Officer of the Company; and
- (b) may pay a premium for a contract insuring an Officer of the Company against that liability.

68.2 Subject to the Corporations Act, the Company may enter into an agreement or deed with an Officer under which the Company must do all or any of the following:

- (a) keep a set of the Company's books (including minute books) and allow the Officer and the Officer's advisers access to the books for any period agreed;
- (b) indemnify the Officer against any liability incurred by the Officer as an Officer; and
- (c) keep the Officer insured for any period agreed in respect of any act or omission by the Officer while an Officer.

68.3 In this clause, **Officer** means an officer of the Company or of a subsidiary of the Company or both.

## Part 10 – Dividends

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### 69. Who may determine Dividend

69.1 Subject to any special rights or restrictions attached to a share, the Directors may pay Dividends as they decide.

69.2 The Directors may determine that a Dividend will be payable on a share and fix:

- (a) the amount;
- (b) the time for payment; and
- (c) the method of payment.

The methods of payment may include the payment of cash, the issue of shares or other securities, the grant of options and the transfer of assets.

69.3 If the Directors do not exercise their power under this clause, the Company in general meeting may.

---

### 70. Dividends for different classes

Dividends may be paid:

- (a) on shares of one class but not another; and
- (b) at different rates for different classes.

---

### 71. Dividends proportional to paid up capital

71.1 Subject to any special rights or restrictions attached to a share:

- (a) the holder of a fully paid share is entitled to the full Dividend on the share (whether the issue price was paid or credited or both); and
- (b) the holder of a partly paid share is not entitled to a greater proportion of a Dividend than the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited) on the share.

71.2 Amounts paid or credited as paid in advance of a call are ignored.

---

### 72. Transfers before payment of Dividend

Subject to the Listing Rules if the Company is listed, the Directors may fix a record date to identify shareholders entitled to a Dividend. A transferee of shares is entitled to a Dividend on the shares only if:

- (a) the Directors fix a record date and the transfer is registered or left with the Company for registration on or before the record date; or

- (b) the Directors do not fix a record date and the transfer is registered or left with the Company for registration on or before the date the Directors pass the resolution that a Dividend will be payable.
- 

### **73. No interest**

Interest is not payable on a Dividend.

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### **74. Calls**

The Directors may deduct from a Dividend payable to or for a shareholder any money presently payable by the shareholder to the Company for calls or otherwise in respect of any shares held by the shareholder.

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### **75. Capitalising profits**

- 75.1 The Directors may capitalise any profits and distribute that capital to the shareholders, in the same proportions as the shareholders are entitled in a distribution by Dividend.
- 75.2 The Directors may decide to apply that capital in either or both of the following ways:
- (a) in paying up amounts unpaid on shares already issued; or
  - (b) in paying up in full any unissued shares or other securities in the Company.
- 75.3 The shareholders must accept that application of capital in full satisfaction of their interests in the capital.
- 

### **76. Transfer of assets**

The Directors may settle any problem about a distribution under this Part in any way. This may include:

- (a) rounding up or down amounts to the nearest whole number;
  - (b) ignoring fractions;
  - (c) valuing assets for distribution;
  - (d) paying cash to any shareholder on the footing of the valuation of the assets; or
  - (e) vesting assets in trustees on trust for the shareholders entitled.
- 

### **77. Notice of Dividend**

The Company must give to the shareholders notice of any Dividend.

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### **78. Payments**

- 78.1 The Company may pay Dividends and other amounts in respect of a share, at the sole discretion of the Directors:
-

- (a) by crediting a financial institution account authorised by the shareholder; or
- (b) by cheque or warrant posted to:
  - (1) the address of the holder of the share shown in the register of shareholders;
  - (2) if joint holders, to the address (shown in the register of shareholders) of the holder named first in the register of shareholders; or
  - (3) to any other address which the holder or joint holders direct in writing.

78.2 A cheque may be made payable to bearer or to the order of the shareholder or any other person the shareholder directs.

78.3 Any joint holder of a share may give an effective receipt for the Dividend or other amounts paid in respect of the share.

---

## **79. Dividend reinvestment plan**

The Directors may:

- (a) implement a dividend reinvestment plan on any terms, under which the Dividends of participants are applied in subscribing for securities of the Company or a related body corporate; and
- (b) amend, suspend or end the plan.

---

## **80. Dividend selection plan**

The Directors may:

- (a) implement a dividend selection plan on any terms, under which participants may choose:
  - (1) to receive a Dividend from the Company derived from a particular source; or
  - (2) to forego a Dividend from the Company in place of another distribution from the Company or another body corporate or a trust; and
- (b) amend, suspend or end the plan.

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## **81. Unclaimed Dividends**

The Directors may invest unclaimed Dividends for the benefit of the Company, until they are claimed or dealt with under a law about unclaimed money.

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## **82. Restricted securities**

A shareholder is not entitled to a Dividend on restricted securities (within the meaning of the Listing Rules) under a current Restriction Agreement, while in breach of that Restriction Agreement.

## Part 11 - Winding up

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### 83. Distribution of assets

Subject to any special rights or restrictions attached to shares:

- (a) if on a winding up there are enough assets to repay all capital to shareholders, all capital must be repaid to the shareholders and any surplus must be distributed among the shareholders in proportion to the amounts paid on their respective shares before the winding up began; or
  - (b) if on a winding up there are not enough assets to repay all capital to shareholders, the available assets must be distributed among the shareholders in proportion to the amounts paid on their respective shares before the winding up began (without the necessity of a call up).
- 

### 84. Distribution of property in kind

84.1 Subject to any special rights or restrictions attached to shares, on a winding up, the liquidator may, with the sanction of a special resolution of shareholders:

- (a) distribute among the shareholders the whole or any part of the property (in its actual state) of the Company; or
- (b) decide how to distribute the property as between the shareholders or different classes of shareholders.

84.2 The liquidator may settle any problem about a distribution under this clause in any way. This may include:

- (a) rounding up or down amounts to the nearest whole number;
- (b) ignoring fractions;
- (c) valuing assets for distribution;
- (d) paying cash to any shareholder on the footing of the valuation of the assets;
- (e) vesting assets in a trustee on trust for the shareholders entitled; or
- (f) capitalising profits and distributing capital as if the liquidator were the Directors.

84.3 A shareholder need not accept a security carrying a liability.

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### 85. Restricted shares

Restricted shares, under a Restriction Agreement current at the start of the winding up, must rank behind all other shares in the repayment of capital on a winding up.

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## **86. Commissions**

- 86.1 The Company must not pay to a Director, the Directors or a liquidator a commission or fee for sale of assets on a winding up, unless approved by the shareholders.
- 86.2 The Company must notify the shareholders of the amount of the proposed commission or fee and the percentage of the total available assets the proposed commission or fee represents in the notice of the shareholders' meeting.

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## **Part 12 – Records**

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### **87. Register**

The Company must keep a register of shareholders in accordance with the Corporations Act.

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### **88. Branch registers**

- 88.1 The Company may keep a branch register of shareholders in any place.
- 88.2 The Directors may regulate the transfer of shares among the main register of shareholders and branch registers of shareholders.
- 

### **89. Inspection**

The Company must allow inspection of any register of shareholders only as required by the Corporations Act.

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### **90. Evidence of register**

Unless proved incorrect, the register of shareholders is sufficient evidence of the matters shown in the register.

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### **91. Minute book**

- 91.1 The Company must keep minute books in which it records within one month:
- (a) proceedings and resolutions of meetings of the members;
  - (b) proceedings and resolutions of Directors' meetings (including meetings of a committee of Directors);
  - (c) resolutions passed by members without a meeting; and
  - (d) resolutions passed by Directors without a meeting.
- 91.2 The Company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by one of the following:
- (a) the chair of the meeting; or
  - (b) the chair of the next meeting.

- 91.3 The Company must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.
- 

## **92. Evidence of minutes**

A minute that is so recorded and signed is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

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## **93. Financial records**

- 93.1 The Company must keep the financial records required by the Corporations Act.
- 93.2 The financial records must be audited as required by the Corporations Act.
- 

## **94. Inspection**

Unless authorised by the Directors or the Company in general meeting or the Corporations Act, a shareholder is not entitled to inspect the Company's books.

# **Part 13 - Notices and interpretation**

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## **95. In writing**

Notice must be in writing and in English, and may be given by an authorised representative of the sender.

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## **96. Notice to shareholders**

- 96.1 The Company may give notice to a shareholder:
- (a) personally;
  - (b) by sending it by post to the address of the shareholder in the register of shareholders or the alternative address (if any) nominated by the shareholder; or
  - (c) by sending it to the fax number or electronic address (if any) nominated by the shareholder.
- 96.2 The Company may give notice to a person entitled to a share because of a Transmission Event in the same ways.
- 96.3 Notice to joint shareholders must be given to the joint shareholder named first in the register of shareholders.
- 96.4 Notice to a person, entitled to a share because of a Transmission Event, is taken to be notice to the shareholder.
- 96.5 A notice to a shareholder is sufficient, even if the shareholder (whether or not a joint shareholder) is dead, mentally incapacitated, an infant, bankrupt or an externally-administered body corporate, and the Company has notice of that event.
-

96.6 A person, entitled to a share because of a transfer, Transmission Event or otherwise, is bound by every notice given in respect of the share.

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## **97. Notice to Directors**

The Company may give notice to a Director or alternate Director:

- (a) personally;
  - (b) by sending it by post to the Director's or alternate Director's usual residential or business address or any other address nominated by them;
  - (c) if a notice calling a meeting - by sending it to the fax or electronic address (if any) nominated by the Director or alternate, only if all the Directors have consented to the use of that technology; or
  - (d) if any other kind of notice - by sending it to the fax or electronic address (if any) nominated by the Director or alternate.
- 

## **98. Notice to the Company**

A person may give notice to the Company:

- (a) by leaving it at the Company's registered office;
  - (b) by sending it by post to the Company's registered office; or
  - (c) by sending it to the fax or electronic address (if any) of the Company's registered office.
- 

## **99. Addresses outside Australia**

A notice sent by post to or from a place outside Australia must be sent by air mail.

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## **100. Time of service**

100.1 A notice sent by post within Australia is taken to be given one day after posting.

100.2 A notice sent by post to or from a place outside Australia is taken to be given two days after posting.

100.3 A notice sent by fax, or other electronic means, is taken to be given on the Business Day after it is sent (if the sender's transmission report shows that the whole notice was sent to the correct facsimile number).

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## **101. Listing Rules**

If the Company is listed on ASX:

- (a) notwithstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act must not be done;
-



- (b) nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision;
- (e) if the Listing Rules require this constitution not to contain a provision and it contains such a provision, this constitution is deemed not to contain that provision; and
- (f) if any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is deemed not to contain that provision to the extent of the inconsistency.

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## 102. Operating rules of CS facility

The Company must comply with the operating rules of the prescribed CS facility if the Company is bound by those rules.

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## 103. Interpretation

In this constitution, unless the context otherwise requires:

- (a) subject to the next clause, a word or phrase has the same meaning as it has in the Corporations Act;
- (b) singular includes plural and plural includes singular;
- (c) words of one gender include any other gender;
- (d) reference to legislation includes any amendment to it, any legislation substituted for it, and any statutory instruments issued under it and in force;
- (e) reference to a person includes a corporation, a firm and any other entity;
- (f) headings do not affect interpretation; and
- (g) the Company must not exercise any power in contravention of the Corporations Act or the Listing Rules if the Company is listed or the operating rules of the CS facility, if applicable.

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## 104. Definitions

In this constitution:

**AEST** means New South Wales Standard Time in accordance with the Standard Time Act 1987 (NSW);

**ASX** means Australian Stock Exchange Limited and any successor body;

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

**ASTC** means the ASX Settlement and Transfer Corporation Pty Limited and/ or any other settlement and transfer clearing house operated under, or contemplated by, the Listing Rules;

**Business Day** means Monday to Friday inclusive, except New Year's Day, Good Friday, Easter Monday, Christmas Day and Boxing Day in Australia according to AEST, and any other day that ASX declares is not a business day;

**Company** means the company named in clause 1 (as that name may be changed from time to time);

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

**Directors** means the directors of the Company and may include an alternate director;

**Dividend** means a dividend paid or to be paid by the Company and includes, without limitation, interim dividend and bonus;

**Listing Rules** means the listing rules of ASX and any other rules of ASX which are applicable while the Company is listed on ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX;

**Restriction Agreement** means a restriction agreement within the meaning of the Listing Rules;

**Spouse** of a person means:

- (a) that person's husband, wife, widow or widower (whether or not remarried); or
- (b) anyone else who, although not legally married to that person, in the Directors' opinion, lives or lived with that person on a genuine domestic basis as the husband or wife of that person; and

**Transmission Event** means:

- (c) if the shareholder is an individual - death, bankruptcy, or becoming of unsound mind or becoming a person whose property is liable to be dealt with under a law about mental health; or
- (d) if the shareholder is a body corporate - the deregistration or winding up of the shareholder or the succession by another body corporate to the assets and liabilities of the shareholder.

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## **Schedule 1 – Terms of preference shares**

### **1. Entitlement to dividend**

- 1.1 Subject to clause 1.3 of this Schedule, the holders of preference shares may have rights to cumulative or non-cumulative dividends and such rights to participate in profits of the Company, and in such priority as determined by the Directors before the issue of those preference shares and described in the terms of issue.
- 1.2 The terms of issue of preference shares may provide that to the extent that an amount is paid to a holder of preference shares other than by way of dividend paid by the Company, the amount of any dividend otherwise payable to the holder in respect of the preference shares reduces in a manner specified in the terms of issue.
- 1.3 For as long as the Company is Listed, holders of preference shares must have dividends at a commercial rate (as determined by the Directors) in preference to ordinary shares.

### **2. Priority as to Dividend**

Subject to clause 1.3 of this Schedule, the holders of preference shares will rank for payment of dividends in relation to other shares or other classes of preference shares in such manner as determined by the Directors before the issue of those preference shares and described in the terms of issue.

### **3. Entitlement to Arrears and Accrued Dividends in a winding Up or Redemption**

- 3.1 Where the holder of a preference share has a right to cumulative dividends, the holder will have the right on redemption or in a winding up to payment of an amount equal to all arrears of or accrued dividends down to the date of redemption or of commencement of the winding up (as the case may be), whether earned or declared or not, with the same priority in relation to other shares or other classes of preference shares as applies under clause 2 of this schedule.
- 3.2 Where the holder of a preference share has a right to non-cumulative dividends, and unless the terms of issue provide otherwise, the holder will have the right on redemption or in a winding up to payment of an amount equal to any dividend accrued but unpaid for the period commencing on the dividend date which has then most recently occurred and ending on the date of redemption or of commencement of the winding up (as the case may be), whether earned or declared or not, with the same priority in relation to other shares or other classes of preference shares as applied under clause 2 of this schedule.

### **4. Entitlement to Payment of a Capital Sum in a Winding Up**

With respect to payment in a winding up, the holders of the preference shares may have such rights to payment in cash of the capital paid, such rights to participate in the surplus assets or profits of the Company, and such rights to payment in cash of a sum fixed by the Directors before issue or capable of determination pursuant to a mechanism adopted by the Directors before issue, as determined by the Directors before the issue of those preference shares and described in the terms of issue.

## **5. Priority of Payment of a Capital Sum in a Winding Up**

- 5.1 Subject to clause 5.2 of this Schedule, the rights of the holders of the preference shares with respect to priority of payment of the sum payable to those holders under clause 4 of this schedule in a winding up in relation to other shares or other classes of preference shares, will be as determined by the Directors before the issue of those preference shares and described in the terms of issue.
- 5.2 For as long as the Company is Listed, holders of preference shares must be entitled to return of capital in preference to holders of ordinary shares when the Company is wound up or ended.

## **6. Voting Rights**

- 6.1 The holders of preference shares have the right to vote in respect of the preference share:
- (a) during a period during which a dividend (or part of a dividend) in respect of the preference share is in arrears;
  - (b) on a proposal to reduce the Company's share capital;
  - (c) on a resolution to approve the terms of a buy-back agreement;
  - (d) on a proposal that affects rights attached to the preference share;
  - (e) on a proposal to wind up the Company;
  - (f) on a proposal for the disposal of the whole of the Company's property, business and undertaking; and
  - (g) during the winding up of the Company.
- 6.2 Subject to the Listing Rules, other than in the circumstances set out in clause 6.1 of this schedule, the holder of preference shares has no right to vote.

## **7. Voting on a poll**

The number of votes which may be cast on a poll by the holders of preference shares present in person or by proxy, attorney or representative where the holders of those preference shares are entitled to vote will be one vote per preference share, unless otherwise determined by the Directors or capable of determination by a mechanism adopted by the Directors before the issue of those preference shares and described in the terms of issue.

## **8. Certificate or Statement for preference shares**

- 8.1 Prior to the issue of any preference shares, the Directors will determine with respect to those shares the following matters or the manner in which those matters will be determined:
- (a) where the preference shares are redeemable,
    - (1) whether the redemption is at the option of the Company, the holder or a combination of both;

- (2) the amount payable on redemption;
  - (3) the redemption date;
  - (4) the time, place and manner of redemption; and
  - (5) the triggering event or circumstances or other conditions for exercise of the rights of redemption by the Company, the holder or both;
- (b) in any case,
- (1) the rate or amount of dividends (including any additional dividends) at any time or from time to time, the basis (if any) upon which the amount of a dividend will be increased to take account of tax or other fiscal impost and the basis (if any) upon which the amount of any dividend otherwise payable in respect of the preference shares reduces by reference to other amounts paid to the holder of the preference shares;
  - (2) the times or circumstances for payment of dividends on the preference shares;
  - (3) the periods in respect of which the dividends are payable;
  - (4) the funds out of which the dividends are to be payable;
  - (5) the currency (if not Australian currency) in which dividends or capital or both are to be paid;
  - (6) whether or not the issue of further shares ranking equally with or in priority to the preference shares in any or in any stated respect is permitted;
  - (7) whether the preference share is convertible into a share or shares of another class and, if so, in what circumstances and the terms and conditions of such conversion;
  - (8) the terms and conditions on which holders of the preference shares have a right (if any) to a bonus issue or capitalisation of profits in favour of holders of those preference shares only;
  - (9) if applicable, the mechanism adopted by the Directors in determining the rights to payment of a sum in a winding up as referred to in clause 4 of this schedule;
  - (10) if applicable, the mechanism adopted by the Directors in determining the number of votes per preference share as referred to in clause 7 of this schedule;
  - (11) such other matters as the Directors may determine,

and will, if they determine to issue a Certificate (**Certificate**) in respect of those preference shares, at the time of allotment issue a Certificate which will

state or make provision for those matters insofar as applicable to those preference shares.

8.2 If the Directors determine not to issue a certificate in respect of those preference shares, at the time of allotment the Company will issue a statement (**Statement**) which will state or make provision for those matters insofar as applicable to those preference shares.

8.3 A copy of the Certificate or Statement applicable to any class of preference shares issued by the Company will be retained on the Register and be available for inspection at any time during business hours.

## 9. General rights to notices and reports

Preference shares will confer upon the holders of those preference shares the same rights as those conferred by this constitution upon the holders of ordinary shares as regards receiving notices of general meetings, reports, balance sheets and accounts and of attending and being heard at all general meetings of the Company.

## 10. Resolution of Inconsistencies

If there is an inconsistency between any or all of the provisions of clause 5 of the constitution of which this Schedule forms part, this Schedule and the terms of issue of preference share, the provisions will prevail in the following descending order of priority to the extent of the inconsistency:

- (a) clause 5 of the constitution;
- (b) this Schedule; and
- (c) the Terms of Issue.

## 11. Definitions and Interpretations

11.1 In this Schedule 1, unless the context otherwise requires, **Listed** means being admitted to the official list of the ASX;

11.2 Otherwise, terms and expressions given a meaning in clause 104 of the constitution of which this Schedule is part, have the same meaning when used in this Schedule 1.