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Constitution

Statuts
Traduction partielle

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Contents

AW Edwards Pty Ltd (Company)

A company limited by shares

Constitution

1. Definitions

In this Constitution:

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

Alternate Director means a person appointed as an alternate director under clause 9.15.

Appointing Document has the meaning given in clause 8.8.4.

Business Day means a day other than a Saturday, Sunday or public holiday in Sydney, New South Wales, Australia.

Call means a demand for payment by the Company of an amount unpaid on a Share, and **Called** has a corresponding meaning.

Claim means any action, claim, demand or proceeding.

Class Meeting has the meaning given in clause 8.10.1.

Directors means the directors of the Company from time to time and **Director** means any one of them.

Distributions has the meaning given in clause 11.1.1(a).

Indemnified Loss means, in relation to any fact, matter or circumstance:

(a) all Loss arising out of or in connection with that fact, matter or circumstance; and

(b) all legal and other professional expenses on a solicitor-client basis incurred in defending or resisting (or otherwise in connection with) proceedings, whether criminal, civil, administrative or investigatory in nature arising out of or connected with the fact, matter or circumstance.

Law includes:

(a) any law, regulation, authorisation, ruling, judgment, order or decree of any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity in Australia; and

(b) any statute, regulation, proclamation, ordinance or by-law in Australia.

Loss means damage, liability, action, loss, charge, cost or expense.

Officer means:

(a) a Director, Alternate Director, Secretary or executive officer of the Company; and

(b) other officers of the Company or a related body corporate of the Company as the Directors may decide.

Option means an option or other right to call for the issue of a Share.

Register means the register of Shareholders required to be kept under the Act and includes a branch register (if applicable).

Representative means, in relation to a body corporate, a person authorised by the body corporate to act as its representative as allowed by the Act.

Secretary means a secretary of the Company.

Share means a share in the share capital of the Company.

Shareholder means a person that holds Shares.

Terms of Issue means the rights and any restrictions attaching to a Share or an Option issued under clause 3 and includes any rights and restrictions in relation to a Share or an Option under any employee share scheme.

Transmission Event means:

(a) in respect of a Shareholder who is a natural person:

(i) the Shareholder's death;

(ii) the Shareholder's bankruptcy; or

(iii) any other circumstances where title in a Share vests in another person by operation of Law; and

(b) in respect of a Shareholder which is a body corporate, the deregistration of the Shareholder in the jurisdiction in which it is registered or the succession by another body corporate to the assets and liabilities of the Shareholder by operation of Law.

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2. Constitution

2.1 Application of the Act

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

2.1.2 An expression in a clause of this Constitution that deals with a matter which is dealt with by a provision of the Act or which is defined in the Act has the same meaning as in the Act, unless that expression is given a different meaning in this Constitution.

2.2 Inconsistency

Where:

2.2.1 the Act; or

2.2.2 any Terms of Issue;

confer a right on a Shareholder or on another person, impose a restriction on exercise of rights or powers or require that a particular procedure be followed before:

2.2.3 any right or power under this Constitution is exercised;

2.2.4 any resolution is passed; or

2.2.5 any other thing is done by the Company, the Officers or the Shareholders,

then the provisions of this Constitution will be subject to the exercise of that right or restriction and the Company, Officers and Shareholders must comply with any procedure that is required to be followed.

3. Share capital

3.1 Issue of Shares

3.1.1 The Company may issue Shares and grant Options and decide the rights and restrictions attaching to those Shares and Options.

3.1.2 The Company may require the holders of partly paid Shares to pay Calls in different amounts and at different times.

3.2 Share certificates

3.2.1 Each Shareholder is entitled to receive a certificate in respect of the Shares held by that Shareholder. The certificate will be in the form decided by the Directors.

3.2.2 Each certificate must specify the number of Shares in relation to which it is issued and the amount paid up on those Shares.

3.2.3 The Company is only required to deliver a certificate to one joint holder of a Share.

3.2.4 If a certificate is defaced, lost or destroyed, the Directors may issue a new certificate on any terms the Directors think are appropriate.

3.3 Variation of class rights

3.3.1 The rights attached to a class of Shares may be varied as allowed by the Act.

3.3.2 The rights of a particular class of Shares (**Relevant Class Shares**) are not varied just because of the:

(a) issue of further Shares in the same class as the Relevant Class Shares; or

(b) creation or issue of further classes of Shares ranking equally with the Relevant Class Shares.

3.4 Power to alter Share capital

3.4.1 The Company may reduce its share capital, buy back its Shares or convert any Shares in any manner allowed by the Act.

3.4.2 Where fractions of Shares are or would be created by a reduction, buy back or conversion under clause 3.4.1, the Directors may:

(a) issue fractional certificates for those Shares;

(b) decide that fractions of Shares are to be disregarded or rounded down to the nearest whole Share; or

(c) decide that fractions of Shares are to be rounded up to the nearest whole Share by capitalising any amount available for capitalisation, even though only some of the Shareholders may participate in that capitalisation.

4. Interests in Shares

4.1 Joint holders of Shares

4.1.1 Where 2 or more persons are registered as the joint holders of a Share, they hold the Share as joint tenants with rights of survivorship.

4.1.2 The joint holders of a Share are jointly and severally liable for all Calls and other payments in respect of the Share.

4.2 Notice of equitable and other claims

4.2.1 The Company is not required to recognise:

(a) a person as holding a Share on any trust; or

(b) any claim to or interest in a Share, except an absolute right of ownership in the registered holder,

even if the Company has notice of the trust, claim or interest, unless a Law expressly requires the Company to do so.

4.2.2 The Directors may register a transfer of a Share signed by a Shareholder prior to a Transmission Event even if the Company has notice of the Transmission Event.

4.3 Lien on shares

4.3.1 The Company has a first lien on each Share, the proceeds of sale of that Share (if sold by the Company under clause 5.6) and all Distributions, for:

(a) all unpaid Calls and instalments due on that Share if the Share is partly paid;

(b) any amounts outstanding under loans made by the Company to acquire the Share under an employee incentive scheme (to the extent allowed by the Act);

(c) all amounts which the Company has paid to third parties where the Company was required to pay that amount by a Law; and

(d) all interest and expenses due and payable to the Company in relation to any unpaid amounts.

4.3.2 The Company's lien on a Share is released if a transfer of the Share is registered by the Company without the Company giving notice of the lien to the transferee.

5. Calls and forfeiture

5.1 Payment of Calls

5.1.1 Each Shareholder must pay a Call to the Company in the amount and at the times required by the Terms of Issue.

5.1.2 Unless the Terms of Issue say otherwise, each Shareholder must pay a Call to the Company in accordance with a notice given under clause 5.2.3.

5.1.3 A Shareholder must still pay a Call even if the Company failed to give notice of the Call to a Shareholder or a Shareholder did not receive the notice.

5.2 Making of Calls

5.2.1 The Company may make Calls on a Shareholder for any amount unpaid on a Share.

5.2.2 The Company may:

(a) make a Call payable by instalments;

(b) revoke or postpone a Call;

(c) extend the time for payment of a Call; or

(d) waive all or any of the Company's rights under this clause 5, either unconditionally or on any terms the Directors think are appropriate.

5.2.3 The Company must give a notice to each Shareholder required to pay a Call:

(a) at least 10 Business Days before the payment is required to be made; and

(b) specifying the amount to be paid, the method of payment and the date on which payment is due.

5.3 Interest and other amounts

5.3.1 If a Shareholder does not pay a Call in full by the date payment is due, the Shareholder must pay to the Company on demand:

(a) interest on the unpaid amount from the date payment is due to the date payment is made, at the rate referred to in clause 5.3.2; and

(b) all Loss of the Company arising from the failure by the Shareholder to pay the Call.

5.3.2 The rate of interest payable to the Company under clause 5.3.1 is:

(a) the rate (if any) the Directors have decided for these purposes; or

(b) if the Directors have not made any decision in relation to a rate of interest, a rate per annum 2% higher than the rate prescribed in respect of unpaid judgments in the Supreme Court of NSW.

5.3.3 Interest payable under clause 5.3.1 accrues daily and may be capitalised monthly or at such intervals as the Directors decide.

5.4 Forfeiture of partly paid shares

5.4.1 If a Shareholder has not paid a Call in full by the date payment is due, the Company may serve a notice on that Shareholder:

(a) requiring payment of the unpaid amount, together with any amounts required to be paid under clause 5.3, by a date not earlier than 10 Business Days after the date of the notice; and

(b) stating that, the Company may forfeit the Share if the amount payable under clause 5.4.1(a) is not paid by the time stated.

5.4.2 If the Shareholder does not pay the amount demanded by a notice given under clause 5.4.1 by the required date, the Company may forfeit the relevant Share.

5.5 Effect of forfeiture

5.5.1 If a Share is forfeited:

(a) notice of the forfeiture must be given to the relevant Shareholder immediately before the forfeiture is registered; and

(b) the forfeiture must be entered in the Register.

5.5.2 Failure to give notice or enter the forfeiture in the Register does not invalidate the forfeiture.

5.5.3 A forfeited Share becomes the property of the Company.

5.5.4 A Shareholder whose Share has been forfeited:

(a) ceases to be a Shareholder in relation to the forfeited Share; and

(b) has no Claim against the Company or any other right or entitlement in relation to the Share, except any rights provided by the Act or specifically provided for in this Constitution.

5.6 Disposal of forfeited Shares

5.6.1 The Company may sell, re-issue or otherwise dispose of, or cancel, a Share which has been forfeited under clause 5.4.

5.6.2 The proceeds of the sale of a forfeited Share must be used to pay:

(a) first, the expenses of the sale; and

(b) second, all amounts payable (whether presently or not) by the former holder of the Share to the Company.

5.6.3 Any amounts remaining after the payments under clause 5.6.2 have been made must be paid to or at the direction of the former holder, on the former holder delivering to the Company the certificate for the Share or other evidence the Directors require to prove title to the amounts.

5.6.4 The Company will not be liable to pay any interest on money payable under this clause 5.6 to a former holder of a Share.

5.6.5 A written statement by a Director or Secretary that a Share has been:

(a) forfeited under clause 5.4; or

(b) sold, reissued, cancelled or otherwise disposed of under this clause 5.6,

on a stated date is conclusive evidence of:

(c) the facts stated as against all persons claiming to be entitled to the Share; and

(d) the right of the Company to forfeit, sell, re-issue, cancel or otherwise dispose of the Share.

6. Transfer of shares

6.1 Transfer of shares

6.1.1 A Shareholder may transfer any of its Shares by a transfer document in any usual form or in any other form approved by the Directors.

6.1.2 A transfer document must be:

(a) executed by the Shareholder and the transferee; and

(b) stamped, if required by Law.

6.1.3 The transfer document must be left for registration at the registered office of the Company, or at another place the Directors decide, with:

(a) the certificate for the Shares being transferred (if any); and

(b) any other evidence the Directors require to prove the Shareholder's right to the Shares and the right of the transferee to be registered as the holder of the Shares.

6.1.4 Subject to clause 6.2, the Directors must register a transfer document that complies with this clause 6.1. The Directors must retain the transfer document.

6.1.5 The Company must not charge a fee for registering a transfer of a Share.

6.2 Power to decline or suspend registration of transfers

6.2.1 The Directors may refuse to register a transfer of a Share in their absolute discretion. The Directors are not required to give reasons for any refusal to register a transfer of a Share.

6.2.2 The Directors must refuse to register a transfer of a Share if:

(a) clauses 6.1.2 and 6.1.3 or clause 6.3 have not been complied with;

(b) the registration of the transfer may breach any Law;

(c) the transfer is not allowed by the Terms of Issue or any requirements for the transfer contained in the Terms of Issue have not been followed; or

(d) on registration of the transfer the number of Shareholders would exceed any maximum number allowed by the Act for a proprietary company.

6.2.3 The Directors may suspend the registration of transfers of Shares at any time and for any period not exceeding a total of 30 days in any year.

6.3 Transfer of stapled securities

If the Terms of Issue of a Share provide for the Share to be stapled to any notes, stocks, debentures, warrants, options or any other securities, then the Shareholder who holds that Share is not able to transfer that Share unless the notes, stocks, debentures, warrants, options or other securities that are stapled to it are transferred to the same person at the same time.

7. Transmission of Shares

7.1 If a Shareholder dies, the legal representative of the deceased (if the deceased was a sole holder) or the survivor (if the deceased was a joint holder), will be the only person the Company recognises as having any title to the Shareholder's Share.

7.2 Clause 7.1 does not release the estate of a deceased Shareholder from any liability in respect of a Share.

7.3 A person who becomes entitled to a Share because of a Transmission Event may, on providing all evidence the Directors require to prove that entitlement, choose to:

7.3.1 be registered as the holder of the Share, by giving notice of that choice to the Company; or

7.3.2 nominate another person to be registered as holder of the Share, by executing a written transfer of the Share to that person and otherwise complying with clause 6.1.

7.4 If 2 or more people are jointly entitled to any Share because of a Transmission Event, after registration they will be taken to hold the Share as joint tenants and clause 4 will apply to them.

8. General meetings

8.1 Calling general meetings

8.1.1 The Directors may call a general meeting at any time.

8.1.2 A Shareholder may only call a general meeting in accordance with the Act.

8.1.3 Subject to clause 8.1.4, the Directors may postpone or cancel a general meeting or change the venue at which the general meeting will be held.

8.1.4 A general meeting called under s 249D of the Act may not be postponed beyond the date by which s 249D requires it to be held. A general meeting called under s 245D of the Act may not be cancelled without the consent of the requisitioning Shareholder or Shareholders.

8.2 Notice of general meetings

8.2.1 The Company must give Shareholders and other people entitled to receive notice of the general meeting the period of notice required by the Act.

8.2.2 The notice of a general meeting must set out the general nature of the business to be transacted at the meeting and any other matters required by the Act. The Directors may decide what other content to include in the notice of a general meeting.

8.2.3 A person may waive the right to receive notice of a general meeting by notice to the Company.

8.2.4 If a person entitled to receive a notice of a general meeting does not receive that notice, or the Company fails to give that notice, every act performed or resolution passed at the general meeting will still be effective, as long as:

(a) the failure to receive or give notice occurred by accident or error; or

(b) before or after the meeting, the person:

(i) has waived or waives notice of that meeting under clause 8.2.3; or

(ii) has given or gives the Company notice of the person's agreement to that act or resolution.

8.2.5 A person waives any objection that person may have to any failure to give notice, or a defective notice, of a general meeting if the person attends the general meeting. That person will not have waived any objection if the person objects to the holding of the meeting at the beginning of the meeting.

8.3 Quorum at general meetings

8.3.1 No business may be transacted at any general meeting unless a quorum of Shareholders is present when the meeting proceeds to business. This requirement does not apply to the election of a chairperson or the adjournment of the meeting.

8.3.1 A quorum for a general meeting is all Shareholders entitled to vote on a resolution at the meeting.

8.3.2 Each individual present at a general meeting may only be counted once towards a quorum.

8.3.3 If a Shareholder has appointed more than one proxy, attorney or Representative, only one of them may be counted towards a quorum.

8.3.4 If a quorum is not present within 30 minutes after the commencement time of a general meeting:

(a) if the meeting was convened on the requisition of Shareholders, the meeting will be dissolved; and

(b) in any other case, the meeting is adjourned to the day, and at the time and place, the chairperson of the meeting or the Directors decide. If they do not make a decision, the meeting is adjourned to the same day in the next week at the same time and place.

8.4 Chairperson of general meetings

8.4.1 The chairperson of Directors must act as chairperson at a general meeting if the chairperson of Directors is present within 15 minutes after the time appointed for a general meeting and is willing to act.

8.4.2 If:

(a) there is no chairperson of Directors; or

(b) the chairperson of Directors is not present at a general meeting; or

(c) the chairperson of Directors is not willing to act as chairperson of the meeting,

one of the other Directors present at the general meeting must act as chairperson.

8.5 Conduct of general meetings

8.5.1 The chairperson of a general meeting is responsible for the general conduct of the meeting and for deciding the procedures to be adopted at the meeting.

8.5.2 In particular, the chairperson of a general meeting may:

(a) require the adoption of any procedure which is, in the chairperson's opinion, necessary or desirable for proper and orderly debate or discussion or for the proper and orderly casting or recording of votes at the meeting; and

(b) terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting.

8.5.3 A decision of the chairperson on any matter under this clause 8.5.2 is final.

8.5.4 A general meeting may be held at 2 or more venues using any technology that gives the Shareholders as a whole a reasonable opportunity to participate.

8.5.5 Where clause 8.5.4 applies:

(a) a Shareholder participating in such a meeting is taken to be present in person at the meeting;

(b) all the provisions in this Constitution relating to general meetings apply, so far as they can and with necessary changes, to meetings using the technology; and

(c) the meeting is taken to be held at the place determined by the chairperson of the meeting, if at least one Shareholder was at that place for the duration of the meeting.

8.5.6 If the technology used for a general meeting encounters a technical difficulty, whether before or during the meeting, and as a result a Shareholder is not able to participate in the meeting, the chairperson may:

(a) allow the meeting to continue, if a quorum of Shareholders remains able to participate in the meeting; or

(b) adjourn the meeting either for a reasonable period to fix the technology or to another time and location that the chairperson decides,

unless required to do otherwise by the Act.

8.5.7 The chairperson of a general meeting may, and must if directed by the meeting, adjourn the meeting from time to time and from place to place. No new business may be transacted at any adjourned meeting. An adjourned meeting must only transact the business left unfinished at the meeting from which the adjournment took place.

8.5.8 If the meeting is adjourned for more than 30 days, notice of an adjournment or of the business to be transacted at an adjourned meeting must be given.

8.6 Decisions at general meetings

8.6.1 Except for a resolution which the Act requires to be passed by a special majority, questions at a general meeting must be decided by a majority of votes cast by the Shareholders present at the meeting and entitled to vote on the resolution.

8.6.2 If there is an equal number of votes for and against a proposed resolution:

(a) the chairperson of the meeting will not have a second or casting vote; and

(b) the proposed resolution is taken to have been lost.

8.6.3 A resolution proposed at a general meeting must be decided on a show of hands unless a poll is demanded in a manner which complies with this Constitution.

8.6.4 No proof of the number or proportion of the votes recorded in favour of or against the resolution is required if:

(a) the chairperson of a general meeting declares that a resolution has been carried or lost on a show of hands; and

(b) an entry to that effect is made in the minutes of the meeting.

8.6.5 A poll may be demanded by the chairperson of the meeting or by any Shareholder present and having the right to vote on the resolution:

(a) before the vote is taken;

(b) before the result of the show of hands is declared; or

(c) immediately after the result of the show of hands is declared.

8.6.6 If a poll is demanded on a resolution at a general meeting, all other business of the meeting can continue.

8.6.7 A poll cannot be demanded on the election of a chairperson of a general meeting or on the adjournment of a meeting.

8.6.8 The demand for a poll may be withdrawn at any time before the poll commences.

8.6.9 If a poll is demanded at a general meeting in accordance with clause 8.6.3, the chairperson of the meeting will decide the manner in which the poll is conducted and whether is the poll should be taken immediately or after an interval or adjournment.

8.7 Voting rights

8.7.1 Each Shareholder present at a general meeting and entitled to vote on a resolution has:

(a) one vote on a show of hands for that resolution; and

(b) one vote for each Share held by that Shareholder on a poll for that resolution.

8.7.2 A Shareholder is not entitled to vote at a general meeting:

(a) unless all Calls and other amounts payable by that Shareholder in respect of all Shares held by the Shareholder have been paid; or

(b) if the Terms of Issue of the Shares held by that Shareholder do not entitle the Shareholder to vote at a general meeting.

8.7.3 A joint holder of a Share may vote at any general meeting as if that person was the sole holder. If more than one joint holder tenders a vote, only the vote of the holder named first in the Register will be accepted.

8.7.4 A person entitled to a Share because of a Transmission Event may vote in respect of that Share at any general meeting as if that person was the registered holder of the Share if, before the general meeting, the Directors have:

(a) acknowledged that person's right to vote at that meeting in respect of the Share; or

(b) been satisfied of that person's right to be registered as the holder of, or to transfer, the Share under clause 7.3.

Any vote tendered by the person entitled to the Share will be accepted to the exclusion of a vote by the registered holder of the Share.

8.7.5 An objection to the qualification of a person to vote at a general meeting:

(a) must be raised before or at the meeting; and

(b) must be referred to the chairperson of the meeting.

8.7.6 The chairperson will decide all objections to the qualifications of a person to vote. The decision of the chairperson is final.

8.8 Representation at general meetings

8.8.1 Each Shareholder entitled to vote at a general meeting may vote in person, by proxy, by attorney or, if a Shareholder is a body corporate, by its Representative.

8.8.2 A proxy, attorney or Representative may be a Shareholder of the Company but is not required to be a Shareholder for the appointment to be effective.

8.8.3 A proxy, attorney or Representative may be appointed for all general meetings, for any number of general meetings or for a particular general meeting.

8.8.4 A document appointing a proxy, attorney or Representative (**Appointing Document**) must be lodged at the Company's registered office no later than 48 hours before the commencement time for a general meeting unless the notice of meeting sets out a different place for lodgement or a different time, in which case that different place or time will apply.

8.8.5 An Appointing Document may contain limits on the power or authority of the proxy, attorney or Representative. If the Appointing Document does not contain any limits, the proxy, attorney or Representative will have the authority to:

(a) agree to a meeting being convened on shorter notice than is required by the Act or this Constitution, including when a special resolution is proposed or passed;

(b) speak to any proposed resolution on which the proxy, attorney or Representative may vote;

(c) demand or join in demanding a poll on any resolution on which the proxy, attorney or Representative may vote;

(d) vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;

(e) vote on any procedural motion; and

(f) attend and vote at any rescheduled or adjourned meeting or at any new venue.

8.8.6 A proxy, attorney or Representative must comply with:

(a) any limits on the powers of the proxy, attorney or Representative; or

(b) any directions as to how the proxy, attorney or Representative is to vote on a particular resolution,

which are set out in the Appointing Document.

8.8.7 If a person present at a general meeting is the proxy, attorney or Representative of more than one Shareholder, the person is entitled to one vote only on a show of hands.

8.8.8 Subject to clause 8.8.9, a vote cast in accordance with the terms of an Appointing Document is valid despite:

(a) a Transmission Event occurring in relation to the appointor; or

(b) the revocation of the Appointing Document or of the authority under which the Appointing Document was executed.

8.8.9 Clause 8.8.8 does not apply if a notice of the Transmission Event or revocation has been received by the Company by the time and at one of the places at which the Appointing Document was required to be deposited or produced.

8.8.10 A vote cast in accordance with the terms of an Appointing Document is valid even if the Share in respect of which the Appointing Document was given has been transferred, provided that the transfer is not registered at the time at which the Appointing Document is required to be lodged with the Company under clause 8.8.4.

8.8.11 The appointment of a proxy or attorney is not revoked by the appointor attending and taking part in the general meeting but, if the appointor votes on a resolution, the person acting as proxy or attorney for the appointor is not entitled to vote as the appointor's proxy or attorney on the resolution.

8.9 Decisions without general meetings

8.9.1 If the Company has one Shareholder, that Shareholder may pass a resolution by recording it and signing the record.

8.9.2 If the Company has more than one Shareholder, the Company may pass a resolution (except a resolution to remove an auditor) without holding a general meeting if all the Shareholders entitled to vote on the resolution sign a document setting out the resolution and containing a statement that they are in favour of that resolution.

8.9.3 If a Share is jointly held, each joint holder must sign the document referred to in clause 8.9.2.

8.9.4 For the purposes of clause 8.9.2:

(a) the resolution is passed when the last person signs the document; and

(b) separate copies of a document may be used for signing by Shareholders if the wording of the resolution and the statement is identical in each copy.

8.9.5 The passing of a resolution in accordance with clause 8.9.2 satisfies any requirement in the Act or in this Constitution that the resolution be passed at a general meeting.

8.10 Class meetings

8.10.1 All clauses of this Constitution which relate to general meetings apply to meetings of holders of a class of Shares (**Class Meeting**), to the extent they are capable of applying and with any necessary changes.

8.10.2 At a Class Meeting:

(a) A quorum is 2 Shareholders who hold Shares of the relevant class or, if only one Shareholder holds Shares of that class, that Shareholder; and

(b) Any Shareholder who holds Shares of the relevant class may demand a poll.

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9. Directors

9.1 Number of Directors

9.1.1 There must be:

(a) at least one Director; and

(b) no more Directors than the maximum set by resolution of the Company from time to time.

9.1.2 The Company may by resolution increase or reduce the minimum or maximum number of Directors for the purpose of clause 9.1.1.

9.2 Appointment of Directors

The Directors may appoint any natural person to be a Director:

9.2.1 to fill a casual vacancy; or

9.2.2 in addition to the existing Directors,

as long as the total number of Directors does not exceed the maximum number referred to in clause 9.1.1 (as increased or decreased under clause 9.1.2).

9.3 Termination of office

A person ceases to be a Director:

9.3.1 if an act, matter or thing occurs which results in the person ceasing to be a director as required by the Act;

9.3.2 if the Director is removed from office by resolution of the Company; or

9.3.3 if the Director resigns by notice in writing to the Company.

9.4 Remuneration of Directors

9.4.1 Each Director is entitled to remuneration as the Directors decide. If, however, the Company in general meeting has fixed a limit on the amount of remuneration payable to the Directors, the aggregate remuneration of the Directors under this clause 9.4.1 must not exceed that limit.

9.4.2 The remuneration of a Director may be a salary or a fixed sum for attendance at each meeting of Directors or both and will be taken to accrue from day to day.

9.4.3 A Director is entitled to be paid all travelling and other expenses properly incurred by that Director in connection with the affairs of the Company.

9.4.4 If a Director performs extra or special duties for the Company, the Directors may arrange for special remuneration to be paid to that Director. Acceptance of a delegation made under clause 9.16.1 may be treated as an extra or special duty performed by the Director for the purposes of this clause 9.4.4.

9.4.5 Clause 9.4.1 does not restrict the remuneration which may be paid to a Director in a capacity other than Director.

9.4.6 The Directors may:

(a) at any time after a Director ceases to hold office, pay to the former Director or a legal personal representative, spouse, relative or dependant of the former Director, a pension or lump sum payment in respect of past services rendered by that former Director; or

(b) establish or support funds and trusts to provide pension, retirement, superannuation or similar payments or benefits to or in respect of a Director or former Director.

9.5 Share qualification

9.5.1 A Director is not required to hold any Shares.

9.5.2 A Director who is not a Shareholder is entitled to attend and speak at general meetings and at Class Meetings.

9.6 Interested Directors

9.6.1 A Director may:

(a) hold any office or place of profit in the Company, except that of auditor;

(b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;

(c) enter into any contract or arrangement with the Company;

(d) participate in any association, institution, fund, trust or scheme for past or present employees of the Company or Directors or persons dependent on or connected with them; or

(e) act in a professional capacity (or be a Shareholder of a firm which acts in a professional capacity) for the Company, except as auditor.

9.6.2 If a Director does any of the things set out in clause 9.6.1, that Director may:

(a) participate in and be counted in a quorum for any meeting, resolution or decision of the Directors, and be present at any meeting where any matter is being considered by the Directors;

(b) sign or participate in the execution of a document by or on behalf of the Company; and

(c) exercise the voting power conferred by securities in any entity held by the Company, including in circumstances where a Director may be interested in the exercise, such as a resolution appointing a Director as an officer of the entity or providing for the payment of remuneration to officers of the entity.

9.6.3 A Director may do any of the things listed in clause 9.6.1:

(a) without any liability to the Company for any direct or indirect benefit accruing to the Director; and

(b) without affecting the validity of any contract or arrangement.

9.6.4 Nothing in this clause 9.6 relieves a Director from:

(a) complying with the requirements of the Act relating to the disclosure of, and voting of matters involving, material personal interests; and

(b) the obligation to act in good faith and in the best interests of the Company as a whole.

9.7 Powers of Directors

9.7.1 The Directors are responsible for managing the business of the Company. The Directors may exercise all the powers of the Company which are not required by the Act or this Constitution to be exercised by the Company in general meeting.

9.7.2 If the Company is a wholly owned subsidiary, its Directors may act in the best interests of the Company's holding company.

9.8 Proceedings of Directors

9.8.1 The Directors may meet together to attend to business and adjourn and regulate their meetings as they decide, but shall meet not less than once in each financial year, unless they otherwise agree.

9.8.2 A meeting of the Directors may be held using any technology consented to by all of the participating Directors (**Approved Technology**). The consent may be a standing one. Any consent to Approved Technology whether standing or otherwise for a Director may only be revoked if given by the Director to the other Directors not less than 48 hours before the meeting.

9.8.3 Where a meeting of Directors is held at two or more venues using Approved Technology:

(a) a Director participating in the meeting is taken to be present in person at the meeting;

(b) all the provisions in this Constitution relating to meetings of Directors apply, so far as they can and with such changes as are necessary, to meetings using Approved Technology; and

(c) the meeting is taken to be held at the place decided by the chairperson of the meeting, if at least one of the Directors was at that place for the duration of the meeting.

9.8.4 If the technology used for a meeting of Directors encounters a technical difficulty, whether before or during the meeting, and as a result a Director is not being able to participate in the meeting, the chairperson may:

(a) allow the meeting to continue, if a quorum of Directors remains able to participate in the meeting; or

(b) adjourn the meeting either for a reasonable period to fix the technology or to another time and location as the chairperson decides, unless required to do otherwise by the Act.

9.9 Calling meetings of Directors

9.9.1 A Director may call a meeting of the Directors at any time.

9.9.2 At least 10 Business Days prior notice of any meeting of the Directors must be given, unless all Directors agree to a shorter notice period or in the case of urgent matters. Notice must be given in writing, unless all Directors consent to the meeting being called by some other means.

9.9.3 A Secretary must call a meeting of the Directors at the request of a Director.

9.9.4 Unless all Directors otherwise agree, a notice of meeting must include an agenda and any supporting materials in relation to the matters to be considered at the meeting.

9.10 Notice of meetings of Directors

9.10.1 Notice of a meeting of Directors must be given to:

(a) each Director, other than a Director who will be on a leave of absence approved by the other Directors at the time of the relevant meeting; and

(b) any Alternate Director.

9.10.2 A Director or Alternate Director may waive notice of any meeting of Directors by notice to the Company.

9.10.3 If a person who is entitled to receive notice of a meeting of Directors does not receive that notice or the notice is not given, every act performed or resolution passed at the meeting will still be effective provided that:

(a) the failure to receive or give notice occurred by accident or error;

(b) before or after the meeting the person:

(i) has waived or waives notice of that meeting under clause 9.10.2; or

(ii) has given or gives the Company notice of the person's agreement to that act or resolution.

9.10.4 If a person attends a meeting of Directors, that person waives any objection that person may have to a failure to give notice of the meeting. A waiver of objection under this clause 9.10.4 binds:

(a) any Alternate Director appointed by that person; or

(b) if the person is an Alternate Director, the Director who appointed that person as Alternate Director and any other Alternate Director appointed by that Director.

9.11 Quorum at meetings of Directors

9.11.1 No business may be transacted at a meeting of Directors unless a quorum of Directors is present when the meeting proceeds to business. This requirement does not apply to the election of a chairperson or the adjournment of the meeting.

9.11.2 A quorum for a meeting of Directors is 5.

9.11.3 If the number of Directors is not sufficient to constitute a quorum, the remaining Director or Directors may act only:

(a) in an emergency;

(b) to increase the number of Directors to a number sufficient to constitute a quorum; or

(c) to call a general meeting of the Company.

9.12 Chairperson of Directors

9.12.1 The Directors may elect one of the Directors as a chairperson of Directors and may decide the period for which that Director is to be chairperson of Directors.

9.12.2 The chairperson of Directors must act as chairperson at a meeting of Directors if that person is present within 15 minutes after the time appointed for the holding of a meeting of Directors and willing to act.

9.12.3 One of the other Directors must act as chairperson of the meeting if:

(a) there is no chairperson of Directors; or

(b) the chairperson of Directors is not present at a meeting of Directors; or

(c) the chairperson of Directors is not willing to act as chairperson of the meeting.

9.13 Decisions of Directors

9.13.1 Questions arising at a meeting of Directors will be decided by a majority of votes of Directors present and entitled to vote.

9.13.2 If there is an equal number of votes for and against a proposed resolution:

(a) the chairperson of the meeting will not have a second or casting vote; and

(b) the proposed resolution is taken to have been lost.

9.14 Written resolutions

9.14.1 If the Company has one Director, that Director may pass a resolution by recording it and signing the record.

9.14.2 The Directors may pass a resolution without holding a Directors' meeting if all the Directors entitled to vote on the resolution sign a document setting out the resolution and containing a statement that they are in favour of the resolution.

9.14.3 For the purposes of clause 9.14.2:

(a) the resolution is taken to have been passed when the last person signs the document; and

(b) 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.

9.15 Alternate Directors

9.15.1 A Director may, with approval of a majority of the other Directors, appoint an alternate director for a specified period.

9.15.2 An Alternate Director may, if the appointor does not attend a meeting of Directors, attend and vote in place of and on behalf of the appointor, and if the appointor attends, attend but not vote on behalf of the appointor.

9.15.3 An Alternate Director has a separate vote for each Director the Alternate Director represents. The votes are in addition to any vote that person may have as a Director in their own right.

9.15.4 An Alternate Director may, in the absence of the appointor, exercise any powers that the appointor may exercise.

9.15.5 The office of an Alternate Director is vacated when the appointor ceases to be a Director.

9.15.6 A Director who appoints an Alternate Director may terminate that appointment at any time.

9.15.7 An appointment of an Alternate Director or termination of that appointment must be by written notice to the Company.

9.15.8 The Directors must decide the remuneration, if any, payable to an Alternate Director and whether that remuneration is payable in addition to, or in reduction of, the remuneration payable to the appointor.

9.15.9 An Alternate Director, while acting as a Director, is responsible to the Company for their own acts and defaults. An Alternate Director is not the agent of the appointor.

9.16 Delegation by Directors

9.16.1 The Directors may delegate any of their powers to:

(a) a committee of Directors; or

(b) a Director; or

(c) any other person, including as attorney or agent.

9.16.2 The delegate must exercise the powers delegated in accordance with any directions of the Directors.

9.16.3 The exercise of a power by a delegate is as effective as if the Directors had exercised it.

9.16.4 The rules applying to meetings and resolutions of Directors apply, so far as they can and with such changes as are necessary, to meetings and resolutions of a committee of Directors.

9.17 Validity of acts

An act by a person acting as a Director or by a meeting of Directors or a committee of Directors attended by a person acting as a Director is valid despite:

9.17.1 a defect in the appointment of the person as a Director;

9.17.2 the person being disqualified to be a Director or having vacated office; or

9.17.3 the person not being entitled to vote,

if the person or the Directors or committee (as the case may be) were not aware of the relevant circumstances when the act was done.

10. Distribution of profits

10.1 Dividends

The Directors may:

10.1.1 declare or determine that a dividend is payable;

10.1.2 fix a record date for the dividend, and the amount and time for payment; and

10.1.3 authorise the payment to, or at the direction of, each Shareholder entitled to the dividend.

10.2 Capitalisation of profits

10.2.1 The Directors may capitalise and distribute among those Shareholders entitled to receive dividends any amount available for distribution to Shareholders.

10.2.2 The Directors may resolve that all or any part of the capitalised amount is to be applied:

(a) in paying up in full securities of the Company to be issued to Shareholders; or

(b) in paying up any amounts unpaid on securities of the Company.

10.2.3 The Shareholders entitled to share in the distribution referred to in clause 10.2.1 must accept any application under clause 10.2.2 in full satisfaction of their interests in the capitalised amount.

10.2.4 If the Company distributes securities in the Company to a Shareholder under this clause 10.2, the Shareholder appoints the Company as its agent to do anything needed to give effect to that transfer.

10.3 Reserves

10.3.1 The Directors may set aside reserves or provisions out of the Company's profits for any purposes they decide.

10.3.2 The Directors may appropriate to the Company's profits any amount previously set aside as a reserve or provision.

10.3.3 An amount set aside as a reserve or provision does not need to be kept separate from the other assets of the Company and reserved amounts may be used as the Directors decide.

11. Distributions

11.1 Payment of dividends and other distributions

11.1.1 Subject to the Terms of Issue of any Share:

(a) dividends or other distributions to a Shareholder (**Distributions**) must be paid in proportion to the number of Shares held by a Shareholder; and

(b) Distributions must be apportioned and paid proportionately to the amounts paid or credited as paid on a Share during any portion of the period in respect of which the Distribution is paid.

11.1.2 For the purposes of 11.1.1, an amount paid or credited as paid on a Share in advance of a Call is to be ignored.

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

11.1.4 A Distribution in respect of a Share must be paid to the person who is registered, or entitled under clause 6.1.4 to be registered, as the holder of the share if:

(a) the Directors have fixed a record date for the Distribution, on that date; or

(b) the Directors have not fixed a record date for the Distribution, on the date the Distribution is paid.

11.1.5 If a person is entitled to a Share as a result of a Transmission Event, the Directors may retain any Distributions payable in respect of that Share until that person becomes registered as the holder of the Share or transfers it to a third party.

11.1.6 The Directors may:

(a) direct payment of a Distribution wholly or partly by the distribution of specific assets; and

(b) direct that a Distribution be paid to particular Shareholders wholly or partly out of a particular fund or reserve or out of profits derived from a particular source and to the remaining Shareholders wholly or partly out of any other particular fund or reserve or out of the profits derived from any other particular source or generally.

11.1.7 The Directors may deduct from any Distribution payable to a Shareholder any amount presently payable by the Shareholder to the Company and apply the amount deducted towards satisfaction of the amount owing.

11.1.8 A Distribution to be made in cash may be paid using any payment method chosen by the Company, including:

(a) by cheque sent through the post directed to the address of the Shareholder in the Register or, in the case of joint holders, to the address of the holder named first in the Register;

(b) by cheque sent through the post to another address notified by the Shareholder to the Company;

(c) by electronic transfer to an account notified by a Shareholder to the Company; or

(d) by another method of direct credit determined by the Directors, to or at the direction of a Shareholder.

11.2 Ancillary powers

11.2.1 The Directors may also:

(a) settle any difficulty that arises in making Distribution, and in particular may issue fractional certificates or make cash payments in cases where securities become issuable in fractions;

(b) fix the value of any specific assets to be transferred in satisfaction of the Distribution;

(c) pay cash or issues securities to any Shareholder in order to adjust the rights of all parties;

(d) vest any specific assets, cash or securities in any trustee for the Shareholders entitled to the Distribution; and

(e) on behalf of all Shareholders entitled to receive securities as a result of the Distribution, authorise any person to make an agreement with another body corporate providing for securities credited as fully paid up to be issued to them, and any agreement made is binding on all Shareholders concerned.

If the Company transfers securities in the Company or in another body corporate or trust to a Shareholder in satisfaction of a Distribution, the Shareholder appoints the Company as its agent to do anything needed to give effect to that transfer.

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12. Indemnity and insurance

12.1 Indemnification of Officers

12.1.1 Subject to clause 12.1.2, the Company must pay to a person who is or has been an Officer on demand an amount equal to all Indemnified Loss of the Officer as a result of or in connection with that person's role as an Officer.

12.1.2 To the extent permitted by Law, the Company may make a payment (whether by way of advance, loan or otherwise) to an Officer for the Officer's legal costs.

12.1.3 The obligation of the Company in clause 12.1.1:

(a) is enforceable without the Officer having to first incur any expense or make any payment;

(b) is a continuing obligation and is enforceable by the Officer even though the Officer may have ceased to be an officer of the relevant company;

(c) applies to Loss incurred both before and after the date of the adoption of this Constitution; and

(d) does not operate in respect of any liability of the Officer to the extent that liability is covered by insurance.

12.1.4 The obligation of the Company in this clause 12.1 will not apply to the extent that:

(a) the Company is not allowed by Law to indemnify an Officer against the Indemnified Loss;

(b) an indemnity by the Company of the Officer against Indemnified Loss would, if given, be legally ineffective under any Law; or

(c) the Company is not allowed by Law to make a payment for legal costs.

12.2 Insurance

To the extent allowed by Law, the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer against a Loss incurred by the person as an Officer. Any premium will be paid in addition to any remuneration paid to a Director by the Company under this Constitution.

12.3 Agreement

The Company may enter into an agreement or deed with a person who is or has been an Officer about the matters referred to in this clause 12.

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13. Access to records

13.1.1 A person who is not a Director does not have the right to inspect any of the board papers, books, records or documents of the Company, except as:

(a) allowed or required by Law; or

(b) as authorised by the Directors or by resolution of the Shareholders.

13.1.2 The Company may agree to provide continuing access for a specified period after a person ceases to be an Officer to board papers, books, records or documents of the Company and any relevant related bodies corporate which relate to the period during which the person was an Officer.

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14. Winding up

14.1 If the Company is wound up and the property of the Company is more than sufficient:

14.1.1 to pay all of the debts and liabilities of the Company; and

14.1.2 the costs, charges and expenses of the winding up,

the excess must be divided among the Shareholders in proportion to the number of Shares held by them, irrespective of the amounts paid or credited as paid on the Shares. This is subject to the Terms of Issue of any Share.

14.2 For the purpose of calculating the excess referred to in clause 14.1 any amount unpaid on a Share is to be treated as property of the Company.

14.3 The amount of the excess that would otherwise be distributed to the holder of a partly paid Share under clause 14.1 must be reduced by the amount unpaid on that Share at the date of the distribution.

14.4 If the effect of the reduction under clause 14.3 would be to reduce the distribution to the holder of a partly paid Share to a negative amount, the holder must contribute that amount to the Company.

15. Seals

15.1 If the Company has a common seal, the Directors may decide any procedures they consider appropriate for use of the seal.

15.2 Clause 15.1 does not limit the ways in which the Company can execute documents in accordance with the Act.

16. Notices

16.1 Delivery of notice

16.1.1 A notice required by this Constitution must be in writing and may be delivered:

(a) personally;

(b) by leaving it at the person's address in the Register;

(c) by posting it by prepaid post addressed to that person at the person's address for service;

(d) by facsimile to the person's facsimile number; or

(e) by electronic mail to the person's email address.

16.1.2 If the person receiving the notice is a company, the notice or other communication may be delivered to the company's registered office.

16.1.3 A person may change their address, facsimile number or email address by giving notice to the Company.

16.2 Service on joint holders and transferees of Shares

16.2.1 The Company may give a notice to joint holders of a Share by giving the notice to the joint holder who is named first in the Register for the Share.

16.2.2 A notice given to a person who is entitled to a Share because of a Transmission Event may be served on the Shareholder in whose name the Share is registered, whether or not the Company has notice of the occurrence of a Transmission Event.

16.2.3 A person who, because of a transfer of a Share, becomes entitled to any Share registered in the name of a Shareholder, is taken to have received every notice which, before that person's name and address is entered in the Register for that Share, is given to the Shareholder in accordance with this clause 16.1.

16.3 Time of service

A notice or other communication is deemed delivered:

16.3.1 if delivered personally or left at the person's address, upon delivery;

16.3.2 if posted within Australia to an Australian address, 2 Business Days after posting and in any other case, 5 Business Days after posting;

16.3.3 if delivered by facsimile, subject to clause 16.3.5, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;

16.3.4 if delivered by electronic mail, subject to clause 16.3.5, at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient; and

16.3.5 if received after 5.00pm in the place it is received or on a day which is not a business day in the place it is received, at 9.00am on the next business day.

17. Interpretation

17.1 Words and headings

In this Constitution, unless expressed to the contrary:

17.1.1 words denoting the singular include the plural and vice versa;

17.1.2 the word 'includes' in any form is not a word of limitation;

17.1.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning; and

17.1.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Constitution

17.2 Specific references

In this Constitution a reference:

17.2.1 to a partly paid Share is a reference to a Share on which there is an amount unpaid;

17.2.2 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 issue or at a fixed date;

17.2.3 in general terms to a person holding or occupying an office or position includes a reference to any person who occupies or performs the duties of that office or person for the time being;

17.2.4 to a gender includes every other gender;

17.2.5 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;

17.2.6 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;

17.2.7 writing includes writing in digital form;

17.2.8 'this Constitution' is to this Constitution as amended from time to time;

17.2.9 'A$', '$', 'AUD' or 'dollars' is a reference to Australian dollars;

17.2.10 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Constitution;

17.2.11 any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;

17.2.12 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;

17.2.13 a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and

17.2.14 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

18. General

18.1 Submission to jurisdiction

Each Shareholder submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

18.2 Severability

18.2.1 Any provision of this Constitution that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

18.2.2 If it is not possible to read down a provision as required by this clause, part or all of the clause of this Constitution that is unlawful or unenforceable will be severed from this Constitution and the remaining provisions continue in force.

18.3 Business Day

If a payment or other act is required by this Constitution to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.