



Peter Warren  
Automotive  
Holdings

## Constitution

Peter Warren Automotive Holdings Limited (ACN 615 674 185)  
A public company limited by shares

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## 1 Dictionary

The Dictionary in Schedule 1:

- (a) defines some of the terms used in this constitution;

- (b) sets out the rules of interpretation which apply to this constitution; and
  - (c) clarifies the effect of the Corporations Act on this constitution.
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## 2 Share capital

### 2.1 Shares

Subject to this constitution, the Listing Rules, the ASX Settlement Operating Rules and any special rights conferred on the holders of any shares or class of shares, the directors may:

- (a) allot, issue, cancel or otherwise dispose of, shares;
- (b) grant options over unissued shares;
- (c) reclassify or convert shares;
- (d) settle the manner in which fractions of a share, however arising, are to be dealt with; and
- (e) decide:
  - (i) the persons to whom shares are issued or options are granted;
  - (ii) the terms on which shares are issued or options are granted; and
  - (iii) the rights and restrictions attached to those shares or options.

### 2.2 Preference shares

- (a) The Company may issue preference shares and issued shares may be converted into preference shares, provided that the rights attached to the preference shares are as determined by the Board.
- (b) Subject to the Corporations Act and the Listing Rules, the Company may issue preference shares which are, or at the option of the Company are, liable to be redeemed or converted into ordinary shares,

### 2.3 Joint holders of shares

Where two or more persons are registered as the holders of a share, they are taken to hold it as joint tenants with rights of survivorship on the following conditions:

- (a) the Company may, but is not required to, register more than three persons as joint holders of the share, except where persons are jointly entitled to a share because of a Transmission Event, or where required under the Listing Rules or the ASX Settlement Operating Rules;
- (b) they are jointly and severally liable for all payments, including calls, in respect of the share;
- (c) subject to rule 2.3(b), on the death of any one of them the survivor or survivors are the only person or persons the Company will recognise as having any title to the share;

- (d) any one of those persons may give effective receipts for any dividend, bonus, interest or other distribution or payment in respect of the share;
- (e) any one of the joint holders may vote at any meeting of the company in person, or by properly authorised Representative, proxy or attorney or by direct vote, in respect of the shares as if that joint holder was solely entitled to the shares. If more than one of the joint holders tender a vote in person or by properly authorised Representative, proxy or attorney or by direct vote, only the vote of the joint holder whose name appears first in the share register counts;
- (f) when the Corporations Act requires the number of members to be counted, they are to be counted as one member; and
- (g) only the person whose name stands first in the share register as one of the joint holders of the shares is entitled, if the Company determines to issue certificates for shares, to delivery of a certificate relating to the shares or to receive notices from the Company and any notice given to that person is considered notice to all the joint holders.

#### **2.4 Equitable interests in shares**

Except as required by law, the Company may treat the registered holder of a share as the absolute owner of that share and is not required to recognise:

- (a) a person as holding a share on any trust;
- (b) any other interest in any share or any other right in respect of a share except an absolute right of ownership in the registered holder,

whether or not it has notice of the trust, right or interest.

#### **2.5 Restricted securities**

Where at any time any of the share capital of the Company is classified by the Exchange as “restricted securities” despite any other provision of this constitution:

- (a) a holder of Restricted Securities must not Dispose of, or agree or offer to Dispose of, those Restricted Securities during the escrow period applicable to those Restricted Securities except as permitted by the Listing Rules or the Exchange;
- (b) if those Restricted Securities are in the same class as quoted securities, the holder will be taken to have agreed in writing that the Restricted Securities are to be kept on the Company’s issuer sponsored subregister and are to have a Holding Lock applied for the duration of the escrow period applicable to those Restricted Securities;
- (c) the Company must refuse to acknowledge any Disposal (including, without limitation, to register any transfer) of Restricted Securities during the escrow period applicable to those Restricted Securities except as permitted by the Listing Rules or the Exchange;
- (d) a holder of Restricted Securities will not be entitled to participate in any return of capital on those Restricted Securities during the escrow period applicable to those Restricted Securities except as permitted by the Listing Rules or the Exchange; and

- (e) if a holder of Restricted Securities breaches a Restriction Deed or a provision of the Company's constitution restricting a Disposal of those Restricted Securities, the holder will not be entitled to any dividend or distribution, or to exercise any voting rights, in respect of those Restricted Securities for so long as the breach continues.

## 2.6 Non-marketable parcels

- (a) The Company may sell shares that constitute less than a Marketable Parcel by following the procedures in this rule 2.6.
- (b) The Company may send a written notice to a member who holds less than a Marketable Parcel of shares in a class of shares of the Company, on a date decided by the directors, which:
  - (i) explains the effect of the notice under this rule 2.6; and
  - (ii) advises the holder that he or she may choose to be exempt from the provisions of this rule. A form of election for that purpose must be sent with the notice.
- (c) If, before the date and time specified in the notice, which is no earlier than 6 weeks after the notice is sent:
  - (i) the Company has not received a notice from the member exempting them from this rule 2.6; and
  - (ii) the member has not increased his or her shareholding to a Marketable Parcel,  
  
the member is taken to have irrevocably appointed the Company as his or her agent to do anything in rule 2.6(e).
- (d) In addition to initiating a sale by sending a notice under rule 2.6(b), the Company may also initiate a sale if a member holds less than a Marketable Parcel at the time that the transfer document was initiated or, in the case of a paper-based transfer document, was lodged with the Company. In that case:
  - (i) the member is taken to have irrevocably appointed the Company as his or her agent to do anything in rule 2.6(e); and
  - (ii) if the holding was created after the adoption of this rule, the Company may remove or change the member's rights to vote or receive dividends in respect of those shares. Any dividends withheld must be sent to the former holder after the sale when the former holder delivers to the Company such proof of title as the Company accepts.
- (e) The Company may:
  - (i) sell the shares constituting less than a Marketable Parcel as soon as practicable on the terms and in the manner the directors think fit;
  - (ii) deal with the proceeds of sale under rule 3.9; and
  - (iii) receive any disclosure document, including a financial services guide, as agent for the member.

- (f) The costs and expenses of any sale of shares arising from a notice under rule 2.6(b) (including brokerage and stamp duty) are payable by the purchaser or by the Company.
- (g) A notice under rule 2.6(b) may be given to a member only once in a 12 month period and may not be given during the offer period of a Takeover for the Company.
- (h) If a takeover bid is announced after a notice is given but before an agreement is entered into for the sale of shares, this rule ceases to operate for those shares. However, despite rule 2.6(f), a new notice under rule 2.6(b) may be given after the offer period of the takeover bid closes.
- (i) The Company may, before a sale is effected under this rule 2.6, revoke a notice given or suspend or terminate the operation of this rule either generally or in specific cases.
- (j) If a member is registered in respect of more than one parcel of shares, the Company may treat the member as a separate member in respect of each of those parcels so that this rule 2.6 will operate as if each parcel was held by different persons.

## 2.7 Variation of Class Rights

- (a) The rights attached to any class of shares may, unless their terms of issue state otherwise, be varied:
  - (i) with the written consent of the holders of 75% of the shares of the class; or
  - (ii) by a special resolution passed at a separate meeting of the holders of shares of the class.
- (b) Unless the terms on which shares in that class were issued state otherwise, the provisions of this constitution relating to general meetings apply, with necessary changes, to separate class meetings as if they were general meetings except that:
  - (i) a quorum is two persons holding or representing by proxy, attorney or Representative, at least 25% of the issued shares of the class, or, if there is one holder of shares in a class, that person; and
  - (ii) any holder of shares of the class present in person or by proxy, attorney or Representative, or the chair of the meeting may demand a poll.
- (c) The rights conferred on the holders of any class of shares are to be taken as not having been varied by the creation or issue of further shares ranking equally with them, unless the terms of issue provide otherwise.

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## 3 Calls, forfeiture, indemnities, lien and surrender

### 3.1 Calls

- (a) Subject to the terms on which any shares are issued, the directors may:

- (i) make calls on the members for any money unpaid on their shares, if the money is not by the terms of issue of those shares made payable at fixed times;
  - (ii) on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment;
  - (iii) require a call to be paid by instalments; and
  - (iv) revoke or postpone a call or extend the time for payment.
- (b) A call is to be taken to be made at the time when the resolution of the directors authorising the call is passed.
- (c) The directors must give members at least 14 days (or such longer period required by the Listing Rules) notice of a call, specifying the amount of the call, the time or times for payment and the manner in which payment must be made.
- (d) Each member must pay the amount called to the Company by the time or times and in the manner specified for payment.
- (e) A call is valid even if a member for any reason does not receive notice of the call.
- (f) If a sum called on a share is not paid in full by the day appointed for payment, the person from whom the sum is due must pay:
- (i) interest on the sum from the date payment is due to the date payment is made, at a rate determined under rule 3.10 (**Interest payable by member**); and
  - (ii) any costs, expenses or damages the Company incurs due to the non-payment or late payment of the sum.
- (g) Any amount unpaid on a share that, by the terms of issue of the share, becomes payable on issue or at a fixed date:
- (i) is treated for the purposes of this constitution as if that amount were payable under a call duly made and notified; and
  - (ii) must be paid on the date on which it is payable under the terms of issue of the share.
- (h) The directors may, to the extent permitted by law, waive or compromise all or part of any payment due to the Company under the terms of issue of a share or under this rule 3.1.

### 3.2 Proceedings for recovery of calls

- (a) In any action or proceedings for the recovery of a call, or interest or costs or expenses incurred in relation to the non-payment or late payment of a call, proof that:
- (i) the name of the defendant is entered in the register as the holder or one of the holders of the share in respect of which the call is claimed;
  - (ii) the resolution making the call is recorded in the directors' minute book; and

- (iii) notice of the call was given to the defendant in accordance with this constitution,

is conclusive evidence of the debt and it is not necessary to prove the appointment of the directors who made the call or any other matter.

- (b) In rule 3.2(a), "defendant" includes a person against whom the Company alleges a set-off or counter-claim, and "proceedings for the recovery of a call" is to be construed accordingly.

### **3.3 Payments in advance of calls**

- (a) The directors may accept from a member the whole or a part of the amount unpaid on a share even though no part of that amount has been called.
- (b) The directors may authorise payment by the Company of interest upon the whole or any part of an amount accepted under rule 3.3(a), until the amount becomes payable, at a rate agreed between the directors and the member paying the amount.
- (c) The directors may repay to a member all or any of the amount accepted under rule 3.3(a).

### **3.4 Forfeiture of partly paid shares**

- (a) If a member fails to pay the whole of a call or instalment of a call by the time appointed for payment of the call or instalment, the directors may serve a notice on that member:
  - (i) requiring payment of the unpaid part of the call or instalment, together with any interest that has accrued and all costs, expenses or damages that the Company has incurred by reason of the non-payment;
  - (ii) specifying a further time which is at least 14 days after the date of service of the notice, by which, and the manner in which, the amount payable under rule 3.4(a)(i) must be paid; and
  - (iii) stating that if the whole amount payable is not paid by the time and in the manner specified, the shares on which the call was made will be liable to be forfeited.
- (b) If a member does not comply with a notice under rule 3.4(a), the directors may by resolution forfeit the relevant shares at any time after the day named in the notice and before the payment required by the notice is made.
- (c) Where a share has been forfeited, the Company must:
  - (i) give notice of the resolution to the member in whose name the share was registered immediately before the forfeiture; and
  - (ii) enter the forfeiture and the date of forfeiture in the register of members.
- (d) Failure by the Company to give the notice or to make the entry required under rule 3.4(c) does not invalidate the forfeiture.
- (e) A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares at the time and on the date of a resolution of the directors

approving the forfeiture, but remains liable to pay, and must immediately pay, to the Company:

- (i) all calls, instalments, interest, costs, expenses and damages owing in respect of the shares at the time of the forfeiture; and
  - (ii) interest on the unpaid part of the amount payable under this rule 3.4(e), from the date of the forfeiture to the date of actual payment, at a rate determined under rule 3.10 (**Interest payable by member**).
- (f) Subject to this constitution and the Listing Rules, the forfeiture of a share extinguishes all interest in, and all claims and demands against the Company in respect of, the forfeited share and all other rights incident to the share, including all dividends, interest and other amounts payable by the Company on the forfeited share that the Company has not actually paid before the forfeiture.
- (g) A forfeited share becomes the property of the Company and the directors may sell, reissue or otherwise Dispose of the share as they think fit and, in the case of reissue or other Disposal, with or without crediting as paid up any amount paid on the share by any former holder.
- (a) A written statement by a director or a secretary that a share has been forfeited in accordance with this constitution on the date declared in the statement, is evidence of the facts in the statement as against all persons claiming to be entitled to the share.
- (b) Subject to the Listing Rules, the directors may:
- (i) exempt a share from all or any part of this rule 3.4;
  - (ii) waive or compromise all or part of any payment due to the Company under this rule 3.4; or
  - (iii) before a forfeited share has been sold, reissued or otherwise Disposed of, cancel the forfeiture on the conditions they decide.

### 3.5 Indemnity for payments by the Company

- (a) This rule 3.5 applies if the Company becomes liable for any reason under a law to make a payment:
- (i) in respect of shares held by a member, solely or jointly;
  - (ii) in respect of a transfer or transmission of shares by a member; or
  - (iii) in respect of dividends, bonuses or other money due or payable or which may become due and payable to a member; or
  - (iv) in any other way for, on account of or relating to a member.

This rule 3.5 applies in addition to any right or remedy the Company may otherwise have.

- (b) The member or, if the member is dead, the member's legal personal representative, must:
- (i) fully indemnify the Company against that liability;



- (ii) reimburse the Company immediately on demand for any payment made; and
  - (iii) pay interest on the unpaid part of the amount payable to the Company under rule 3.5(b)(ii), from the date of demand until the date the Company is reimbursed in full for that payment, at a rate determined under rule 3.10 (**Interest payable by member**).
- (c) The directors may:
- (i) exempt a share from all or any part of this rule 3.5; and
  - (ii) waive or compromise all or any part of any payment due to the Company under this rule 3.5.

### 3.6 Lien on shares

- (a) To the extent permitted by law, the Company has a first lien on every share for:
- (i) all due and unpaid calls and instalments in respect of that share;
  - (ii) all money which the Company is required by law to pay, and has paid, in respect of that share;
  - (iii) reasonable interest on the amount due from the date it becomes due until the date of payment;
  - (iv) reasonable expenses of the Company in respect of the default on payment and
  - (v) each share registered in the name of a member for all money payable to the Company by the member under loans made under an employee incentive scheme.
- (b) The Company's lien on a share extends to all distributions in respect of the share, including dividends and to the proceeds of sale of the share.
- (c) The directors may sell a share on which the Company has a lien under this rule 3.6 in any manner they think fit where:
- (i) an amount in respect of which the lien exists is presently payable; and
  - (ii) the Company has given to the registered holder of the share a written notice, at least 14 days before the date of the sale, stating, and demanding payment of, that amount.
- (d) When the company registers a transfer of shares on which the company has a lien without giving the transferee notice of its claim, the company's lien is extinguished so far as it relates to sums owing by the transferor or any predecessor in title.
- (e) The directors may do all things necessary or desirable under the Listing Rules or the ASX Settlement Operating Rules to protect any lien, charge or other right to which the Company is entitled under any law or this constitution.
- (f) The directors may:

- (i) exempt a share from all or any part of this rule 3.6; and
- (ii) waive or compromise all or any part of any payment due to the Company under this rule 3.6.

### 3.7 Reimbursement

The obligation of the member to reimburse the Company is a debt due to the Company as if it were a call on all the member's shares, duly made at the time when the written demand for reimbursement is given by the Company to the member. The provisions of this constitution relating to non-payment of calls, including payment of interest and sale of the member's shares under lien, apply to the debt.

### 3.8 Surrender of shares

- (a) The directors may accept a surrender of a share by way of compromise of any claim.
- (b) Any share surrendered under rule 3.8(a) may be sold, reissued or otherwise Disposed of in the same manner as a forfeited share.

### 3.9 General provisions applicable to a Disposal of shares by the Company

- (a) A reference in this rule 3.9 to a Disposal of shares by the Company is a reference to:
  - (i) any sale, reissue or other Disposal of a forfeited share under rule 3.4(g) or a surrendered share under rule 3.8 (**Surrender of shares**) or of less than a Marketable Parcel under rule 2.6 (**Non-marketable parcels**); and
  - (ii) any sale of a share on which the Company has a lien under rule 3.6(c).
- (b) Where the Company Disposes of shares, the directors may:
  - (i) receive the purchase money or consideration given for the shares;
  - (ii) effect a transfer of the shares and, if necessary, execute, or appoint a person to execute, on behalf of the former holder, an instrument of transfer of the shares or any other instrument for the purpose of giving effect to the Disposal; and
  - (iii) register as the holder of the shares the person to whom the shares have been Disposed.
- (c) In the case of shares held as an Uncertificated Holding, the Company must do all things necessary or appropriate for it to do under the ASX Settlement Operating Rules to effect a Disposal of shares under this constitution.
- (d) A person to whom the Company Disposes of shares need not take any steps to investigate the regularity or validity of the Disposal, or to see how the purchase money or consideration on the Disposal is applied. That person's title to the shares is not affected by any irregularity or invalidity in connection with that Disposal. A Disposal of the share by the Company is valid even if a Transmission Event occurs to the member before the Disposal.
- (e) The only remedy of any person aggrieved by a Disposal of shares by the Company is a claim for damages against the Company.

- (f) The proceeds of a Disposal of shares by the Company must be applied in the payment of:
- (i) first, the expenses of the Disposal;
  - (ii) secondly, all money payable (whether presently or not) by the former holder to the Company,
- and any remaining proceeds must be paid to the former holder as soon as practicable following the former holder delivering to the Company proof of title to the shares acceptable to the directors.
- (g) Until the proceeds of a Disposal of a share sold by the Company are claimed or otherwise Disposed of according to law, the directors may invest or use the proceeds in any other way for the benefit of the Company.
- (h) The Company is not required to pay interest on money payable to a former holder under this rule 3.9.
- (i) On completion of a sale, reissue or other Disposal of a share under rule 3.4(g), the rights which attach to the share which were extinguished under rule 3.4(f) revive.
- (j) A statement in writing signed by a director or secretary of the Company to the effect that a share in the Company has been:
- (i) duly sold under rule 2.6 (**Non-marketable parcels**);
  - (ii) duly forfeited under rule 3.4(b);
  - (iii) duly sold, reissued or otherwise Disposed of under rules 3.4(g) or 3.8; or
  - (iv) duly sold under rule 3.6(c),
- on a date stated in the statement is binding on, and conclusive evidence of the facts stated in the statement as against, all persons claiming to be entitled to the share, and of the right of the Company to forfeit, sell, reissue or otherwise Dispose of the share.

### 3.10 Interest payable by member

- (a) For the purposes of rules 3.1(f)(i), 3.4(e)(ii) and 3.5(b)(iii), the rate of interest payable to the Company is:
- (i) if the directors have fixed a rate, the rate so fixed; or
  - (ii) in any other case, a rate per annum 2% higher than the rate prescribed in respect of unpaid judgments in the Supreme Court of the state or territory in which the company is registered.
- (b) Interest payable under rules 3.1(f)(i), 3.4(e)(ii) and 3.5(b)(iii) accrues daily and may be capitalised monthly or at other intervals the directors think fit.

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## 4 Transfer and transmission of shares

### 4.1 Transfer of shares

- (a) Subject to this constitution and to any restrictions attached to a member's shares, a member may transfer any of the member's shares by:
  - (i) a Proper ASTC Transfer; or
  - (ii) a written instrument of transfer in any usual form or in any other form that the directors approve.
- (b) An instrument of transfer referred to in rule 4.1(a)(ii) must be:
  - (i) signed by or on behalf of both the transferor and, if required by the Company, the transferee;
  - (ii) duly stamped, if required by law;
  - (iii) left for registration at the registered office of the Company, or at such other place as the directors determine, accompanied by such evidence the directors require to prove the transferor's title or right to the shares and the transferee's right to be registered as the holder of the shares.
- (c) Subject to the powers vested in the directors under rules 4.2 (**Power to decline registration of transfers**), where the Company receives an instrument of transfer complying with this rule 4.1, the Company must register the transferee named in the instrument as the holder of the shares to which it relates.
- (d) A transferor of shares remains the holder of the shares transferred until the transfer is:
  - (i) effected in accordance with the ASX Settlement Operating Rules; or
  - (ii) registered and the name of the transferee is entered in the register of members as the holder of the shares.
- (e) The Company must not charge a fee for the registration of a transfer of shares: unless:
  - (i) the Company is not listed on the Exchange; or
  - (ii) the fee is permitted by the Listing Rules.
- (f) The Company may retain any registered instrument of transfer received by the Company under rule 4.1(b)(iii) for any period the directors think fit.
- (g) The directors may do anything that is necessary or desirable for the Company to participate in any computerised, electronic or other system for facilitating the transfer of shares or operation of the Company's registers that may be owned, operated or sponsored by the Exchange or a related body corporate of the Exchange.
- (h) The directors may, to the extent permitted by law and the Listing Rules, waive any of the requirements of this rule 4.1 and prescribe alternative requirements instead, whether for the purpose of giving effect to rule 4.1(g) or otherwise.

#### 4.2 Power to decline registration of transfers

- (a) The directors may decline to register, or prevent registration of, an instrument of transfer received under rule 4.1(b)(iii) or ask ASX Settlement to apply a Holding Lock to prevent a Proper ASTC Transfer where:
  - (i) permitted under the Listing Rules or ASX Settlement Operating Rules, as applicable;
  - (ii) the transfer is not in registrable form;
  - (iii) the Company has a lien on any of the shares transferred;
  - (iv) registration of the transfer may breach a law of Australia or would be in breach of any order of any Court;
  - (v) the transfer is paper-based and registration of the transfer will result in a holding which, at the time the transfer is lodged, is less than a Marketable Parcel;
  - (vi) the transfer is not permitted under the terms of an employee incentive scheme; or
  - (vii) the Company is otherwise permitted or required to do so under the Listing Rules or, except for a Proper ASTC Transfer, under the terms of issue of the shares.
- (b) Subject to rules 4.2(c) and 4.2(d), the Company must give written notice of the refusal, or the request for a Holding Lock to the holder of the shares, the transferee and the broker lodging the transfer, if any: Failure to give such notice does not invalidate the decision of the directors.
- (c) The directors may suspend the registration of transfers of shares at such time, and for such periods, as permitted by the ASX Settlement Operating Rules, as they think fit.
- (d) The directors may delegate their authority under this rule 4.2 to any person.

#### 4.3 Transmission of shares

- (a) Subject to rule 4.3(f), where a member dies, the only persons the Company will recognise as having any title to the member's shares or any benefits accruing in respect of those shares are:
  - (i) the legal personal representative of the deceased, where the deceased was a sole holder; and
  - (ii) the survivor or survivors, where the deceased was a joint holder.
- (b) Rule 4.3(a) does not release the estate of a deceased member from any liability in respect of a share, whether that share was held by the deceased solely or jointly with other persons.
- (c) A person who becomes entitled to a share as a result of a Transmission Event may choose:

- (i) to be registered as the holder of the share by signing and serving on the Company a written notice stating that choice; or
- (ii) to nominate some other person to be registered as the transferee of the share by executing or otherwise effecting a transfer of the share to that other person,

after producing such evidence as the directors require to prove that person's entitlement to the share;

- (d) The provisions of this constitution relating to the right to transfer, and the registration of transfers of, shares apply, so far as they can and with any necessary changes, to any transfer under rule 4.3(c)(ii) as if the relevant Transmission Event had not occurred and the transfer were executed or effected by the registered holder of the share.
- (e) If two or more persons become jointly entitled to a share because of a Transmission Event, those persons are, on being registered as the holders of the share, taken to hold the share as joint tenants subject to rule 2.3 (**Joint holders of shares**).
- (f) The directors may register a transfer of shares signed by a member before a Transmission Event even though the Company has notice of the Transmission Event.

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## 5 General meetings

### 5.1 Convening of general meetings

- (a) The directors may convene and arrange to hold a general meeting of the Company at the time and place or places and in the manner as they think fit. No member may convene a general meeting of the Company except where entitled under the Corporations Act to do so.

### 5.2 Use of technology at general meetings

- (a) The Company may hold a general meeting:
  - (i) at two or more venues using any technology that gives all persons entitled to attend, as a whole a reasonable opportunity to participate in the meeting; and/or
  - (ii) using one or more technologies that give all persons entitled to attend, as a whole, a reasonable opportunity to participate in the meeting without being physically present in the same place.

The directors are not under any obligation to offer or provide any additional venue or any technology.

- (b) All persons participating in a general meeting held pursuant to rule 5.2(a) are taken for all purposes of this constitution (including, a quorum requirement under rule 5.6) to be present at the meeting while so participating.
- (c) A general meeting will be duly constituted and its proceedings valid if the chair is satisfied that adequate facilities are available throughout the meeting to seek to

ensure that persons entitled to attend, as a whole, have a reasonable opportunity to participate in the business for which the meeting has been convened.

- (d) The general meeting will be deemed to take place at the place where the chair presides. The powers of the chair will apply equally to each venue and each online platform of the meeting.
- (e) If a general meeting is held wholly or partly by means of one or more technologies, the directors may (subject to the requirements of the Act and Listing Rules) make any arrangement and impose any requirement or restriction in connection with participation by such technologies, including any arrangement, requirement or restriction that is:
  - (i) necessary to verify the identification of the member, proxy, attorney or Representative;
  - (ii) necessary to ensure the security of the technology used; and
  - (iii) proportionate to the achievement of those objectives.
- (f) If, before or during the meeting, any technology used in accordance with rule 5.2(a) encounters a technical difficulty which results in a person entitled to participate not being able to participate in the meeting, the chair may:
  - (i) allow the meeting to continue; or
  - (ii) adjourn the meeting until the difficulty is remedied or to such other time and location as the chair deems appropriate.
- (g) The chair, in his or her discretion, or the directors, in their discretion, may require the adoption of any procedures which are in his or her, or their, opinion necessary or desirable for proper and orderly conduct of the meeting including debate or discussion.

### **5.3 Postponement, cancellation or change or removal of venue or technology**

- (a) The directors may by notice, whenever they think fit:
  - (i) postpone or cancel a general meeting; or
  - (ii) change, or remove the offering of, any venue or technology for a general meeting,

except where the postponement, cancellation, change or removal would be contrary to the Corporations Act.

- (b) Any failure to give notice of cancellation, postponement, change or removal does not invalidate the cancellation, postponement, change or removal, the proceedings at or any resolution passed at the general meeting.

### **5.4 Notice of general meetings**

- (a) Notice of a general meeting must be given in accordance with this constitution, the Corporations Act and the Listing Rules.
- (b) Unless otherwise decided by the directors in accordance with the Corporations Act and the Listing Rules:

- (i) notice of a general meeting may be given, and any other information to be provided with notice of the meeting, or at or in relation to the meeting, may be provided, using one or more technologies to communicate to those entitled to receive notice of the meeting:
  - (A) the contents of the notice and the other information; or
  - (B) details of an online location where such contents and information can be viewed or from where they can be downloaded; and
- (ii) notice of the meeting must include information about how those entitled to attend can:
  - (A) attend the meeting, including details of any access, identification and security arrangements relating to the technology or technologies;
  - (B) participate in the meeting (including how they can participate in a vote taken at the meeting, and speak at the meeting, to the extent they are entitled to do so); and
  - (C) appoint proxies for the meeting to the extent they are entitled to do so.
- (c) The content of a notice of a general meeting called by the directors is to be decided by the directors, but it must state the general nature of the business to be transacted at the meeting and any other matters required under the Corporations Act.
- (d) A person may waive notice of any general meeting by notice in writing to the Company.
- (e) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting under this rule 5.2 does not invalidate any act, matter or thing done or resolution passed at the general meeting.
- (f) A person's attendance at a general meeting waives any objection that the person may have to:
  - (i) a failure to give notice, or the giving of a defective notice, of the meeting unless at the beginning of the meeting the person objects to the holding of the meeting; and
  - (ii) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.
- (g) In calculating the period of notice, both the day on which notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

## 5.5 Admission to general meetings

- (a) The chair of a general meeting may take any action he or she considers appropriate for the safety of persons attending the meeting and the orderly conduct of the meeting and may refuse admission to a person, or require a person to leave and remain out of the meeting, if that person:



- (i) has a pictorial-recording or sound-recording device, including without limitation cameras, tape recorders, video cameras, smart phones or another audio or visual recording devices;
- (ii) has a placard or banner;
- (iii) has an article which the chair considers to be dangerous, offensive or liable to cause disruption;
- (iv) refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
- (v) behaves or threatens to behave or who the chair has reasonable grounds to believe may behave in a dangerous, offensive or disruptive manner; or
- (vi) is not a member or a proxy, attorney or Representative of a member, a director or auditor of the Company; or
- (vii) is not entitled to receive notice of the meeting.

The chair may delegate the powers conferred by this rule to any person as he or she thinks fit.

- (b) A person, whether a member or not, requested by the directors or the chair to attend a general meeting is entitled to be present, and at the request of the chair, to speak at the meeting.
- (c) If the chair of a general meeting considers that there is not enough room for the members who wish to attend the meeting, he or she may arrange for any person whom he or she considers cannot be seated in the main meeting room, to observe or attend the general meeting in a separate room.
- (d) The inability of one or more members present in a separate room to participate in the conduct of the meeting, or to access, or to continue to access, one or more technologies for participation in the general meeting, does not invalidate the proceedings at or any resolution passed at the meeting, provided that sufficient members are able to participate in the meeting as are required to constitute a quorum for the meeting.
- (e) Nothing in this rule 5.4(g) or in rule 5.8 (**Conduct of general meetings**) is taken to limit the powers conferred on the chair by law.

## 5.6 Quorum at general meetings

- (a) No business may be transacted at a general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) A quorum consists of:
  - (i) if the number of members entitled to vote is three or more – three of those members; or
  - (ii) if only one member is entitled to vote – that member,
 present at the meeting.

- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
  - (i) where the meeting was convened by, or at the request of members, the meeting must be dissolved; or
  - (ii) in any other case:
    - (A) the meeting stands adjourned to the day, time, place with the means of attendance and participation (including by technologies), as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and
- (d) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

### 5.7 Chair of general meetings

- (a) If the directors have elected one of their number as chair of their meetings, that person is entitled to preside as chair at each general meeting.
- (b) Subject to rule 5.7(c), if at a general meeting:
  - (i) a chair has not been elected by the directors; or
  - (ii) the elected chair of directors is not present within 15 minutes after the time appointed for the meeting or is unable or unwilling to act as chair for all or part of the meeting,  
  
the following may preside as acting chair for all or the relevant part of the meeting (in order of precedence):
    - (iii) the deputy chair (if any);
    - (iv) a director chosen by a majority of the directors present;
    - (v) the only director present;
    - (vi) a member chosen by a majority of the members present in person or by proxy, attorney or Representative.
- (c) The chair of a general meeting may, for any item of business or discrete part of the meeting, vacate the chair in favour of another person nominated by him or her.
- (d) Where an instrument of proxy appoints the chair of a general meeting as proxy for the part of the proceedings for which an acting chair of the meeting has been nominated, the instrument of proxy is taken to be in favour of that acting chair for the relevant part of the proceedings.

### 5.8 Conduct of general meetings

- (a) The chair of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require

the adoption of any procedures which are in his or her opinion necessary or desirable for:

- (i) proper and orderly debate or discussion, including limiting the time that a person present may speak on a motion or other item of business before the meeting; and
  - (ii) the proper and orderly casting or recording of votes at the general meeting, whether on a show of hands or on a poll, including the appointment of scrutineers.
- (b) The chair of a general meeting may at any time he or she considers it necessary or desirable for the proper and orderly conduct of the meeting:
- (i) terminate debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the members present;
  - (ii) allow debate or discussion on any business, question, motion or resolution being considered by the meeting to continue; or
  - (iii) make rulings without putting any question to the vote.
- (c) The chair of a general meeting may:
- (i) refuse to allow debate or discussion on any business, question, motion or resolution which is not within the business referred to in the notice of meeting; and
  - (ii) refuse to allow any amendment to be moved to a resolution of which notice has been given under rule 5.4(a).
- (d) Any challenge to a right to vote (whether on a show of hands or on a poll) or to a determination to allow or disregard a vote (including in either case a direct vote) may only be made at the meeting and may be determined by the chair of the meeting whose decision is final.
- (e) If a person purports to cast a vote (including a direct vote) at or for the purposes of a general meeting in contravention of the Corporations Act or Listing Rules, the chair of the meeting may determine that the vote be disregarded and treated as not having been cast.
- (f) A decision by a chair under this rule 5.8 is final.
- (g) Except with the approval of the directors, with the permission of the chair of the meeting or as permitted under the Corporations Act, no person may move at any general meeting either any resolution (except in the form set out in the notice of meeting) or any amendment of any resolution.

## **5.9 Adjournment of general meeting**

- (a) The chair of a general meeting may, at any time during the meeting, adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and place with any means of attendance and participation as the chair thinks fit.

- (b) If the chair exercises his or her right under rule 5.9(a), it is in the chair's sole discretion whether to seek the approval of the members present to the adjournment.
- (c) If the chair does seek the members' approval under rule 5.9(b), the chair must adjourn the meeting if the members present with a majority of votes agree or direct that the chair must do so.
- (d) The chair's rights under rule 5.9(a) are exclusive and, unless otherwise required by the chair, no vote may be taken or demanded by the members present in respect of any adjournment.
- (e) The only business that may be transacted at any adjourned meeting is the unfinished business of the meeting from which the adjournment took place.
- (f) Where a meeting is adjourned, notice of the adjourned meeting must be given to the Exchange, but need not be given to any other person

#### 5.10 Voting at general meetings

- (a) Except where a resolution requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the members present at the meeting and any such decision is for all purposes, a decision of the members.
- (b) In the case of an equality of votes either on a show of hands or on a poll at or for the purposes of a general meeting, the chair has no casting vote, in addition to any vote to which that chair may be entitled as a member or as a proxy, attorney or Representative.
- (c) The chair of a general meeting may determine that any question or resolution to be submitted to the meeting be determined by a poll without first submitting the question to the meeting to be decided by a show of hands.
- (d) A resolution put to the vote of a general meeting must in the first instance be decided on a show of hands of the members present and entitled to vote unless, before a vote by show of hands is taken or before or immediately after the declaration of the result of the show of hands, a poll is demanded by:
  - (i) the chair of the meeting;
  - (ii) members in accordance with the Corporations Act (and not otherwise).
- (e) A resolution put to the vote of a general meeting held wholly or partly by means of one or more technologies under 5.2(a)(ii) must be decided on a poll, unless the chair of the meeting determines that it will be decided on a show of hands.
- (f) Unless a poll is duly demanded, a declaration by the chair of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (g) If a poll is duly demanded at a general meeting:
  - (i) it will be taken when and in the manner the chair of the meeting directs;

- (ii) the result of a poll may be announced in the manner and at the time (whether during the relevant meeting or afterwards) as the chair of the meeting considers appropriate;
  - (iii) the result of the poll will be the resolution of the meeting at which the poll was demanded; and
  - (iv) the demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll has been demanded.
- (h) A poll cannot be demanded at a general meeting on the election of a chair of the meeting.
  - (i) A demand for a poll may be withdrawn.
  - (j) The directors may, subject to law, determine that, at any meeting of members or a class of members, a member who is entitled to attend and vote at that meeting is entitled to give their vote by Direct Vote.

#### 5.11 Direct voting

- (a) Despite anything to the contrary in this constitution, the directors may decide that, at any general meeting, a member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution. A "direct vote" includes a vote delivered to the Company by post, fax or other electronic means approved by the directors.
- (b) The directors may prescribe regulations, rules and procedures in relation to direct voting, including the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.

#### 5.12 Voting rights

- (a) Subject to this constitution and to any rights or restrictions attached to any shares or class of shares, at a general meeting:
  - (i) on a show of hands, every member present has one vote;
  - (ii) on a poll, every member present has:
    - (A) one vote for each fully paid share held by the member and in respect of which the member is entitled to vote; and
    - (B) for each partly paid share held by the member and in respect of which the member is entitled to vote, that fraction of a vote equivalent to the proportion that the amount paid (not credited) on the share bears to the total amounts paid and payable (excluding amounts credited) on the share. An amount paid on a share in advance of a call is to be ignored.
- (b) If a person present at a general meeting represents personally or by proxy, attorney or Representative of more than one member, the following rules apply to a vote taken on a show of hands:
  - (i) the person is entitled to one vote only despite the number of members the person represents; and

- (ii) the person's vote will be taken as having been cast for all the members the person represents.
- (c) A joint holder may vote at any meeting in person or by proxy, attorney or Representative as if that person was the sole holder. If more than one joint holder tenders a vote, the vote of the holder named first in the register must be accepted to the exclusion of the other or others.
- (d) The parent or guardian of an infant member may vote at a general meeting on evidence being produced of the relationship or of the appointment of the guardian as the directors may require and any vote so tendered by a parent or guardian of an infant member must be accepted to the exclusion of the vote of the infant member.
- (e) A person entitled to a share as a result of a Transmission Event may vote at a general meeting in respect of that share in the same manner as if that person were the registered holder of the share if, at least 48 hours before the meeting, the directors have:
  - (i) admitted that person's right to vote at that meeting in respect of the share; or
  - (ii) been satisfied of that person's right to be registered as the holder of, or to transfer, the share under rule 4.3(c),
 and any vote tendered by that person must be accepted to the exclusion of the vote of the registered holder of the share.
- (f) A member is not entitled to vote at a general meeting in respect of a share upon which any calls or other sums are presently payable by the shareholder to the company.
- (g) An objection to the qualification of a person to vote at a general meeting:
  - (i) must be raised before or immediately after the result of the motion on which the vote objected to is given or tendered; and
  - (ii) must be referred to the chair of the meeting, whose decision is final.
- (h) A vote not disallowed by the chair of a meeting under rule 5.12(g) is valid for all purposes.

### 5.13 Representation at general meetings

- (a) Subject to this constitution and any rights or restrictions for the time being attached to any class or classes of shares, each member entitled to attend and vote at a meeting of members may:
  - (i) attend and vote in person; or, where a member is a body corporate, by its Representative;
  - (ii) be represented and vote by proxy, by attorney or, where a member is a body corporate, by its Representative; or
  - (iii) if a determination has been made by the directors in accordance with rule 5.10(j), vote by direct vote.

- (b) A proxy, attorney or Representative may be a member of the Company but does not have to be a member.
- (c) A member who is entitled to attend and cast a vote at a general meeting of the Company may appoint no more than two other persons as that member's proxy or proxies to attend and vote at the meeting on that member's behalf. A proxy, attorney or Representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.
- (d) Unless otherwise provided in the Corporations Act or in the appointment, an appointment of a proxy, attorney or Representative will be taken to confer authority:
  - (i) to agree to a meeting being convened by shorter notice than is required by the Corporations Act or by this constitution;
  - (ii) to speak to any proposed resolution on which the proxy, attorney or Representative may vote;
  - (iii) to demand or join in demanding a poll on any resolution on which the proxy, attorney or Representative may vote;
  - (iv) even though the appointment may refer to specific resolutions and may direct the proxy, attorney or Representative how to vote on those resolutions:
    - (A) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
    - (B) to vote on any procedural motion, including any motion to elect the chair, to vacate the chair or to adjourn the meeting; and
    - (C) to act generally at the meeting; and
  - (v) even though the appointment may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re-Scheduled or adjourned meeting or at the new venue.
- (e) The chair of a meeting may require any person purporting to act as a proxy, attorney or Representative to establish to the satisfaction of the chair that the person has been validly appointed as a proxy, attorney or Representative and is the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting. The chair may delegate his or her powers under this rule 5.13(e) to any person.
- (f) Where a member appoints two proxies or attorneys to vote at the same general meeting and the authority of one is not conditional on the other failing to attend or vote, the following rules apply:
  - (i) where the appointment does not specify the proportion or number of the member's votes each proxy or attorney may exercise, each proxy or attorney may exercise half of the member's votes;
  - (ii) on a show of hands, neither proxy or attorney may vote; and

- (iii) on a poll, each proxy or attorney may only exercise the voting rights the proxy or attorney represents.
- (g) An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- (h) A proxy or attorney may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy or attorney, and the original or a certified copy of the power of attorney or other authority (if any) under which the instrument is signed, are received:
  - (i) at the registered office of the Company, the fax number at its registered office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting; and
  - (ii) at least 48 hours before the time of the meeting.
- (i) Where the Company receives an instrument recording a direct vote or appointing a proxy or attorney in accordance with this Constitution or the Corporations Act and within the time period specified in rule 5.13(h) or as otherwise determined by the directors, the Company is entitled to:
  - (i) clarify with the relevant member any instruction in relation to that instrument by written or verbal communication and make any amendments to the instrument required to reflect any clarification; and
  - (ii) where the Company considers that the instrument has not been duly executed, return the instrument to the appointing member and request that the member duly execute the instrument and return it to the company within the period determined by the company under rule 5.13(h) or otherwise determined by the directors and notified to the member.
- (a) The member is taken to have appointed the Company as its attorney for the purpose of any amendments made to an instrument recording a direct vote or appointing a proxy or attorney in accordance with rule 5.13(i). An instrument appointing a proxy or attorney which is received by the Company in accordance with rule 5.13(i) is taken to have been validly received by the Company.
- (j) Where a notice of meeting provides for electronic lodgement of proxy appointment forms or direct votes, a form or direct vote lodged at the electronic address specified in the notice are taken to have been received at the registered office of the Company and validated by the member if there is compliance with the requirements set out in the notice.
- (k) A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite:
  - (i) a Transmission Event occurring in relation to the appointer; or
  - (ii) the revocation of the instrument or of the authority under which the instrument was executed,

if no notice in writing of the Transmission Event or revocation has been received by the Company by the time and at one of the places at or in the manner in which



the instrument appointing the proxy or attorney is required to be received under rule 5.13(h).

- (l) A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite the transfer of the share in respect of which the instrument was given if the transfer is not registered by the time at which the instrument appointing the proxy or attorney is required to be received under rule 5.13(h).
  - (m) The appointment of a proxy or attorney is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on any resolution, the proxy or attorney is not entitled to vote, and must not vote, as the appointer's proxy or attorney on the resolution.
  - (n) The Company must include with a notice of meeting a proxy form which must provide for the appointer:
    - (i) to vote for or against each resolution; and
    - (ii) to appoint proxies of the appointer's choice, but may specify who is to be appointed as proxy if the appointer does not choose.
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## 6 Directors

### 6.1 Appointment and removal of directors

- (a) The number of directors (not including alternate directors) must not be:
  - (i) less than three; or
  - (ii) more than 9,unless the company otherwise resolves in general meeting.
- (b) All directors must be natural persons.
- (c) Subject to rules 6.1(a) and 6.3(a), the directors may elect any eligible person to be a director by resolution, either to fill a casual vacancy or as an addition to the existing directors.

### 6.2 Retirement of directors

- (a) A director appointed under rule 6.1(c) who is not a managing director must retire from office at the next annual general meeting following their appointment.
- (b) No director who is not the managing director may hold office without re-election beyond the third annual general meeting following the meeting at which that director was last elected or re-elected.
- (c) If there is more than one managing director, only one of them, nominated by the directors, is entitled not to be subject to vacation of office under rule 6.2(a) or retirement under rule 6.2(b) or 6.2(c). Where the Listing Rules require an election of directors to be held and no director would otherwise be required to submit for election or re-election, the director to retire at the annual general meeting is any director who wishes to retire (whether or not he or she intends to stand for re-election), otherwise it is the director who has been in office the longest since their

last election or appointment (excluding the managing director). As between directors who were last elected or appointed on the same day, the director to retire must be decided by ballot (unless they can agree among themselves).

- (d) The retirement and re-election of a director from office under this constitution, or the election of another person to that office (as the case may be) takes effect at the end of the meeting at which the retirement and re-election or election occur.

### 6.3 Election of directors

- (a) The only way a person can be elected as a director at an annual general meeting is by:
  - (i) **Retirement and re-election:** that person is a director retiring from office under rule 6.2 and standing for re-election at that meeting;
  - (ii) **Directors' nomination:** that person has been nominated by the directors for election at that meeting;
  - (iii) **Member's own nomination:** that person nominates themselves as a candidate for election as a director at a general meeting by signing a notice of nomination and giving it to the Company; or
  - (iv) **Member's nomination of another person:** that person is nominated by a member as a candidate for election as a director at a general meeting, the nominating member signing a notice of nomination and giving it to the Company, and a notice signed by the person stating his or her consent to the nomination.
- (b) The relevant timeframe for a nomination under rules 6.3(a)(iii) and 6.3(a)(iv) is not less than 45 Business Days and not more than 90 Business Days before the meeting.

### 6.4 Vacation of office

In addition to the circumstances prescribed by the Corporations Act, this constitution or by the terms of a director's appointment, the office of a director becomes vacant if the director:

- (a) is a managing director and ceases to be employed by the Company or a related body corporate;
- (b) becomes mentally incapacitated;
- (c) becomes liable to have their estate dealt with in any way under the law relating to mental health;
- (d) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors generally;
- (e) is disqualified from holding office as a director of the company under any Australian legislation or any regulatory requirement or standard made in accordance with such legislation applicable to the Company;
- (f) is convicted of an indictable offence and the directors do not within one month of that conviction resolve to confirm the director's appointment or election (as the case may be) to the office of director; or

- (g) fails to attend meetings of the directors for more than three consecutive months without leave of absence from the directors and the other directors have not, within 14 days of having been given a notice by the secretary giving details of the absence, resolved that the leave of absence be granted; or
- (h) resigns by notice in writing to the Company.

#### **6.5 Remuneration of directors**

- (a) The directors may decide each director's remuneration for holding that office, but the aggregate remuneration of all non-executive directors in any financial year must not exceed the amount fixed by the Company in general meeting.
- (b) When calculating a non-executive director's remuneration for the purposes of rule 6.5(a), any amount paid by the company or related body corporate:
  - (i) to a superannuation, retirement or pension fund for a director is to be included;
  - (ii) as fees for acting as a director of the Company or any child entity (including attending and participating in any directors' committee meetings where the directors have not made a determination under rule 6.17(c) is to be included;
  - (iii) as securities, issued with the approval of members under the Listing Rules, are to be excluded; and
  - (iv) for any insurance premium paid or agreed to be paid for a director under rule 9.3 is to be excluded.
- (c) Remuneration of directors may be provided in whatever manner that the directors decide, including as a non-cash benefit or as a contribution to a superannuation fund.
- (d) The remuneration payable by the Company to a director (who is not a managing director or an executive director) must not include a commission on, or percentage of, operating revenue.
- (e) Directors are entitled to be paid all travelling and other expenses properly incurred by them in connection with the affairs of the Company, including attending and returning from:
  - (i) general meetings of the Company;
  - (ii) meetings of the directors; or
  - (iii) meetings of committees of the directors.
- (f) If a director renders or is called on to perform extra services or to make any special exertions in connection with the affairs of the Company, the directors may arrange for a special remuneration to be paid to that director, either in addition to or in substitution for that director's remuneration under rule 6.5(a).
- (g) Nothing in rule 6.5(a) restricts the remuneration to which a director may be entitled as an officer of the Company or of a related body corporate in a capacity other than director, which may be either in addition to or in substitution for that director's remuneration under rule 6.5(a). The directors may, subject to the Listing Rules and the Corporations Act:

- (i) at any time after a director dies or otherwise ceases to hold office as a director, pay to the director or a legal personal representative, spouse, relative or dependant of the director, in addition to the remuneration of that director under rule 6.5(a), a pension or lump sum payment for past services rendered by that director; and
  - (ii) cause the Company to enter into a contract with the director for the purpose of providing for or giving effect to that payment.
- (h) Any director may be paid a retirement, or similar, benefit, as determined by the directors. The directors may make arrangements with any director with respect to the payment of retirement benefits in accordance with this rule.
- (i) The directors may establish or support, or assist in the establishment or support of, funds and trusts to provide pension, retirement, superannuation or similar payments or benefits to or in respect of the directors or former directors.

#### **6.6 Share qualification**

- (a) A director is not required to hold any shares in the Company to qualify for appointment.
- (b) A director who is not a member of the Company is nevertheless entitled to attend and speak at general meetings and at meetings of the holders of a class of shares.

#### **6.7 Interested directors**

Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests and any procedures determined by the directors from time to time regarding any matter concerning the Company, a director may:

- (a) hold any other office or place of profit, other than auditor, in the Company;
- (b) hold any office or other place of profit in another company, body corporate or trust or entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into a contract or arrangement with the Company, or have an interest in a contract or arrangement with the Company;
- (d) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the directors and may be present at any meeting where any matter is being considered by the Directors;
- (e) sign or participate in the execution of a document by or on behalf of the Company;
- (f) do any of the above despite the fiduciary relationship of the Director's office:
  - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement; and
- (g) exercise the voting power conferred by securities in any entity held by the Company as they determine, 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.

A reference to the Company in this rule 6.6 is also a reference to each related body corporate of the Company.

#### **6.8 Powers and duties of directors**

- (a) The directors are responsible for managing the business of the Company.
- (b) The directors may exercise all powers and do all things that are:
  - (i) within the power of the Company; and
  - (ii) are not by this constitution, the Listing Rules or by law directed or required to be done by the company in general meeting.
- (c) Without limiting the generality of rule 6.8(b), the directors may exercise all the powers of the Company to:
  - (i) borrow or otherwise raise money;
  - (ii) charge any property or business of the Company or all or any of its uncalled capital; and
  - (iii) issue debentures, give any indemnities or guarantees, or give any other security for a debt, liability or obligation of the Company or of any other person.
- (d) The directors may determine how any document must be signed, drawn, accepted, endorsed or otherwise executed, by or on behalf of the Company.
- (e) The directors may pay the costs of:
  - (i) the promotion, formation and registration of the Company; and
  - (ii) registration of any assets acquired by the Company,out of the funds of the Company.
- (f) The directors have discretion to:
  - (i) appoint or employ any person to be an officer, agent or attorney of the Company:
    - (A) for the purposes;
    - (B) with the powers;
    - (C) for the period; and
    - (D) on the conditions,the directors feel are appropriate;

- (ii) resolve to delegate any of their powers to an officer, agent or attorney. The officer, agent or attorney to whom powers are delegated in terms of this rule must exercise those powers as directed by the directors;
  - (iii) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in that officer, agent or attorney; and
  - (iv) remove or dismiss any officer, agent or attorney of the Company at any time, with or without cause, provided that decision must be subject to any contract between the Company and the relevant officer, agent or attorney.
- (g) A power of attorney may be drafted as the directors think fit.

#### **6.9 Director meetings and technology**

- (a) Every director consents:
- (i) by virtue of agreeing to be a director; or
  - (ii) by virtue of adopting this constitution,
- to the use of any technology permitting directors to communicate with each other as a group in real time to hold board meetings.
- (b) Any director may withdraw the consent in rule 6.9(a) in accordance with the Corporations Act.

#### **6.10 Convening of director meetings**

- (a) A director may, whenever the director thinks fit, convene a directors meeting.
- (b) A secretary must convene a directors meeting when requested in writing (which includes by email) in terms of rule 6.10(a).

#### **6.11 Notice of directors' meetings**

- (a) Subject to this constitution, notice of a directors meeting must be given to each person who is at the time of giving the notice:
- (i) a director, other than a director on leave of absence approved by the directors; or
  - (ii) an alternate director appointed under rule 6.16 (**Alternate directors**) by a director on leave of absence approved by the directors.
- (b) A notice of a directors meeting:
- (i) must specify the time and place of the meeting;
  - (ii) must specify any form of technology being used to conduct the meeting and provide information on how to access the meeting;
  - (iii) need not state the nature of the business to be transacted at the meeting;
  - (iv) will be taken to have been given to an alternate director if it is given to the director who appointed that alternate director.

- (c) A director or alternate director may waive notice of a directors meeting by notifying the Company.
- (d) If any:
  - (i) director; or
  - (ii) alternate director of a director on a leave of absence,  
  
does not receive a notice of a directors meeting (**non-receipt**), that fact does not by itself invalidate anything done, anything decided, or any resolution passed at that meeting if:
    - (iii) the non-receipt was attributable to accident or error;
    - (iv) before or after the meeting, that director or alternate director:
      - (A) waived or waives notice of that meeting under rule 6.11(c); or
      - (B) notified or notifies the Company of his or her agreement to that act, matter, thing or resolution; or
    - (v) the director or an alternate director appointed by the director attended the meeting despite the lack of notice.

#### 6.12 Quorum at directors' meetings

- (a) A quorum for directors' meetings is at least two directors, one of whom must be an independent director, or such other higher number as the directors decide.
- (b) If the directors have decided that a quorum must include a particular director or directors appointed by a member, that director or directors must be included in determining whether a quorum is present
- (c) No business may be transacted at a directors meeting unless there is a quorum at the time the business is dealt with.
- (d) A director will be excluded from being counted as part of the quorum if that director:
  - (i) is on a leave of absence approved by the directors;
  - (ii) has notified the chair or the secretary that he or she may be uncontactable for a certain period and the directors meeting is held during that period;
  - (iii) becomes incapacitated due to ill health or other unforeseen circumstances and is unable to participate in the directors meeting;
  - (iv) disqualifies himself or herself from considering the relevant item(s) of business; or
  - (v) would be prohibited under the Corporations Act or other laws or regulations from voting on item(s) of business.
- (e) If the number of directors does not constitute a quorum at a directors meeting, the remaining director or directors may act only:

- (i) in an emergency;
- (ii) or for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or of convening a general meeting of the Company.

#### **6.13 Chair and deputy chair**

- (a) The directors must elect one of the directors as chair of the directors.
- (b) The directors may elect one of the directors as the deputy chair of the directors.
- (c) The directors may decide the period which the chair and deputy chair will hold that office.
- (d) If a directors meeting is held and:
  - (i) a chair has not been elected; or
  - (ii) the chair is not present within 10 minutes after the time appointed for the holding of the meeting, or is unable or unwilling to act,

the deputy chair will be the chairperson of that meeting. If a deputy chair has not been elected, or is not present or willing to act, the directors present must elect one of their number to be chair of that meeting.

#### **6.14 Decisions of directors**

- (a) Decisions require a majority
  - A decision made at a directors meeting must be decided by a majority of votes of directors present and entitled to vote.
- (b) While the number of directors on the Board is an even number, the Chair will have a casting vote while the Chair is an independent director.

If the votes are equal, the chair does not have a second or casting vote.

#### **6.15 Written resolutions**

- (a) A resolution in writing which:
  - (i) is signed by all directors; or
  - (ii) is signed by a majority of directors entitled to vote on the resolution, the number of which is not less than a quorum at a directors meeting,is a valid resolution of the directors.
- (b) A written resolution under rule 6.15(a)(i) is effective when signed by the last of the directors to sign the resolution.
- (c) The written resolution under rule 6.15(a) may consist of several documents in the same form, each signed by one or more of the directors.
- (d) A director may signify assent to a document by signing the document, or by notifying the Company of the director's assent in person or by post, fax,



telephone or other method of written, audio or audio-visual communication or other form of technology.

- (e) For the purpose of this rule 6.15, any references to directors only includes an alternate director appointed by a director where that director:
  - (i) is not available to sign the document; or
  - (ii) is unable to sign the document within a reasonable time.
- (f) Where a document is assented to in accordance with this rule 6.15, the document is to be taken as a minute of a directors meeting.

#### **6.16 Alternate directors**

- (a) A director may appoint a person to be the director's alternate director, provided that:
  - (i) a majority of the other directors approve both the appointment itself, and the parameters of that appointment under rule 6.16(b); and
  - (ii) the person appointed as alternate director has consented to act.
- (b) An alternate director appointed under rule 6.16(a) may be appointed for:
  - (i) such a period;
  - (ii) with whichever powers and responsibilities,as the appointing director sees fit.
- (c) An appointment, or the termination of an appointment, of an alternate director must be in writing signed by the appointing director.
- (d) One person may act as alternate director to more than one director.
- (e) An alternate director is entitled to:
  - (i) notice of directors' meetings; and
  - (ii) attend and vote on behalf of his or her appointer, where the appointer does not attend a directors meeting.
- (f) An alternate director is entitled to a separate vote for each director the alternate director represents, in addition to any vote the alternate director may have as a director in his or her own right.
- (g) In the absence of the appointer, an alternate director may exercise any powers that the appointer saw fit to grant, and the exercise of that power by the alternate director is to be taken to be the exercise of the power by the appointer.
- (h) The office of an alternate director is vacated when the appointer vacates office as a director.
- (i) The appointment of an alternate director may be terminated at any time by the appointer, even where the period of the appointment has not expired.

- (j) An alternate director is not to be taken into account in determining the minimum or maximum number of directors allowed under this constitution or the rotation of directors under rule 6.1 (**Appointment and removal of directors**).
- (k) In determining whether a quorum is present at a directors meeting an alternate director is not to be taken into account separately from their appointor.
- (l) The directors have discretion to determine the appropriate remuneration for any alternate director.
- (m) An alternate director is not entitled to be remunerated by the Company for his or her services as alternate director, except as provided in rule 6.16(l).
- (n) Any individual acting as an alternate director:
  - (i) is an officer of the Company and not the agent of the appointor; and
  - (ii) is responsible to the exclusion of the appointor for their own acts and defaults.

#### **6.17 Committees and delegations of directors' power**

- (a) Any delegation in terms of section 198D of the Corporations Act must be exercised in accordance with any directions of the directors.
- (b) The provisions of this constitution applying to directors' 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.
- (c) The directors can resolve to award special remuneration to directors who hold delegated powers, whether as part of a committee or in terms of an individual delegation, provided that the total amount fixed by the Company for remuneration of non-executive directors under rule 6.5(a) will not be exceeded.

#### **6.18 Validity of acts**

- (a) Anything done by a person:
  - (i) acting as a director; or
  - (ii) acting as director in a meeting of directors or a committee of directors,is not invalidated by reason only of:
  - (iii) a defect in the appointment of that person as a director;
  - (iv) that person being disqualified to be a director or having vacated office; or
  - (v) that person not being entitled to vote,if the relevant circumstance was not known at the relevant time.

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## 7 Executive directors

### 7.1 Executive directors

- (a) The directors may appoint one or more:
  - (i) employees of the Company, or of a related body corporate, as executive directors (subject to the provisions of this constitution dealing with the appointment of directors); or
  - (ii) directors as executive directors of the Company whilst also determining the terms and title of such executive appointments; or
  - (iii) individuals as executive directors (subject to the provisions of this constitution dealing with the appointment of directors) and determine the terms and title of such executive director appointments.
- (b) If a person appointed as an executive director under rule 7.1(a) ceases to be a director, then the executive appointment automatically terminates, subject to any contrary determination by the directors (and without prejudice to any rights of any party under any relevant service agreement).
- (c) The directors may resolve that any executive director appointed under rule 7.1(a) bears the title Managing Director.
- (d) Unless the directors decide otherwise, an executive director's appointment:
  - (i) as a director terminates automatically if the executive director ceases to be an employee of the Company or of a related body corporate; or
  - (ii) as an employee of the Company or of a related body corporate terminates automatically if the executive director ceases to be a director.
- (e) An executive director's remuneration must not include a commission on operating revenue or a percentage of operating revenue of the Company.
- (f) The directors may:
  - (i) confer on an executive director the powers, discretions and duties as they think fit, and may resolve to delegate any powers, discretions and duties vested in or exercisable by the directors;
  - (ii) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive director; and
  - (iii) authorise the executive director to delegate all or any of the powers, discretions and duties conferred on the executive director.
- (g) An executive director is not required to hold any shares to qualify for appointment.
- (h) An act done by a person acting as an executive director is not invalidated by reason only of:
  - (i) a defect in the person's appointment as an executive director; or

- (ii) the person being disqualified to be an executive director,  
if that circumstance was not known by the person when the act was done.

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## 8 Secretaries

### 8.1 Appointment

- (a) The directors must appoint at least one secretary and may appoint additional secretaries.
- (b) The directors may appoint one or more assistant secretaries.
- (c) The appointment of a secretary or assistant secretary may be for the period, at the remuneration and on the conditions the directors think fit.

### 8.2 Removal

A secretary or assistant secretary may be removed or dismissed by the directors at any time, with or without cause, subject to any contract between the Company and that individual.

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## 9 Indemnity and insurance

### 9.1 Indemnity

- (a) Subject to rule 9.2, the directors may decide that the Company will indemnify, to the extent permitted by law, any person:
  - (i) who is or was a director, alternate director, executive director, secretary or assistant secretary of the Company;
  - (ii) who is or was an officer or employee or former officer or employee of the Company, or of its related bodies corporate as the directors in each case determine; and
  - (iii) any auditor or former auditor of the Company, or of its related bodies corporate,for all losses or liabilities incurred by such a person.
- (b) The indemnification in rule 9.1(a) includes, but is not limited to, a liability for negligence or for reasonable legal costs on a full indemnity basis.

### 9.2 Extent of Indemnity

Any indemnity granted to a person in terms of rule 9.1 (**Indemnity**):

- (a) is a continuing obligation and is enforceable against the Company by that person ;
- (b) applies even though that person may have ceased to be an officer or auditor of the Company or of a related body corporate;
- (c) applies to losses and liabilities incurred both before and after the date of adoption of that rule;

- (d) operates only to the extent that the loss or liability is not covered by insurance; and
- (e) is enforceable without that being required to incur any expense or make any payment.

### 9.3 Insurance

- (a) The Company may, to the extent permitted by law:
  - (i) purchase and maintain insurance; or
  - (ii) pay or agree to pay a premium for insurance,

for any person that 9.1(a) applies to.

- (b) The insurance in terms of rule 9.3(a) applies against any liability incurred by insured person as an officer or auditor of the Company or of a related body corporate including, but not limited to, a liability for negligence or for legal costs.

### 9.4 Savings

Nothing in rule 9.1 (Indemnity) or 9.3 (Insurance):

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any loss or liability referred to in those rules; or
- (b) limits the capacity of the Company to indemnify or provide insurance for any person to whom those rules do not apply.

### 9.5 Contracts

The Company may enter into an agreement with a person referred to in rule 9.1(a) with respect to the matters covered by this rule 9. Such an agreement may include provisions:

- (a) requiring the Company to make payments to that person by way of advance or loan (on an interest-free basis) of amounts of money that are to be applied to meet legal costs; and
- (b) relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

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## 10 Execution and seals

### 10.1 Manner of execution

- (a) Without limiting the ways in which the Company may execute documents under the Corporations Act and subject to this constitution, the Company may execute a document if the document is signed by:
  - (i) 2 directors; or
  - (ii) a director and a secretary; orany other person or persons authorised by the directors for that purpose.

## 10.2 Use of seal

If the directors determine that the Company have a seal and/or a duplicate seal:

- (a) it may be used only with the authority of the directors or a committee of the directors authorised by the directors to authorise its use (and such authority may be given before or after the Seal is used);
- (b) until the directors otherwise determine, each document to which the seal is affixed must be signed by:
  - (i) 2 directors;
  - (ii) a director and a secretary; or
  - (iii) a director and another person or persons authorised by the directors for that purpose; and
- (c) the directors may decide on other procedures for the use of the seal.

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## 11 Dividends, other distributions and reserves

### 11.1 General

The provisions in this rule are subject to:

- (a) the Corporations Act, the Listing Rules and any other applicable law; and
- (b) this constitution and any rights or restrictions attached to a share or class of shares.

### 11.2 Declaration or determination of dividends

- (a) The directors may:
  - (i) declare or determine and pay any interim, special or final dividends as, in their judgment, the financial position of the Company justifies;
  - (ii) rescind or amend a decision to pay a dividend if they decide, before the payment date, that the Company's financial position no longer justifies the payment; and
  - (iii) pay any dividend required to be paid under the terms of issue of a share.
- (b) If there is more than once class of shares on issue, the directors may declare and pay a dividend on one class of shares:
  - (i) to the exclusion of some or all of the other classes; and
  - (ii) at a different rate from that on another class of shares.
- (c) Determination, declaration and payment of a dividend by the directors does not require any ratification by the members in general meeting.
- (d) Interest is not payable by the Company in respect of any dividend.

- (e) On determining that a dividend is payable on a particular class of shares, the directors may fix:
  - (i) the amount of the dividend;
  - (ii) the date of payment of the dividend; and
  - (iii) the form and method of payment of the dividend.
- (f) The form of payment of the dividend may include any combination of the following, and whether generally or for specific shares or members:
  - (i) cash;
  - (ii) the issue of shares;
  - (iii) the grant of options; or
  - (iv) the distribution of assets, including fully paid shares or other securities of the Company or of another body corporate.
- (g) The directors may resolve to pay the dividend to particular members wholly or partly out of any particular source, and to the remaining members wholly or partly out of any other particular source in their discretion.

### **11.3 Apportionment of dividends**

- (a) Unless otherwise decided by the directors:
  - (i) all fully paid shares on which any dividend is to be paid are entitled to participate in the dividend equally;
  - (ii) the dividend to be paid to the holder of a partly paid share must not exceed that proportion of the dividend to be paid to the holder of a fully paid share that the amount paid up on the share (not credited as paid up) bears to the total issue price of the share (excluding amounts credited as paid up); and
  - (iii) shares will rank for dividends from their date of issue.
- (b) In determining the amount paid on a share under rule 11.5(b), any amount paid or credited as paid on a share in advance of a call, is to be ignored.

### **11.4 Deductions**

The directors may apply any part of any dividend payable to a member towards satisfaction of all amounts presently payable by the member to the Company, including any unpaid calls on partly paid shares

### **11.5 Timing and entitlement to dividends**

- (a) Subject to the ASX Settlement Operating Rules, the directors may fix a record date in respect of a dividend.
- (b) Subject to the ASX Settlement Operating Rules, a dividend in respect of a share must be paid to the person who is registered, or entitled under rule 4.1(c) to be registered, as the holder of the share:

- (i) where the directors have fixed a record date in respect of the dividend, on that date; or
- (ii) where the directors have not fixed a record date in respect of that dividend, on the date on which the dividend is paid,

and a transfer of a share that is not registered, or left with the Company for registration in accordance with rule 4.1(b)(iii), on or before that date is not effective, as against the Company, to pass any right to the dividend.

- (c) Where a person is entitled to a share as a result of a Transmission Event, the directors may, but need not, retain any dividends payable on that share until that person becomes registered as the holder of the share or transfers it.

## 11.6 Payment

- (a) Any dividend, interest or other money payable in cash in respect of shares may be paid:
  - (i) by electronic funds transfer to an account with a bank or other financial institution nominated by the holder (or in the case of joint holders, to the account nominated by, the joint holder first named in that register) and which is acceptable to the Company; or
  - (ii) in any other manner the directors decide.
- (b) Where payment is made by electronic funds transfer but no account is nominated by the holder or an electronic funds transfer into a nominated account is rejected or refunded, the company may credit the amount payable to an account of the Company to be held until the holder nominates a valid account.
- (c) The directors may invest or otherwise use any unclaimed dividends for the benefit of the Company until claimed or required to be dealt with under any law relating to unclaimed dividends.
- (d) Where a holder does not have a registered address or the company believes that a holder is not known at the holder's registered address, the Company may credit an amount payable in respect of the member's shares to an account of the Company to be held until the member claims the amount payable or nominates a valid account.
- (e) Where a person is entitled to a share as a result of a Transmission Event, the Board may, but need not, retain any dividends payable on that share until that person becomes registered as the holder of the share or transfers it.
- (f) An amount credited to an account under rules 11.6(a) or 11.6(d) is to be treated as having been paid to the member at the time it is credited to that account. The Company will not be a trustee of the money and no interest will accrue on the money. The money may be used for the benefit of the Company until claimed, reinvested under rule 11.6(g) or disposed of in accordance with the laws relating to unclaimed monies.
- (g) If the directors elect to pay an amount payable under rule 11.6(a) by cheque, where such cheque is not presented for payment for at least 11 calendar months after issue or an amount is held in an account under rules 11.6(a) or 11.6(d) for at least 11 calendar months, the Board may reinvest the amount, after deducting reasonable expenses, into shares in the Company on behalf of, and in the name of, the



member concerned and may stop payment on the cheque. The shares may be acquired on market or by way of new issue at a price the directors accept is market price at the time. Any residual sum which arises from the reinvestment may be carried forward or donated to charity on behalf of the member, as the directors decide. The Company's liability to provide the relevant amount is discharged by an application under this rule 11.6(g). The Board may do anything necessary or desirable (including executing any document) on behalf of the member to effect the application of an amount under this rule 11.6(g). The directors may determine other rules to regulate the operation of this rule 11.6(g) and may delegate its power under this rule to any person.

## 11.7 Capitalisation

- (a) The directors may resolve to capitalise any amount being the whole or any amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to members.
- (b) The directors may (but need not) resolve to apply all or any part of the capitalised amount for the benefit of a member in the proportions to which those members would have been entitled in a distribution of that amount by way of dividend, in any of the following ways:
  - (i) in paying up in full any unissued shares in or other securities of the Company to be issued to members as fully paid;
  - (ii) in paying up any amounts unpaid on shares or other securities held by the members;
  - (iii) partly as specified in rule 11.7(b)(i) and partly as specified in rule 11.7(b)(ii); or
  - (iv) in any other way permitted by the Corporations Act and the Listing Rules.The members entitled to a share in the distribution must accept that application in full satisfaction of their interests in the capitalised amount.
- (v) Where the terms of options on issue on the date that the resolution in rule 11.7(b) is passed entitle the holder to an issue of bonus shares under this rule 11.7, the directors may allow for such future issues of bonus shares in determining the number of unissued shares to be issued; and
- (c) Rules 11.3 (**Apportionment of dividends**) and 11.5 (**Timing and entitlement to dividends**) apply, so far as they can and with any necessary changes, to a capitalisation of an amount under this rule 11.7 as if references in those rules to a dividend and to the date a dividend is paid were references to a capitalisation of an amount and to the date the directors resolve to capitalise the amount under this rule 11.7 respectively.

## 11.8 Ancillary powers

- (a) The directors may do any of the following things necessary to give effect to a resolution for the satisfaction of a dividend to return capital (by way of a reduction of capital, a buy-back or otherwise) or by the capitalisation of an amount under this rule:
  - (i) settle as they think expedient any difficulty that may arise in making the distribution or capitalisation and, in particular, where shares or other securities in the Company are or would otherwise be issuable in fractions:

- (A) determine that fractions are to be disregarded or are to be rounded down to the nearest whole number;
  - (B) determine that fractions are to be rounded up to the nearest whole number; or
  - (C) make cash payments in respect of the fractional entitlement;
- (ii) fix the value for distribution of any specific assets or any part of such asset;
  - (iii) pay cash or issue shares or other securities to any members in order to adjust the rights of all parties;
  - (iv) vest any specific assets, cash, shares or other securities in a trustee on such trusts for the persons entitled to the dividend or capitalised amount as the directors consider expedient; and
  - (v) authorise any person to make, on behalf of all the members entitled to any further shares or other securities as a result of the distribution or capitalisation, an agreement with the Company or another body corporate providing, as appropriate:
    - (A) for the issue to them of such further shares or other securities as fully paid; or
    - (B) for the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares or other securities by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement made under an authority referred to in this rule 11.8(a)(v) is effective and binding on all members concerned.

- (b) If the Company distributes to a member shares or other securities in the Company or another body corporate or a trust, the member appoints the Company as his or her agent to do anything needed to give effect to that distribution, including agreeing to become a member of that other body corporate or trust.
- (c) If a distribution of specific assets, shares or securities to, or at the direction of, a particular member or members is illegal, would give rise to parcels of securities which do not constitute a marketable parcel, or, in the directors' opinion, is impracticable, the directors may instead:
  - (i) make a cash payment to the member or members on the basis of the cash amount of the dividend instead of the distribution of specific assets; or
  - (ii) allocate some or all of the assets, shares or debentures to a trustee to be sold on behalf of, and for the benefit of, those members, and any proceeds receivable by members under this rule will be net of expenses incurred by both the Company and trustee in connection with the sale.

## 11.9 Reserves

- (a) The directors may, before paying any dividend:
  - (i) set aside out of the profits of the Company any reserves or provisions as they think fit;

- (ii) carry forward any amount of profits that the directors decide not to set aside as reserves or provisions; or
  - (iii) appropriate any amount previously set aside as a reserve or provision to the Company's profits.
- (b) If the directors decide to set aside an amount as a reserve or provision, the directors do not need to keep the amount separate from other assets of the Company or prevent the amount being used in the business of the Company or invested as the directors think fit or subsequently being distributed to members.

#### 11.10 Dividend reinvestment plans and dividend selection plans

The directors may, on the terms they think fit, implement, amend, suspend or terminate:

- (a) a dividend reinvestment plan under which the whole or any part of a dividend due to members who participate in the plan on their shares or any class of shares may be applied in subscribing for securities of the Company or of a related body corporate; or
- (b) a dividend selection plan under which participants may elect in respect of all, or part, of their shareholdings:
  - (i) to receive a dividend from the Company paid wholly or partly out of a particular fund or reserve or out of profits derived from a particular source; or
  - (ii) to forego a dividend from the Company in place of another form of distribution from the Company or another body corporate or a trust.

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## 12 Winding up

### 12.1 Distribution of surplus

Subject to this constitution and to the rights or restrictions attached to any shares or class of shares:

- (a) if the Company is wound up and the property of the Company is more than sufficient to pay:
  - (i) all of the debts and liabilities of the Company; and
  - (ii) the costs, charges and expenses of the winding up,

the excess must be divided among the members in proportion to the shares held by them, irrespective of the amounts paid or credited as paid on the shares;

- (b) for the purpose of calculating the excess referred to in rule 12.1(a), any amount unpaid on a share is to be treated as property of the Company;
- (c) the amount of the excess that would otherwise be distributed to the holder of a partly paid share under rule 12.1(a) must be reduced by the amount unpaid on that share at the date of the distribution; and

- (d) if the effect of the reduction under rule 12.1(c) 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.

## 12.2 Division of property

- (a) If the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company:
  - (i) divide among the members in specie the whole or any part of the Company's surplus assets that remain after payment of its debts; and
  - (ii) fix the value of assets as the liquidator considers fair and determine how the liquidator will carry out the division as between the members or different classes of members; and
  - (iii) vest all or any of the Company's assets in a trustee on trusts determined by the liquidator for the benefit of the contributories.
- (b) Where a division or vesting under rule 12.2(a) is otherwise than in accordance with the legal rights of the contributories, a contributory who would be prejudiced by that division or vesting is entitled to dissent and to exercise the same rights as if the special resolution sanctioning that division were a special resolution passed under section 507 of the Corporations Act.
- (c) If any of the property to be divided under rule 12.2(a) includes securities with any liability (including liability to calls), a person entitled under the division to any of the securities may within 10 days after the passing of the special resolution referred to in that rule, by notice in writing direct the liquidator to sell the person's proportion of the securities and to account for the net proceeds and the liquidator must, if practicable, act accordingly.
- (d) Nothing in this rule adversely affects any right to exercise any statutory or other power which would have existed if this rule 12.2 were omitted.
- (e) Rule 11.8 (**Ancillary powers**) applies, so far as it can and with necessary changes, to a division by a liquidator under this rule as if references in rule 11.8 (**Ancillary powers**) to the directors and to a distribution or capitalisation were references to the liquidator and to the division under this rule respectively.

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## 13 Inspection of records

- (a) Subject to the Corporations Act, the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the Company or any of them will be open to the inspection of members other than directors.
- (b) A person other than a director does not have the right to inspect any books, records or documents of the Company except as provided by law or authorised by the directors or by the Company in general meeting.

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## 14 Notices

### 14.1 Notices by the Company to members

- (a) The Company may give a notice to a member in accordance with the Corporations Act and the Listing Rules.
- (b) A notice may be given by the Company to the joint holders of a share by giving the notice in the manner authorised by rule 14.1(a) to the joint holder first named in the register of members in respect of the share.
- (c) Any person who, by operation of law, transfer of shares or otherwise, becomes entitled to shares registered in the name of a member is bound by every notice which, before that person's name and address is entered in the register of members in respect of those shares, is given to the member in accordance with this rule 14.1
- (d) A notice served in accordance with this constitution is (despite the occurrence of a Transmission Event and whether or not the Company has notice of the Transmission Event) deemed to have been properly served in respect of any registered shares, whether held solely or jointly with other persons by the member the subject of the Transmission Event, until some other person is registered in the member's place as the holder or joint holder. The service is sufficient service of the notice on the member's personal representative and any persons jointly interested with the member in the shares.

### 14.2 Notices by the Company to directors

Subject to this constitution, a notice may be given by the Company to any director or alternate director either by serving it personally at, or by sending it by post in a prepaid envelope to, the director's or alternate director's usual residential or business address, or such other address, or by fax or electronic mail to such fax number or electronic address as the director or alternate director has supplied to the Company for the giving of notices.

### 14.3 Notices by members or directors to the Company

Subject to this constitution, a notice may be given by a member, director or alternate director to the Company by serving it on the Company at, or by sending it by post in a prepaid envelope to, the registered office of the Company or by fax or electronic mail to the principal fax number or a nominated electronic address at the registered office of the Company.

### 14.4 Notices to members outside Australia

A notice to be sent to a member outside Australia and its external territories must be sent by airmail, fax or electronic mail, or in another way that ensures it will be received quickly.

### 14.5 Time of service

- (a) A notice from the Company properly addressed and posted is taken to be served at 10.00am Sydney time on the day after the date it is posted.
- (b) A certificate signed by a secretary or officer of the company to the effect that a notice was duly posted under this constitution is conclusive evidence of that fact.

- (c) Where the Company sends a notice by fax, the notice is taken as served at the time the fax is sent if the correct fax number appears on the facsimile transmission report produced by the sender's fax machine.
- (d) Where the Company sends a notice by electronic transmission, the notice is taken as served at the time the electronic transmission is sent.
- (e) Where the company gives a notice to a member by any other means permitted by the Corporations Act relating to the giving of notices and electronic means of access to them, the notice is taken as given at 10.00am Sydney time on the day after the date on which the member is notified that the notice is available.
- (a) Where a given number of days' notice or notice extending over any other period must be given, the day of service is not to be counted in the number of days or other period.

#### 14.6 Other communications and documents

The provisions of this rule 14.6 apply, so far as they can and with necessary changes, to the service of any communication or document.

#### 14.7 Notices in writing

- (a) A reference in this constitution to a notice in writing includes a notice given by fax or another form of written communication.

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## 15 Approval of Proportional Takeover Bids

### 15.1 Definitions

In this rule 15:

- (a) **Approving Resolution**, in relation to a Proportional Takeover Bid, means a resolution to approve the Proportional Takeover Bid passed in accordance with rule 15.3 (**Resolution**);
- (b) **Proportional Takeover Bid** means an off-market bid that is made or is purported to be made under section 618(1)(b) of the Corporations Act in respect of a specified proportion of shares included in a class of shares in the Company; and
- (c) **Approving Resolution Deadline**, in relation to a Proportional Takeover Bid, means the day that is 14 days before the last day of the bid period in respect of the Proportional Takeover Bid.

### 15.2 Transfers not to be registered

Despite rules 4.1(c) and 4.2 (**Power to decline registration of transfers**), a transfer giving effect to a takeover contract resulting from the acceptance of an offer made under a Proportional Takeover Bid must not be registered unless and until an Approving Resolution to approve the Proportional Takeover Bid has been passed or is taken to have been passed in accordance with rule 15.3 (**Resolution**).

### 15.3 Resolution

- (a) Where offers have been made under a Proportional Takeover Bid, the directors must:

- (i) convene a meeting of the persons entitled to vote on the Approving Resolution for the purpose of considering and, if thought fit, passing an Approving Resolution to approve the Proportional Takeover Bid; and
  - (ii) oversee that such a resolution is voted on in accordance with this rule 15.3, before the Approving Resolution Deadline in relation to that Proportional Takeover Bid.
- (b) The provisions of this constitution that apply to a general meeting of the Company apply:
  - (i) with any changes that the circumstances require, to a meeting convened under rule 15.3(a); and
  - (ii) as if the meeting convened under rule 15.3(a) was a general meeting of the Company.
- (c) The bidder under a Proportional Takeover Bid and any associates of the bidder are not entitled to vote on the Approving Resolution relating to that Proportional Takeover Bid and, if they do vote, their votes must not be counted.
- (d) Subject to rule 15.3(c), a person who, as at the end of the day on which the first offer under the Proportional Takeover Bid was made, held bid class shares is entitled to vote on the Approving Resolution relating to the Proportional Takeover Bid.
- (e) An Approving Resolution is to be taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than 50%, and otherwise is to be taken to have been rejected.
- (f) If an Approving Resolution to approve a Proportional Takeover Bid has not been voted on in accordance with this rule 15.3 (**Resolution**) as at the end of the day before the Approving Resolution Deadline, an Approving Resolution to approve the Proportional Takeover Bid will be taken to have been passed in accordance with this rule 15.3.

#### 15.4 Sunset

Rules 15.1 (**Definitions**), 15.2 (**Transfers not to be registered**) and 15.3 (**Resolution**) cease to have effect at the end of three years beginning:

- (a) on the date this constitution is adopted by the Company; or
- (b) where those rules have been renewed in accordance with the Corporations Act, on the date those rules were last renewed.

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## 16 General

### 16.1 Currency

- (a) The directors may, with the agreement of a member or under the terms of issue of a share held the member, pay the following to the member in a currency other than Australian:

- (i) dividends; or
  - (ii) other amounts payable to the member including on account of return of capital, participation in the property of the Company on a winding up or otherwise.
- (b) The directors may convert any payment under clause 16.1(a) from Australian currency in any manner, at any time and at any exchange rate as they think fit.

#### **16.2 Choice of law (Governing law)**

This constitution is governed by the laws of New South Wales.

#### **16.3 Choice of jurisdiction**

The Company and each member, director and company secretary of the Company irrevocably and unconditionally submits to the *non-exclusive* jurisdiction of the courts of New South Wales, including, for the avoidance of doubt, the Federal Court of Australia sitting in New South Wales.

#### **16.4 Prohibition and enforceability**

Any term of this constitution which is wholly or partially void or unenforceable in any place is severed to the extent that it is void or unenforceable in that place. The validity or enforceability of the remainder of this constitution is not affected.



## 1 Dictionary

In this constitution:

**alternate director** means a person appointed from time to time as an alternate director under rule 6.16.

**ASX Settlement** means ASX Settlement Pty Ltd (ABN 49 008 504 532) or any relevant organisation which is an alternative or successor to, or replacement of, that body or of any applicable CS facility licensee.

**ASX Settlement Operating Rules** means the operating rules (however described) of ASX Settlement and to the extent they are applicable, the operating rules of the Exchange and the operating rules of ASX Clear Pty Limited.

**Business Day** has the meaning given in the Listing Rules.

**Company** means Peter Warren Automotive Holdings Limited (ACN 615 674 185).

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

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

**director** means a person holding office as a director of the Company from time to time, and where appropriate, includes an alternate director.

**Dispose** has the meaning given in the Listing Rules.

**Exchange** means the Australian Securities Exchange operated by ASX Limited (ABN 98 008 624 691) and includes any successor to that body.

**Holding Lock** has the meaning given in the Listing Rules.

**Listed Company** means a company which is admitted to the official list of the Exchange.

**Listing Rules** means the listing rules of the Exchange and any other rules of the Exchange which are applicable while the Company is admitted to the official list of the Exchange as they apply to the Company.

**Marketable Parcel** has the meaning given in the Listing Rules.

**Proper ASTC Transfer** has the meaning given in the Corporations Regulations.

**Representative**, in relation to a body corporate, means a representative of the body corporate appointed under section 250D of the Corporations Act or a corresponding previous law.

**Restricted Securities** has the meaning given in the Listing Rules.

**Restriction Deed** has the meaning given in the Listing Rules.

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

**Takeover** has the meaning given in the Listing Rules.

**Transmission Event** means:

- (a) in respect of a member of the Company who is an individual:
  - (i) the death of the member;
  - (ii) the bankruptcy of the member; or
  - (iii) the member becoming of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; and
- (b) in respect of a member of the Company who is a body corporate, the dissolution of the member or the succession by another body corporate to the assets and liabilities of the member.

**Uncertificated Holding** means a share or shares for which the Company has not issued a certificate, or in respect of which any certificate which was issued by the Company has been cancelled without the issue of a replacement certificate.

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## 2 Interpretation

- (a) A reference in a rule to a partly paid share is a reference to a share on which there is an amount unpaid.
- (b) A reference in a rule relating to partly paid shares to a call or an amount called in respect of a share includes a reference to a sum that, by the terms of issue of a share, becomes payable on issue or at a fixed date.
- (a) A reference in this constitution to a member for the purposes of a meeting of members is a reference to a registered holder of shares as at the relevant time
- (b) A member is to be taken to be present at a general meeting if the member is present in person (including participating by technology approved by the directors in accordance with this constitution) or by proxy, attorney or Representative or, except in any rule that specifies a quorum or except in any rule prescribed by the directors, a member who has duly lodged a valid direct vote in relation to the general meeting under rule 5.11.
- (c) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (d) In this constitution, headings are for convenience only and do not affect the interpretation of this constitution and, unless the contrary intention appears:
  - (i) the singular include the plural and vice versa;
  - (ii) words that are gender neutral or gender specific include each gender;
  - (iii) the words 'such as', 'including', 'particularly' and similar expressions are not words of limitation;
  - (iv) a reference to:

- (A) a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate;
  - (B) a thing (including but not limited to a chose in action or other right) includes a part of that thing;
  - (C) a party includes its agents, successors and permitted assigns;
  - (D) a document includes all amendments or supplements to that document;
  - (E) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this constitution;
- (v) this constitution includes all schedules and attachments to it;
  - (vi) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
  - (vii) a statute includes any regulation, ordinance, by-law or other subordinate legislation under it;
  - (viii) a monetary amount is in Australian dollars and all amounts payable under or in connection with this constitution are payable in Australian dollars;
  - (iv) a reference to the Listing Rules or the ASX Settlement Operating Rules includes any consolidation, amendment or replacement of those rules from time to time and is to be taken to be subject to any applicable waiver or exemption.

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### 3 Application of the Corporations Act, Listing Rules and ASX Settlement Operating Rules

- (a) This constitution is to be interpreted subject to the Corporations Act and (while the Company is a Listed Company) the Listing Rules and the ASX Settlement Operating Rules.
- (b) Unless the contrary intention appears, an expression in a rule that deals with a matter dealt with by a provision of the Corporations Act, the Listing Rules or the ASX Settlement Operating Rules has the same meaning as in that provision.
- (c) Subject to paragraph (b), unless the contrary intention appears, an expression in a rule that is defined in section 9 of the Corporations Act has the same meaning as in that section.

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### 4 Effect of the Listing Rules

While the Company is a Listed Company, the following provisions apply:

- (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;
  - (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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## 5 Replaceable rules not to apply

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

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## Schedule 2 Rights attaching to preference shares

The Company may issue preference shares under rule 2.2 on the following terms:

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### 1 Dividend rights and priority of payment

- (a) Each preference share confers on the holder a right to receive a preferential dividend, in priority to the payment of any dividend on the ordinary shares, at the rate or in the amount, and on the basis, decided by the directors under the terms of issue.
  - (c) The preferential dividend may be cumulative only if and to the extent that the Board decides under the terms of issue, and will otherwise be non-cumulative.
  - (d) Each preference share confers on its holder the right in a winding up and on redemption to payment in priority to the ordinary shares to:
    - (i) the amount of any dividend accrued but unpaid on the share at the date of winding up or at the date of redemption, unless otherwise provided for in the terms of issue; and
    - (ii) any other amount decided by the directors under the terms of issue.
  - (e) To the extent the directors decide under the terms of issue, a preference share may confer a right to a bonus issue or capitalisation of profits in favour of holders of those shares only.
  - (f) Unless otherwise decided by the directors under the terms of issue, a preference share does not confer on its holder any right to participate in the profits or assets of the Company except as set out in this schedule.
- 

### 2 Meeting and voting rights

- (a) Each preference share confers on its holder the same right as that conferred by this constitution upon the holder of an ordinary share in relation to receiving notices of general meetings, reports, balance sheets and accounts and of attending and being heard at all general meetings of the Company.
- (b) A preference share does not entitle its holder to vote at any general meeting of the Company except:
  - (i) On a proposal:
    - (A) to reduce the share capital of the Company;
    - (B) that affects rights attached to the share;
    - (C) to wind up the Company; or
    - (D) for the disposal of the whole of the property, business and undertaking of the Company;
  - (ii) on a resolution to approve the terms of a buy back agreement;

- (iii) during a period in which a dividend or part of a dividend on the share is in arrears;
  - (iv) during the winding up of the Company; and
  - (v) in any other circumstance the directors decide under the time of issue.
- (c) Each holder of a preference share who has a right to vote on a resolution is entitled to the greater of one vote per share or such other number of votes specified in, or determined in accordance with, the terms of issue for the share.
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### 3 Redeemable preference share

In the case of a redeemable preference share, the Company must redeem the share, pay the amount payable on redemption of the share, or otherwise deal with the redemption, in accordance with the terms of issue.

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### 4 Foreign Currency

Where any amount is payable by the Company to the holder of a preference share in a currency other than Australian dollars, and the amount is not paid when due or the Company has commenced winding up, the holder may give notice to the Company requiring payment of an amount in Australian dollars equal to the foreign currency amount calculated by applying the reference rate on the date of payment for the sale of the currency in which the payment is to be made for Australian dollars. Reference rate means the rate applicable in the market and at the time determined by the Directors before allotment of those preference shares and specified in the terms of issue for those preference shares.

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### 5 Conversion to ordinary shares

- (a) 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:
- (i) have the same rights as a fully paid ordinary share; and
  - (ii) rank equally with other fully paid ordinary shares on issue.

This is subject to the terms of issue of the preference share in relation to entitlement to ordinary dividends paid after conversion. In addition, the terms of issue of the preference share may provide for the issue of additional ordinary shares on conversion as determined by the directors.

- (b) The conversion does not constitute a cancellation, redemption or termination of the preference share or the issue, allotment or creation of new shares, but has the effect of varying the status of, and the rights attaching to, the preference share so that it becomes an ordinary share.
- 

### 6 Transfer

A holder of a preference share must not transfer or purport to transfer, and the directors, to the extent permitted by the Listing Rules, must not register a transfer of,

the share if the transfer would contravene any restrictions on the right to transfer the share set out in the terms of issue for the share.

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## **7 Amendment to the terms**

Subject to complying with all applicable laws, the Company may, without the consent of holders of preference shares, amend or add to the terms of the preference shares if, in the opinion of the Company, the amendment or addition is:

- (a) of a formal, minor or technical nature;
  - (b) to correct a manifest error;
  - (c) made to comply with any applicable law, Listing Rule or requirement of ASX;
  - (d) convenient for the purpose of obtaining or maintaining the listing of the Company or quotation of the preference shares; or
  - (e) is not likely to be or become materially prejudicial to the holders of preference shares.
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## **8 Further issue of shares**

If the Company issues new preference shares that rank equally with existing preference shares, the issue will not be taken to vary the rights attached to the existing preference shares unless otherwise determined by the directors in the terms of issue of the existing shares.