



HERBERT
SMITH
FREEHILLS

Constitution

Constitution

Phoenix Industrial Minerals Pty Ltd
ACN 667 231 816

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Constitution

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Phoenix Industrial Minerals Pty Ltd

ACN 667 231 816

A company limited by shares.

1 Preliminary

1.1 Definitions

The meanings of the terms used in this constitution are set out in Schedule 1.

1.2 Interpretation

- (a) A reference in this constitution to a partly paid share is a reference to a share on which there is an amount unpaid.
- (b) A reference in this constitution to a call or an amount called in respect of a share includes a reference to an amount that, by the terms of issue of a share, becomes payable on issue or at a fixed date.
- (c) A member is to be taken to be present at a general meeting if the member is present in person or by proxy, attorney or representative.
- (d) A chairperson appointed under this constitution may be referred to as chairman or chairwoman, or as chair, as appropriate.
- (e) A reference in this constitution 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.
- (f) In this constitution, unless the contrary intention appears:
 - (1) headings and bold type are for convenience only and do not affect its interpretation;
 - (2) the singular includes the plural and the plural includes the singular;
 - (3) words of any gender include all genders;
 - (4) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual;
 - (5) a reference to a person includes that person's successors and legal personal representatives;
 - (6) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them; and

- (7) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

1.3 Currency

In this constitution:

- (a) a reference to any payment, consideration or price is, unless specified otherwise, a reference to the lawful currency of Australia; and
- (b) a reference to “dollars” or “\$” is a reference to Australian dollars.

1.4 Schedules

This constitution includes any schedules.

1.5 Application of the Act

- (a) Unless the contrary intention appears, an expression in a rule that deals with a matter dealt with by a provision of the Act has the same meaning as in that provision of the Act.
- (b) Subject to rule 1.5(a), unless the contrary intention appears, an expression in a rule that is used in the Act has the same meaning in this constitution as in the Act.

1.6 Exercise of powers

- (a) The company may, in any way the Act permits:
- (1) exercise any power;
 - (2) take any action; or
 - (3) engage in any conduct or procedure,
- which, under the Act, a company limited by shares may exercise, take or engage in.
- (b) Where this constitution provides that a person or body may do a particular act or thing, the act or thing may be done at the person’s discretion.
- (c) Where this constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the same manner and subject to the same conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing.
- (d) Where this constitution confers a power to do a particular thing in respect of particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that thing in respect of some only of those matters or in respect of a particular class or particular classes of those matters and to make different provision in respect of different matters or different classes of matters.
- (e) Where this constitution confers a power to make appointments to any office or position, the power is, unless the contrary intention appears, to be taken to include a power:
- (1) to appoint a person to act in the office or position until a person is appointed to the office or position;



- (2) subject to any contract between the company and the relevant person, to remove or suspend any person appointed, with or without cause; and
 - (3) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of the office or position.
- (f) Where this constitution confers a power or imposes a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.
- (g) Where this constitution confers a power or imposes a duty on the holder of an office as such then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office.
- (h) Where this constitution confers power on a person or body to delegate a function or power:
 - (1) the delegation may be concurrent with, or (except in the case of a delegation by the Board) to the exclusion of, the performance or exercise of that function or power by the person or body;
 - (2) the delegation may be either general or limited in any manner provided in the terms of delegation;
 - (3) the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of a specified office or position;
 - (4) the delegation may include the power to delegate;
 - (5) where the performance or exercise of that function or power is dependent on the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegate on the opinion, belief or state of mind of the delegate in relation to that matter; and
 - (6) the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body.

1.7 Replaceable rules not to apply

Those provisions of the Act designated as replaceable rules do not apply to the company except so far as they are repeated in this constitution.

1.8 Single member company

If at any time the company has only one member then, unless the contrary intention appears:

- (a) a reference in a rule to 'the members' is a reference to that member; and
- (b) without limiting rule 1.8(a), a rule which confers a power or imposes an obligation on the members to do a particular thing confers that power or imposes that obligation on that member.



1.9 Single director company

If at any time the minimum number of directors fixed under this constitution is one and the company in fact has only one director then, unless the contrary intention appears:

- (a) a reference in a rule to 'the directors' is a reference to that director; and
- (b) without limiting rule 1.9(a), a rule which confers a power or imposes an obligation on the directors to do a particular thing confers that power or imposes that obligation on that director.

1.10 Bare trust

- (a) All shares in the company to be issued pursuant to the Demerger Scheme will be issued to the Custodian as bare trustee for:

- (1) Tulla Shareholders, other than CDN, at the Demerger Scheme Effective Date; and
- (2) the Tulla CDI Holders at the Demerger Scheme Effective Date, on the Custodian Terms.

- (b) Each:

- (1) Shareholder who is required to transfer the legal title to its shares to the Custodian to hold on bare trust pursuant to the Shareholders Agreement, this constitution or the Custodian Terms; and
- (2) person who is required to acquire, or accept an issue of, shares as a Beneficial Holder such that the Custodian will hold its shares on bare trust on the terms of the Custodian Terms,

appoints the Custodian to hold all such shares issued or transferred to the Custodian as bare trustee on trust for such person on the terms set out in the Custodian Terms and the Shareholders Agreement.

1.11 Shareholders Agreement

- (a) This constitution is to be interpreted subject to the Shareholders Agreement.
- (b) In this constitution, where there is a reference to the Shareholders Agreement:
 - (1) for such time as there is no Shareholders Agreement in force, the relevant rule will be read as if it did not contain any reference to the Shareholders Agreement, and if it is not capable of being so read, will be disregarded in its entirety;
 - (2) where there are references to any matter being subject to the Shareholders Agreement or which turn upon whether a thing is done in accordance with the Shareholders Agreement or in contravention of the Shareholders Agreement (in each case, however expressed), if parties entitled to do so effectively waive the relevant provisions of the Shareholders Agreement (in accordance with the Shareholders Agreement) then the applicable rule of this constitution will apply as if the Shareholders Agreement contained no relevant additional or inconsistent requirements or as if the relevant provisions of the Shareholders Agreement had in fact been complied with in accordance with their terms, as the case may be (provided that, if the waiver is given subject to conditions, those conditions are complied with in accordance with their terms); and

- (3) where a rule of this constitution contains provisions to the effect that if the Shareholders Agreement is in force, a matter will be governed by the applicable provisions of the Shareholders Agreement, but the Shareholders Agreement does not in fact contain provisions governing that matter, then the rule will be read as if it did not contain any reference to the Shareholders Agreement, and if it is not capable of being so read, will be disregarded in its entirety.
- (c) If this constitution is inconsistent with the Shareholders Agreement, the Shareholders Agreement prevails to the extent of the inconsistency.
- (d) To the extent of any inconsistency between the Shareholders Agreement and this constitution, then the Shareholders and the company must take all steps reasonably required to remove the inconsistency, including causing this constitution to be amended to remove the inconsistency.
- (e) Despite any other provision of this constitution, for so long as the Shareholders Agreement is in force, the company may not (and each member and officer must take all action to procure that the company does not):
 - (1) undertake any act under the Shareholders Agreement which requires certain approval or a particular procedure to be followed without first obtaining that approval or following that procedure (as applicable); or
 - (2) undertake any act to:
 - (A) issue or grant options in respect of shares, nor agree to do so;
 - (B) otherwise deal, in its own shares, or rights to acquire or be issued them (however structured), nor agree to do so;
 - (C) vary all or any of the rights or privileges attached to a class of shares (including, without limitation, in any conversion or reclassification of shares of one class into shares of another class); or
 - (D) alter its share capital or the capital structure of any of its subsidiaries,if such issue, grant, disposal, variation, conversion, reclassification or alteration would contravene or be inconsistent with the Shareholders Agreement.
- (f) A holder of any shares who, for any reason, is not at any time a party to the Shareholders Agreement must comply with the Shareholders Agreement as if it were a party to it.

2 Share capital

2.1 Shares

Without prejudice to any special rights conferred on the holders of any shares or class of shares, the directors may, subject to any approval requirements set out in the Shareholders Agreement:

- (a) issue, allot or grant options for, or otherwise dispose of, shares in the company; and



- (b) decide:
 - (1) the persons to whom shares are issued or options are granted;
 - (2) the terms on which shares are issued or options are granted; and
 - (3) the rights and restrictions attached to those shares and options.

2.2 Preference shares

- (a) The company may, subject to the requirements set out in the Shareholders Agreement, issue preference shares including preference shares which are, or at the option of the company or holder are, liable to be:
 - (1) redeemed; or
 - (2) converted into Ordinary Shares.
- (b) Except to the extent otherwise provided in their terms of issue:
 - (1) 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 and on the basis decided by the directors under the terms of issue. The preferential dividend may be cumulative only if and to the extent the directors decide under the terms of issue, and will otherwise be non-cumulative;
 - (2) in addition to any preferential dividend and rights on winding up, each preference share may participate with the Ordinary Shares in profits and assets of the company, including on a winding up, if and to the extent the directors decide under the terms of issue;
 - (3) each preference share confers on its holder the right in a winding up and on redemption to payment in priority to the Ordinary Shares of:
 - (A) the amount of any dividend accrued but unpaid on the share at the date of winding up or the date of redemption; and
 - (B) any additional amount specified in the terms of issue.
- (c) To the extent the directors may 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.
- (d) A preference share does not confer on its holder any right to participate in the profits or property of the company except as set out above or in their terms of issue.
- (e) Except as otherwise provided in their terms of issue, a preference share does not entitle its holder to vote at any general meeting of the company except during the winding up of the company, in which case the holder of a preference share who is entitled to vote in respect of that share is, on a poll, entitled to the number of votes specified in, or determined in accordance with, the terms of issue for the share (if any).
- (f) In the case of a redeemable preference share, the company must, at the time and place for redemption specified in, or determined in accordance with, the terms of issue for the share, redeem the share and, on receiving a redemption notice under the terms of issue, pay to or at the direction of the holder the amount payable on redemption of the share.
- (g) A holder of a preference share must not transfer or purport to transfer, and the directors 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 or the Shareholders Agreement.

2.3 Variation of class rights

- (a) The procedure for varying rights attached to shares in a class of shares where the variation occurs as a result of any of the following actions:
- (1) varying the rights attached to some of the shares in a class of shares; or
 - (2) issuing new shares or securities (including Preference Shares, Options or Convertible Securities and including issuing Preference Shares that rank equally with or senior to existing Preference Shares),

is that those rights are varied if the action has been approved in accordance with the Shareholders Agreement (whether such approval is by a resolution of directors or shareholders or otherwise) unless the terms of issue of a class of shares expressly require further approval or consent in addition to the approval requirements under the Shareholders Agreement. For the avoidance of doubt, if the action has been approved in accordance with the Shareholders Agreement then no further approval or consent of holders of that class of shares is required to vary the rights attached to that class of shares unless the terms of issue of the class of shares expressly require further approval or consent.

- (b) Except as provided under rule 2.3(a), unless otherwise provided by the terms of issue of a class of shares:
- (1) all or any of the rights or privileges attached to the class may be varied, whether or not the company is being wound up, only with the consent in writing of the holders of three quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the issued shares of that class;
 - (2) the provisions of these rules relating to general meetings apply, so far as they can and with such changes as are necessary, to each separate meeting of the holders of the issued shares of that class; and
 - (3) the rights conferred on the holders of the shares of that class are to be taken as not having been varied by the creation or issue of further shares ranking equally with them.

2.4 Alteration of share capital

- (a) Subject to the Shareholders Agreement, the company may alter its share capital in any manner permitted by law.
- (b) Where fractions of shares are or would otherwise be created by an alteration of share capital under rule 2.4(a), the directors may:
- (1) make cash payments;
 - (2) decide that fractions of shares are to be disregarded or rounded down to the nearest whole share; or
 - (3) decide that fractions of shares are to be rounded up to the nearest whole share by capitalising any amount available for capitalisation under rule 4.2 even though some only of the members may participate in that capitalisation.



2.5 Conversion or reclassification of shares

Subject to rule 2.3 and the terms of issue of each class of shares, the company may by resolution convert or reclassify shares from one class to another. Unless otherwise provided in the relevant resolution, any such conversion or reclassification will occur by way of variation of the rights attaching to the relevant shares (and will not cause the cancellation of any existing share or the issue of any new share).

2.6 Equitable and other claims

- (a) Except where a law or this constitution requires otherwise, the company is entitled to treat the registered holder of a share as the absolute owner of that share and need not:
 - (1) recognise a person as holding a share on any trust, even if the company has notice of that trust; or
 - (2) recognise, or be bound by, any equitable, contingent, future or partial claim to or interest in a share by any other person except an absolute right of ownership in the registered holder, even if the company has notice of that claim or interest.
- (b) With the consent of the directors, shares held by a trustee may be marked in the register in such a way as to identify them as being held subject to the relevant trust.
- (c) Nothing in rule 2.6(b) limits the operation of rule 2.6(a).

2.7 Currency

An amount payable to the holder of a share, whether by way of or on account of dividend, return of capital, participation in the property of the company on a winding up or otherwise, may be paid, with the agreement of the holder or pursuant to the terms of issue of the share, in the currency of a country other than Australia and the directors may fix a date up to 30 days before the payment date as the date on which any applicable exchange rate will be determined for that purpose.

2.8 Joint holders of shares

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

- (a) they are liable individually as well as jointly for all payments, including calls in respect of the share;
- (b) subject to the Shareholders Agreement, on the death of any one of them, the survivor is the only person the company will recognise as having title to the share;
- (c) any one of them may give effective receipts for any dividend, bonus, interest or other distribution or payment in respect of the share; and
- (d) except where the persons are jointly entitled to a share because of a Transmission Event, the company may, but is not required to, register more than 3 persons as joint holders of the share.

3 Calls, forfeiture, lien and surrender

3.1 Calls

- (a) Subject to this constitution and to the terms on which any shares are issued, the directors may:
 - (1) make calls on the members for any amount unpaid on their shares which is not by the terms of issue of those shares made payable at fixed times; and
 - (2) on the issue of shares, differentiate between members as to the amount of calls to be paid and the time for the payment.
- (b) The directors may require a call to be paid by instalments.
- (c) On receiving at least 14 days' notice specifying the time and place of payment, each member must pay to the company by the time and at the place so specified the amount called on the member's shares.
- (d) A call is to be taken as having been made when the resolution of the directors authorising the call was passed.
- (e) The directors may revoke or postpone a call or extend the time for payment.
- (f) Failure of a member to receive a notice of a call, or the accidental failure to give notice of a call to a member, does not invalidate the call.
- (g) If an amount called on a share is not paid in full by the time appointed for payment, the person from whom the amount is due must pay:
 - (1) interest on the unpaid part of the amount from the date specified for payment to the date of actual payment, at a rate determined under rule 3.9; and
 - (2) if the share was issued after the date this constitution is adopted, any expenses or damages the company incurs because the amount has not been paid or has been paid late.
- (h) Any amount unpaid on a share that, by the terms of issue of the share, becomes payable on issue or at a fixed date:
 - (1) is treated for the purposes of this constitution as if that amount was payable pursuant to a call duly made and notified; and
 - (2) must be paid on the date on which it is payable under the terms of issue of the share.
- (i) The directors may, to the extent the law permits, waive or compromise all or any 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 an action or other proceedings to recover a call, or interest or costs or expenses incurred because of the failure to pay or late payment of a call, proof that:
 - (1) the name of the defendant is entered in the register as the holder or one of the holders of the share on which the call is claimed;
 - (2) the resolution making the call is recorded in the minute book; and



- (3) notice of the call was given to the defendant complying with this constitution,

is conclusive evidence of the debt and it is not necessary to prove the appointment or committee membership 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 counterclaim and 'action or other proceedings to recover a call' is to be interpreted 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 although no part of that amount has been called.
- (b) The directors may authorise payment by the company of interest on 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) Unless a different agreement is made, the directors may repay to a member all or a part of the amount accepted under rule 3.3(a).

3.4 Forfeiting partly paid shares

- (a) If a member fails to pay the whole of a call or instalment of a call by the time specified for payment, the directors may serve a notice on that member:
- (1) requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all costs, expenses or damages that may have been incurred by the company by reason of the non-payment or late payment of the call or instalment;
 - (2) naming a further day (at least 14 days after the date of service of the notice) by which, and a place at which, the amount payable under rule 3.4(a)(1) is to be paid; and
 - (3) stating that, in the event of non-payment of the whole of the amount payable under rule 3.4(a)(1) by the time and at the place named, the shares in respect of which the call was made will be liable to be forfeited.
- (b) If the requirements of a notice served under rule 3.4(a) are not complied with, the directors may by resolution forfeit any share concerning which the notice was given at any time after the day named in the notice and before the payment required by the notice is made.
- (c) A forfeiture under rule 3.4(b) includes all dividends, interest and other amounts payable by the company on the forfeited share and not actually paid before the forfeiture.
- (d) Where a share has been forfeited:
- (1) notice of the resolution must be given to the member in whose name the share stood immediately before the forfeiture; and
 - (2) an entry of the forfeiture, with the date, must be made in the register of members.
- (e) Failure to give the notice or to make the entry required under rule 3.4(d) does not invalidate the forfeiture.



- (f) 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.
- (g) A person whose shares have been forfeited ceases to be a member as to the forfeited shares, but must, if the directors decide, pay to the company:
 - (1) all calls, instalments, interest, costs, expenses and damages owing in respect of the shares at the time of the forfeiture; and
 - (2) interest on the unpaid part of the amount payable under rule 3.4(g)(1), from the date of the forfeiture to the date of actual payment, at a rate determined under rule 3.9.
- (h) Except as otherwise provided by this constitution, the forfeiture of a share extinguishes all interest in, and all claims and demands against the company relating to, the forfeited share and all other rights attached to the share.
- (i) The directors may:
 - (1) exempt a share from all or any part of this rule 3.4;
 - (2) waive or compromise all or any part of any payment due to the company under this rule 3.4; and
 - (3) before a forfeited share has been sold, reissued or otherwise disposed of, annul the forfeiture on the conditions they decide.

3.5 Indemnity for payments by the company

Subject to the Shareholders Agreement and the terms of issue of any particular class of shares, if the company becomes liable under any law to make any payment:

- (a) in respect of shares held solely or jointly by a member;
- (b) in respect of a transfer or transmission of shares by a member;
- (c) in respect of dividends, bonuses or other amount due or payable or which may become due and payable to a member; or
- (d) otherwise for or on account of or in respect of a member, whether as a consequence of:
 - (e) the death of that member;
 - (f) the non-payment of any income tax, capital gains tax, wealth tax or other tax by that member or the legal personal representative of that member;
 - (g) the non-payment of any estate, probate, succession, death, stamp or other duty by that member or the legal personal representative of that member; or
 - (h) any other thing,

then, in addition to any right or remedy that the law may confer on the company:

- (i) the member or, if the member is dead, the member's legal personal representative, must:
 - (1) fully indemnify the company against that liability;
 - (2) reimburse the company for any payment made under or as a consequence of that law immediately on demand by the company; and



- (3) pay interest on so much of the amount payable to the company under rule 3.5(i)(2) as is unpaid from time to time, from the date the company makes a payment under that law until the date the company is reimbursed in full for that payment under rule 3.5(i)(2), at a rate determined under rule 3.9;
- (j) the company has a lien over all dividends, interest and other amounts payable in respect of the shares held solely or jointly by that member or that member's legal personal representative for all amounts payable to the company under this rule 3.5;
- (k) the company may refuse to register a transfer of any shares by or to that member or that member's legal personal representative until all amounts payable to the company under this rule 3.5 have been paid; and
- (l) the directors may:
 - (1) exempt a share from all or any part of this rule 3.5; and
 - (2) 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) The company has a first lien on:
 - (1) each partly paid share for all amounts (whether presently payable or not) called or otherwise due under this constitution in respect of that share; and
 - (2) all shares registered in the name of a sole holder for all amounts presently payable by the holder or the holder's estate to the company.
- (b) The company's lien on a share extends to all dividends payable on the share and to the proceeds of sale of the share.
- (c) The directors may, following expiry of the time for payment set out in the notice given under 3.6(c)(2), sell any share on which the company has a lien in such manner as they think fit where:
 - (1) an amount in respect of which a lien exists under this rule 3.6 is presently payable; and
 - (2) the company has, at least 14 days before the date of the sale, given to the registered holder of the share written notice stating the part of the amount for which the lien exists that is presently payable, and demanding payment of that amount.
- (d) Where the company registers a transfer of shares on which the company has a lien without giving to the transferee notice of its claim, the company's lien is released so far as it relates to amounts owing by the transferor or any predecessor in title on the shares transferred.
- (e) The directors may:
 - (1) exempt a share from all or any part of this rule 3.6; and
 - (2) waive or compromise all or any part of any payment due to the company under this rule 3.6.



3.7 Surrender of shares

- (a) The directors may accept a surrender of a share by way of compromise of any claim as to whether or not that share has been validly issued or in any other case where the surrender is within the powers of the company.
- (b) Any share so surrendered may be sold, reissued or otherwise disposed of in the same manner as a forfeited share.

3.8 Procedures after sale, reissue or other disposal of shares by the company

- (a) A reference in this rule 3.8 to a sale of a share is a reference to:
 - (1) any sale, reissue or other disposal of a forfeited share under rule 3.4(f) or a surrendered share under rule 3.7; and
 - (2) any sale of a share over which the company has a lien under rule 3.6(c).
- (b) After the company has sold a share, the directors may:
 - (1) receive the purchase money or consideration given for the share;
 - (2) effect a transfer of the share or execute or appoint a person to execute, on behalf of the former holder, a transfer of the share; and
 - (3) register as the holder of the share the person to whom the share is sold.
- (c) A person to whom the company sells shares need not take any steps to investigate the regularity or validity of the sale, or to see how the purchase money or consideration on the sale is applied. That person's title to the shares is not affected by any irregularity by the company before the sale or the exercise of the company's lien on the shares (as applicable).
- (d) Damages is the only remedy of a person who suffers any loss because of a sale of shares by the company. The claim for damages can only be made against the company.
- (e) The proceeds of a sale of shares under this constitution must be applied in paying:
 - (1) first, the expenses of the sale;
 - (2) second, all amounts presently payable by the former holder whose shares have been sold,and the balance (if any) must be paid (subject to any lien that exists under rule 3.6 in respect of amounts not presently payable) to the former holder on the former holder delivering to the company the certificate for the shares that have been disposed of or such other proof of title as the directors may accept.
- (f) A written statement by a director or secretary of the company that a share in the company has been:
 - (1) duly forfeited under rule 3.4(b);
 - (2) duly sold, reissued or otherwise disposed of under rule 3.4(f) or 3.7; or
 - (3) duly sold under rule 3.6(c),on a date stated in the statement is conclusive evidence of the facts stated as against all persons claiming to be entitled to the share and of the right of the



company or the directors to forfeit, sell, reissue or otherwise dispose of the share.

3.9 Interest payable by member

- (a) For the purposes of rules 3.1(g)(1), 3.4(g)(2) and 3.5(i)(3), the rate of interest payable to the company is:
 - (1) if the directors have fixed a rate, that rate; or
 - (2) 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(g)(1), 3.4(g)(2) and 3.5(i)(3) accrues daily and may be capitalised monthly or at such other intervals the directors decide.

4 Distributions

4.1 Dividends

- (a) The directors may pay any interim and final dividends that, in their judgment, the financial position of the company justifies and subject always to the Shareholders Agreement.
- (b) The directors may pay any dividend required to be paid under the terms of issue of a share.
- (c) Paying a dividend does not require confirmation at a general meeting provided such payment complies with the requirements of the Shareholders Agreement.
- (d) Subject to any rights or restrictions attached to any shares or class of shares:
 - (1) all dividends in respect of shares must be paid in proportion to the number of shares held by the members;
 - (2) where shares are partly paid, all dividends must be apportioned and paid proportionately to the amounts so paid or credited during any portion or portions of the period in respect of which the dividend is paid;
 - (3) for the purposes of rules 4.1(d)(1) and 4.1(d)(2), an amount paid or credited as paid on a share in advance of a call is to be taken as not having been credited as paid on the share; and
 - (4) interest is not payable by the company on any dividend.
- (e) The directors may fix a record date in respect of a dividend, with or without suspending the registration of transfers from that date under rule 5.2.
- (f) A dividend in respect of a share must be paid to the person who is registered, or entitled under rule 5.1(d) to be registered, as the holder of the share:
 - (1) where the directors have fixed a record date in respect of the dividend, on that date; or
 - (2) where the directors have not fixed a record date in respect of that dividend, on the date fixed for payment of the dividend,



and a transfer of a share that is not registered, or left with the company for registration in accordance with rule 5.1(c), on or before that date is not effective, as against the company, to pass any right to the dividend.

- (g) When resolving to pay a dividend the directors may direct payment of the dividend from any available source permitted by law, including:
 - (1) wholly or partly by the distribution of specific assets, including paid-up shares or other securities of the company or of another body corporate, either generally or to specific members; and
 - (2) to particular members wholly or partly out of any particular fund or reserve or out of profits derived from any particular source and to the remaining members wholly or partly out of any other particular fund or reserve or out of profits derived from any other particular source or generally.
- (h) The directors may deduct from any dividend payable to a member all amounts presently payable by the member to the company and apply the amount so deducted in or towards satisfaction of the amount owing.
- (i) 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 in respect of that share until that person becomes registered as the holder of the share or transfers it.
- (j) Without prejudice to any other method of payment the directors may adopt, payment in respect of a share may be made:
 - (1) by such electronic or other means approved by the directors directly to an account (of a type approved by the directors) nominated in writing by the member or the joint holders; or
 - (2) by cheque sent to the address of the holder as shown in the register of members, or in the case of joint holders, to the address shown in the register of members as the address of the joint holder first named in that register, or to such other address as the holder or joint holders direct in writing.
- (k) A cheque sent under rule 4.1(j)(2) may be made payable to bearer or to the order of the member to whom it is sent or another person that the member directs and is sent at the member's risk.

4.2 Capitalisation of profits

- (a) Subject to any rights or restrictions attached to any shares or class of shares, the directors may capitalise and distribute among those members who would be entitled to receive dividends, and in the same proportions, any amount:
 - (1) forming part of the company's undivided profits;
 - (2) representing profits arising from an ascertained accretion to capital or a revaluation of the company's assets;
 - (3) arising from the realisation of any of the company's assets; or
 - (4) otherwise available for distribution as a dividend.
- (b) The directors may resolve that any part of the capitalised amount is to be applied:
 - (1) in paying up in full shares or other securities of the company to be issued to members;



- (2) in paying up any amounts unpaid on shares or other securities held by the members; or
 - (3) partly as specified in rule 4.2(b)(1) and partly as specified in rule 4.2(b)(2),
 - (4) and such an application must be accepted by the members entitled to share in the distribution in full satisfaction of their interests in the capitalised amount.
- (c) Rules 4.1(e) and 4.1(f) apply, so far as they can and with any necessary changes, to capitalising an amount under this rule 4.2 as if references in those rules to a dividend and to the date a dividend is paid were references respectively to a capitalisation of an amount and to the date the directors resolve to capitalise the amount under this rule 4.2.

4.3 Ancillary powers

- (a) To give effect to any resolution to satisfy a dividend as set out in rule 4.1(g)(1) or to capitalise any amount under rule 4.2, the directors may:
- (1) 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, make cash payments, decide that fractions of shares are to be disregarded or rounded down to the nearest whole number or decide that fractions of shares are to be rounded up to the nearest whole share;
 - (2) fix the value for distribution of any specific assets;
 - (3) pay cash or issue shares or other securities to any members in order to adjust the rights of all parties;
 - (4) vest any of those specific assets, cash, shares or other securities in a trustee on trust for the persons entitled to the dividend or capitalised amount; and
 - (5) 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, for the issue to them of those further shares or other securities credited as fully paid up or for the payment by the company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares or other securities by applying their respective proportions of the amount resolved to be capitalised.
- (b) Any agreement made under an authority referred to in rule 4.3(a)(5) is effective and binding on all members concerned.
- (c) If the company distributes to members (either generally or to specific members) securities in the company or in another body corporate or trust (whether as a dividend or otherwise and whether or not for value), each of those members 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.

4.4 Reserves

- (a) The directors may set aside out of the company's profits any reserves or provisions they decide.
- (b) The directors may appropriate to the profits of the company any amount previously set aside as a reserve or provision.
- (c) Setting aside an amount as a reserve or provision does not require the directors to keep the amount separate from the company's other assets or prevent the amount being used in the company's business or being invested as the directors decide.

4.5 Carry forward of profits

The directors may carry forward any part of the profits remaining that they consider should not be distributed as dividends or capitalised, without transferring those profits to a reserve or provision.

5 Transfer and transmission of shares

5.1 Transfer of shares

- (a) A member may only transfer any of the member's shares if such transfer complies with the requirements in the Shareholders Agreement.
- (b) Subject to this constitution, the Shareholders Agreement and to the rights or restrictions attached to any shares or class of shares, a member may transfer any of the member's shares by an instrument in writing in any usual form or in any other form approved by the directors.
- (c) An instrument of transfer referred to in rule 5.1(a) must:
 - (1) be signed by or on behalf of both the transferor and the transferee unless the instrument of transfer relates only to fully paid shares and the directors have dispensed with signature by the transferee or the transfer of the shares is effected by a document which is, or documents which together are, a sufficient transfer of those shares under the Act;
 - (2) if required by law to be stamped, be duly stamped;
 - (3) in the case of a transfer of partly paid shares, be endorsed by, or accompanied by an instrument executed by, the transferee to the effect that the transferee agrees to accept the shares subject to the terms and conditions on which the transferor held them and to become a member and to be bound by the company's constitution; and
 - (4) be left for registration at the company's registered office, or at such other place as the directors decide, with the certificate for the shares to which it relates or any other 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 owner of the shares.
- (d) Subject to the powers vested in the directors under rule 5.2, where the company receives an instrument of transfer complying with rule 5.1(c), the company must



register the transferee named in the instrument as the holder of the shares to which it relates.

- (e) A transferor of shares remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members as the holder of the shares.
- (f) The company may retain a registered instrument of transfer for any period the directors decide.
- (g) Except in the case of fraud, the company must return any instrument of transfer which the directors decline to register to the person who deposited it with the company.
- (h) The directors may, to the extent permitted by law, waive all or any part of the requirements of this rule 5.1.

5.2 Power to decline or suspend registration of transfers

- (a) Subject to any special rights conferred on the holders of any shares or class of shares, the directors may, in their absolute discretion, decline to register any transfer of shares.
- (b) The directors may suspend the registration of transfers at such times and for such periods, not exceeding in total 30 days in any year, as they think fit.
- (c) Subject to rule 5.2(d) but notwithstanding rule 5.2(a) or 5.2(b) or any other provision of this constitution, the directors must not decline to register a transfer of a share and must not suspend the registration of such transfer for any period where the transfer is made to:
 - (1) a person entitled to the benefit of a charge or mortgage or other encumbrance (**Security Interest**) over the share (whether or not as agent, trustee or nominee for a person entitled to the benefit of the Security Interest); or
 - (2) a person who purchases the share from the holder of that share or person entitled to the benefit of the Security Interest (or person acting as agent, trustee or nominee on its behalf),

pursuant to or in connection with the enforcement of that Security Interest in respect of the share, provided that the company receives an instrument of transfer signed by the transferee and the holder of a Security Interest as referred to in this rule 5.2(c) and otherwise in accordance with rule 5.1.

- (d) If the Shareholders Agreement is in force, and notwithstanding rule 5.2(a) or 5.2(b) or any other provision of this constitution, the directors must not decline to register a transfer of a share and must not suspend the registration of such transfer that complies with the terms of the Shareholders Agreement, and must not register a transfer which does not comply with the terms of the Shareholders Agreement.

5.3 Transmission of shares

- (a) Where a member dies, the only persons the company will recognise as having any title to the member's shares or any benefits accruing on those shares are, subject to the Shareholders Agreement:
 - (1) the legal personal representative of the deceased, where the deceased was a sole holder; and
 - (2) the survivor or survivors, where the deceased was a joint holder.



- (b) Rule 5.3(a) does not release the estate of a deceased member from any liability on 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 because of a Transmission Event may, on producing any evidence the directors require to prove that person's entitlement to the share, choose:
 - (1) to be registered as the holder of the share by signing and giving the company a written notice stating that choice; or
 - (2) to nominate some other person to be registered as the transferee of the share by executing or effecting in some other way a transfer of the share to that other person,provided that where the Shareholders Agreement is in force, such person agrees to be bound by the Shareholders Agreement and delivers to the company an executed Deed of Accession.
- (d) The provisions of this constitution concerning the right to transfer shares, and the registration of transfers of shares apply, so far as they can and with any necessary changes, to any transfer under rule 5.3(c) as if the relevant Transmission Event had not occurred and the transfer were signed by the registered holder of the share.
- (e) For the purpose of this constitution, where 2 or more persons are jointly entitled to a share because of a Transmission Event they will, on being registered as the holders of the share, be taken to hold the share as joint tenants.
- (f) Despite rule 5.3(a), 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.

6 General meetings

6.1 Calling general meetings

- (a) The directors may, whenever they think fit, call and arrange to hold a general meeting.
- (b) A general meeting may be convened only as provided by this rule 6.1 or as otherwise required by the Act.
- (c) Subject to rule 6.1(d), the directors may postpone, cancel or change the venue for a general meeting.
- (d) A general meeting called and arranged under section 249D of the Act may not be postponed beyond the date by which section 249D requires it to be held and may not be cancelled without the consent of the requisitioning member or members.
- (e) A general meeting may be held by virtual meeting technology only.

6.2 Notice of general meetings

- (a) Subject to this constitution and to the rights or restrictions attached to any shares or class of shares, notice of a general meeting must be given within the time limits prescribed by the Act.



- (b) The content of a notice of a general meeting called by directors is to be decided by the directors, but must state the general nature of the business to be transacted at the meeting and any other matters required by the Act.

6.3 Admission to general meetings

The chairperson of a general meeting may take any action they consider appropriate for the safety of persons attending the meeting and the orderly conduct of the meeting and may refuse admission to, or require to leave and remain out of, the meeting any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of an article considered by the chairperson to be dangerous, offensive or liable to cause disruption;
- (d) who refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
- (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (f) who is not:
 - (1) a member or a proxy, attorney or representative of a member;
 - (2) a director;
 - (3) an auditor of the company; or
 - (4) a person requested by the directors or chairman to attend the meeting.

6.4 Quorum at general meetings

- (a) No business may be transacted at any general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) If the Shareholders Agreement is in force, a quorum for a meeting of members is as set out in the Shareholders Agreement. Otherwise, a quorum consists of:
 - (1) if the number of members entitled to vote is 2 or more – 2 of those members; or
 - (2) if only one member is entitled to vote – that member, present at the meeting.
- (c) If the Shareholders Agreement is in force, if a quorum is not present within the time stipulated in the Shareholders Agreement, the relevant provisions in the Shareholders Agreement will apply. Otherwise, if a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (1) where the meeting was convened on the requisition of members, the meeting must be dissolved; or
 - (2) in any other case, the meeting stands adjourned to the day, and at the time and place, the directors decide or, if they do not make a decision, to the same day in the next week at the same time and place and 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.



6.5 Chairperson of general meetings

- (a) The chairperson of directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each general meeting.
- (b) If at a general meeting there is no chairperson of directors or the chairperson of directors is not present or not willing to act as chairperson of the meeting, one of the other directors must act as chairperson.

6.6 Conduct of general meetings

- (a) The chairperson 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:
 - (1) proper and orderly debate or discussion, including limiting the time that a person may speak on a motion or other item of business before the meeting; and
 - (2) 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 chairperson of a general meeting may at their sole discretion at any time during the course of the meeting adjourn from time to time and place to place the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion and may adjourn any business, motion, question or resolution, debate or discussion either to a later time at the same meeting or to an adjourned meeting.
- (c) No business may be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (d) Where a meeting is adjourned, notice need not be given to any person unless the meeting is adjourned for more than 30 days.
- (e) Where a meeting is adjourned, the directors may postpone, cancel or change the venue of the adjourned meeting.
- (f) Where a meeting of members is held at 2 or more venues using any form of technology:
 - (1) a member participating in the meeting is to be taken to be present in person at the meeting;
 - (2) all the provisions in this constitution relating to meetings of members apply, so far as they can and with such changes as are necessary, to meetings of the members using that technology; and
 - (3) the meeting is to be taken to be held at the place determined by the chairperson of the general meeting as long as at least one of the members involved was at that place for the duration of the general meeting.
- (g) If the technology used in accordance with the requirement of rule 6.6(f) encounters a technical difficulty, whether before or during the meeting, which results in a member not being able to participate in the meeting, the chairperson may, subject to the Act, allow the meeting to continue or may adjourn the meeting either for such reasonable period as may be required to fix the



technology or to such other time and location as the chairperson deems appropriate.

6.7 Decisions at general meetings

- (a) Except in the case of any resolution which as a matter of law or in accordance with the Shareholders Agreement 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. A decision made in this way is for all purposes a decision of the members.
- (b) The chairperson of the meeting does not have a casting vote, in addition to any deliberative vote unless the Shareholders Agreement provides otherwise.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands, unless a poll is demanded by:
 - (1) the chairperson of the meeting; or
 - (2) any member present and having the right to vote at the meeting,before a show of hands is held or before the result of the show of hands is declared or immediately after the result of the show of hands is declared.
- (d) A demand for a poll does not prevent a general meeting continuing to transact any business except the question on which the poll is demanded.
- (e) Unless a poll is duly demanded, a declaration by the chairperson 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 for or against the resolution.
- (f) If a poll is duly demanded at a general meeting, it is to be taken in a way and subject to rule 6.7(g) either at once or after an interval or adjournment or otherwise as the chairperson of the meeting directs. The result of the poll as declared by the chairperson is the resolution of the meeting at which the poll was demanded.
- (g) A poll demanded at a general meeting on the election of a chairperson of the meeting or on a question of adjournment must be taken immediately.
- (h) The demand for a poll may be withdrawn with the chairperson's consent.

6.8 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:
 - (1) on a show of hands, every member present has one vote; and
 - (2) on a poll, every member present has one vote for each share held by the member and in respect of which the member is entitled to vote.
- (b) If a person present at a general meeting represents personally or by proxy, attorney or representative more than one member:
 - (1) on a show of hands the person is entitled to one vote only, even though he or she represents more than one member;
 - (2) that vote will be taken as having been cast for all the members the person represents; and



- (3) the person must not exercise that vote in a way which would contravene any directions given to the person in accordance with rule 6.11(g) in any instrument appointing the person as a proxy or attorney.
- (c) A joint holder may vote at any meeting in person or by proxy, attorney or representative as if that person were 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) A person entitled to a share because of a Transmission Event may vote at any general meeting in respect of that share in the same way as if that person were the registered holder of the share if, before the meeting, the directors have:
 - (1) admitted that person's right to vote at that meeting in respect of the share; or
 - (2) been satisfied of that person's right to be registered as the holder of, or to transfer, the share under rule 5.3(c),and any vote so tendered by that person must be accepted to the exclusion of the vote of the registered holder of the share.
- (e) A member is not entitled to vote at a general meeting unless all calls and other amounts presently payable by that member in respect of shares in the company have been paid.
- (f) An objection to the qualification of a person to vote at a general meeting must be:
 - (1) raised before or at the meeting at which the vote objected to is given or tendered; and
 - (2) referred to the chairperson of the meeting, whose decision is final.
- (g) A vote not disallowed by the chairperson of a meeting under rule 6.8(f) is valid for all purposes.

6.9 Decisions without general meetings

- (a) When the company has more than one member, the company may pass a resolution (except a resolution to remove an auditor) without a general meeting being held:
 - (1) in accordance with the Shareholders Agreement; or
 - (2) if all of the members entitled to vote on the resolution sign a document containing a statement that they are in favour of a resolution set out in the document,and otherwise in accordance with the Act.
- (b) If a share is held jointly, each of the joint members must sign the document.
- (c) For the purposes of rule 6.9(a):
 - (1) the resolution is passed when the last person signs the document; and
 - (2) separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy.
- (d) The passage of the resolution in accordance with this rule 6.9 satisfies any requirement in the Act, or in this constitution, that the resolution be passed at a general meeting.



6.10 Resolution of single member

When the company has only one member:

- (a) The company may pass a resolution by the member recording it and signing the record.
- (b) The member must give the company written notice of any resolution passed in accordance with rule 6.10(a) within 14 days of the passing of the resolution. The notice must set out details of the resolution passed.

6.11 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
 - (1) in person or, where a member is a body corporate, by its representatives;
 - (2) by not more than 2 proxies; or
 - (3) by not more than 2 attorneys.
- (b) A proxy, attorney or representative may, but need not, be a member of the company.
- (c) 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 instrument, an instrument appointing a proxy, attorney or representative is to be taken to confer authority:
 - (1) to agree to a meeting being convened by shorter notice than is required by the Act or by this constitution;
 - (2) to agree to a resolution being proposed and passed as a special resolution at a meeting of which less than the period of notice required by the Act has been given; and
 - (3) even though the instrument may refer to specific resolutions and may direct the proxy, attorney or representative how to vote on those resolutions to do any of the acts specified in rule 6.11(e).
- (e) The acts referred to in rule 6.11(d)(3) are:
 - (1) 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;
 - (2) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
 - (3) to act generally at the meeting.
- (f) Where a member appoints 2 proxies or attorneys to vote at the same general meeting, the following rules apply:
 - (1) subject to rule 6.11(f)(2), the appointment is of no effect and a proxy or attorney may not vote unless each proxy or attorney (as applicable) is appointed to represent a specified proportion of the member's voting rights;
 - (2) if the Act precludes the company from treating as invalid the appointment of 2 proxies which fails to specify the proportion or

number of votes that each may exercise, each person appointed may exercise half the member's votes;

- (3) on a show of hands, neither proxy or attorney may vote;
 - (4) on a poll, each proxy or attorney may only exercise the voting rights the proxy or attorney represents; and
 - (5) if both appointments cannot be validly exercised at the meeting, the later appointment revokes the earlier appointment of a proxy or attorney.
- (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) Subject to rule 6.11(i), an instrument appointing a proxy or attorney need not be in any particular form as long as it is in writing, legally valid and signed by or on behalf of the appointer or the appointer's attorney.
- (i) A proxy or attorney may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy or attorney, and the authority under which the instrument is signed or a certified copy of the authority, are:
- (1) received at the registered office of the company, a fax number at the company's registered office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting before the time specified in the notice;
 - (2) in the case of a meeting or an adjourned meeting, tabled at the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
 - (3) in the case of a poll, produced when the poll is taken.
- (j) The directors may waive all or any of the requirements of rules 6.11(h) and 6.11(i) and in particular may, on the production of such other evidence as the directors require to prove the validity of the appointment of a proxy or attorney, accept:
- (1) an oral appointment of a proxy or attorney;
 - (2) an appointment of a proxy or attorney which is not signed in the manner required by rule 6.11(h); and
 - (3) the deposit, tabling or production of a copy (including a copy sent by fax) of an instrument appointing a proxy or attorney or of the power of attorney or other authority under which the instrument is signed.
- (k) A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite:
- (1) a Transmission Event occurring in relation to the appointer; or
 - (2) the revocation of the instrument or of the authority under which the instrument was executed,

if no written notice of the Transmission Event or revocation has been received by the company by the time and at one of the places at which the instrument appointing the proxy or attorney is required to be deposited, tabled or produced under rule 6.11(i).



- (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 deposited, tabled or produced under rule 6.11(i).
- (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 a resolution, the person acting as proxy or attorney for the appointer is not entitled to vote, and must not vote, as the appointer's proxy or attorney on the resolution.

7 Directors

7.1 Appointment and removal of directors

- (a) There must be at least one director and no more than:
 - (1) if the Shareholders Agreement is in force, the maximum number of directors permitted under the Shareholders Agreement; or
 - (2) in any other circumstance, unless the company resolves otherwise, 7 directors.
- (b) If the Shareholders Agreement is in force, then without limiting rule 7.2 a director may only be appointed or removed in accordance with the applicable provisions of the Shareholders Agreement. Otherwise:
 - (1) the company may by resolution appoint or remove a director; and
 - (2) the directors may appoint any natural person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but the total number of directors must not at any time exceed the maximum number allowed under this constitution.
- (c) Subject to rule 7.2 and to the terms of any agreement entered into between the company and the relevant director, a director holds office until the director dies or is removed from office under this rule 7.1.

7.2 Vacation of office

The office of a director becomes vacant:

- (a) in the circumstances (if any) prescribed in the Shareholders Agreement;
- (b) in the circumstances prescribed by the Act;
- (c) if the director becomes of unsound mind (as certified by a registered medical professional) or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (d) if the director is removed from office under rule 7.1; or
- (e) if the director resigns by written notice to the company.

7.3 Remuneration of directors

- (a) If the Shareholders Agreement is in force, the remuneration of each director is to be determined in accordance with the applicable provisions of the



Shareholders Agreement. Otherwise, if there is no Shareholders Agreement in force (or the Shareholders Agreement in force does not contain applicable provisions relating to the remuneration of directors) and subject to this rule 7.3(a), each director is entitled to such remuneration out of the funds of the company as the directors decide, but if the company in general meeting has fixed a limit on the amount of remuneration payable to the directors, the total remuneration of the directors under this rule 7.3(a) must not exceed that limit.

- (b) The remuneration of directors may be:
- (1) a stated salary or a fixed sum for attendance at each meeting of directors, or both; or
 - (2) a share of a fixed sum decided by the company in general meeting to be the remuneration payable to all directors which is to be divided between the directors in the proportions agreed between them or, failing agreement, equally,
- and if it is a stated salary under rule 7.3(b)(1) or a share of a fixed sum under rule 7.3(b)(2), is to be taken to accrue from day to day.
- (c) If the Shareholders Agreement is in force, the directors are entitled to be paid such travelling and other expenses as are permitted in accordance with the applicable provisions of the Shareholders Agreement. Otherwise, if there is no Shareholders Agreement in force (or the Shareholders Agreement in force does not contain applicable provisions relating to travelling and other expenses of directors), in addition to their remuneration under rule 7.3(a), the directors are entitled to be paid travelling and other expenses properly incurred by them in connection with the affairs of the company, including attending and returning from general meetings of the company or meetings of the directors or of committees of the directors subject to a maximum amount as determined by the Board.
- (d) 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 7.3(a).
- (e) Nothing in rule 7.3(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 7.3(a).
- (f) For the purposes of rule 7.3(a), the maximum amount (if any) fixed by the company as remuneration payable to the directors does not include any amount paid by the company or related body corporate:
- (1) to a superannuation, retirement or pension fund for a director so that the company is not liable to pay the superannuation guarantee charge or similar statutory charge; or
 - (2) for any insurance premium paid or agreed to be paid for a director under rule 11.4.
- (g) The directors may:
- (1) 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 7.3(a), a pension or lump sum payment in respect of past services rendered by that director; and



- (2) cause the company to enter into a contract with the director for the purpose of providing for or giving effect to such a payment.
- (h) 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 a director or former director.

7.4 Share qualification

- (a) A director need not hold any shares in the company as a qualification.
- (b) A director who is not a member of the company is entitled to attend and speak at general meetings and at meetings of the holders of a class of shares.

7.5 Interested directors

- (a) If:
 - (1) the Shareholders Agreement is in force; and
 - (2) the Shareholders Agreement includes provisions governing the rights and obligations of interested directors,then:
 - (3) those provisions will apply as if set out in this rule 7.5; and
 - (4) the remainder of this rule 7.5 will continue to apply to the extent that it is not inconsistent with the terms of the Shareholders Agreement.
- (b) A director may hold any other office or place of profit (other than auditor) in the company or any related body corporate in conjunction with his or her directorship and may be appointed to that office or place on such terms as to remuneration, tenure of office and otherwise as the directors think fit.
- (c) A director of the company may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the company or in which the company may be interested as a shareholder or otherwise, and is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of, or from having an interest in, that body corporate.
- (d) The directors may exercise the voting rights conferred by shares in any body corporate held or owned by the company in such manner in all respects as the directors think fit (including voting in favour of any resolution appointing a director as a director or other officer of that body corporate or voting for the payment of remuneration to the directors or other officers of that body corporate) and a director may, if permitted by law, vote in favour of the exercise of those voting rights even though he or she is, or may be about to be appointed, a director or other officer of that other body corporate and, as such, interested in the exercise of those voting rights.
- (e) A director is not disqualified merely because of being a director from contracting with the company.
- (f) No contract made by a director with the company, and no contract or arrangement entered into by or on behalf of the company in which any director may be in any way interested, is avoided or rendered voidable merely because of the director holding office as a director or because of the fiduciary obligations arising out of that office.



- (g) No director contracting with or being interested in any arrangement involving the company is liable to account to the company for any profit realised by or under any contract or arrangement merely because of the director holding office as a director or because of the fiduciary obligations arising out of that office.
- (h) Subject to the Act, a director who is in any way interested in any contract or arrangement or proposed contract or arrangement may, despite that interest:
 - (1) be counted in determining whether or not a quorum is present at any meeting of directors considering that contract or arrangement or proposed contract or arrangement;
 - (2) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement; and
 - (3) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement to which the seal is affixed.
- (i) While the company is a wholly owned subsidiary its directors may, subject to the Act, act in the best interests of the company's holding company or ultimate holding company.

7.6 Powers and duties of directors

- (a) The directors are responsible for managing the business of the company and may exercise to the exclusion of the company in general meeting all the powers of the company which are not required, by the Act or by this constitution, to be exercised by the company in general meeting.
- (b) Without limiting the general nature of rule 7.6(a), the directors may exercise all the powers of the company to borrow or raise money in any other way, to charge any of the company's property or business or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.
- (c) The directors may decide how cheques, promissory notes, banker's drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed (as applicable) by or on behalf of the company.
- (d) The directors may pay out of the company's funds all expenses of the promotion, formation and registration of the company and the vesting in it of the assets acquired by it.
- (e) The directors may:
 - (1) appoint or employ any person to be an officer, agent or attorney of the company for such purposes with the powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the directors), for such period and on such conditions as they decide;
 - (2) authorise an officer, agent or attorney to delegate any of the powers, discretions and duties vested in the officer, agent or attorney; and
 - (3) subject to any contract between the company and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney of the company at any time, with or without cause.
- (f) A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the directors decide.



- (g) A director may share confidential information of the company with the Shareholder that appointed that director.

7.7 Proceedings of directors

- (a) The directors may meet together to attend to business and adjourn and regulate their meetings as they decide, unless the Shareholders Agreement requires otherwise.
- (b) A meeting of the directors may be held using any technology consented to by all the participating directors (**Approved Technology**) and the consent may be a standing one. The contemporaneous linking together by Approved Technology of a number of the directors sufficient to constitute a quorum, constitutes a meeting of the directors and all the provisions in this constitution relating to meetings of the directors apply, so far as they can and with such changes as are necessary, to meetings of the directors by Approved Technology.
- (c) A director participating in a meeting by Approved Technology is to be taken to be present in person at the meeting.
- (d) A meeting by Approved Technology is to be taken to be held at the place determined by the chairperson of the meeting as long as at least one of the directors involved was at that place for the duration of the meeting.
- (e) If, before or during the meeting, any technical difficulty occurs as a result of which one or more directors cease to participate, the chairperson may adjourn the meeting until the difficulty is remedied or may, where a quorum of directors remains present, continue with the meeting.

7.8 Convening meetings of directors

- (a) A director may, whenever the director thinks fit, convene a meeting of the directors.
- (b) A secretary must, on the requisition of a director, convene a meeting of the directors.
- (c) A meeting for the purposes of rules 7.8(a) and 7.8(b) includes a meeting held by telephone, any electronic means of audio or audio-visual communication, or other means in accordance with section 248D of the Corporations Act.

7.9 Notice of meetings of directors

- (a) Subject to this constitution, notice of a meeting of directors must be given to each person who is at the time of giving the notice:
 - (1) a director, other than a director on leave of absence approved by the directors;
 - (2) an alternate director appointed under rule 7.14 by a director on leave of absence approved by the directors; and
 - (3) any person who is entitled to receive a notice under the Shareholders Agreement.
- (b) A notice of a meeting of directors:
 - (1) must specify the time and place of the meeting;
 - (2) need not state the nature of the business to be transacted at the meeting;



- (3) unless all the directors (other than any director on a leave of absence) agree otherwise, must be given to each director at least two Business Days' before the date of the meeting;
 - (4) may be given in person or by post or by telephone, fax or other electronic means; and
 - (5) is to 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 any meeting of directors by notifying the company to that effect in person or by post, telephone, fax or other electronic means.
- (d) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate anything done or resolution passed at the meeting if:
- (1) the non-receipt or failure occurred by accident or error;
 - (2) before or after the meeting, the director or an alternate director appointed by the director has waived or waives notice of that meeting under rule 7.9(c) or has notified or notifies the company of his or her agreement to that thing or resolution personally or by post, telephone, fax or other electronic means; or
 - (3) the director or an alternate director appointed by the director attended the meeting.
- (e) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, an alternate director of a director on leave of absence approved by the directors does not invalidate any act, thing done or resolution passed at the meeting if:
- (1) the non-receipt or failure occurred by accident or error;
 - (2) before or after the meeting, the alternate director or the director who appointed the alternate director or another alternate director appointed by that director has waived or waives notice of that meeting under rule 7.9(c) or has notified or notifies the company of his or her agreement to that thing or resolution personally or by post, telephone, fax or other electronic means; or
 - (3) the alternate director or the director who appointed the alternate director or another alternate director appointed by that director attended the meeting.
- (f) A person who attends a meeting of directors waives any objection that person may have to a failure to give notice of the meeting.
- If the person is:
- (1) a director, the waiver applies to any alternate director appointed by that person; or
 - (2) an alternate director, the waiver applies to the director who appointed that person as an alternate director and to any other alternate director appointed by that director.

7.10 Quorum at meetings of directors

- (a) No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.



- (b) Where the company has only one director, a quorum consists of that director present at the meeting of directors.
- (c) If the Shareholders Agreement is in force, a quorum for a meeting of directors is as set out in the applicable provisions of the Shareholders Agreement. Otherwise, subject to rule 7.10(b), a quorum consists of:
 - (1) if the directors have fixed a number for the quorum, that number of directors; and
 - (2) in any other case, 2 directors, present at the meeting of directors.
- (d) If there is a vacancy in the office of director, the remaining director or directors may act. But, if the number of remaining directors is not sufficient to constitute a quorum, the remaining director or directors may act only in an emergency or to increase the number of directors to a number sufficient to constitute a quorum or to call a general meeting of the company.

7.11 Chairperson of directors

- (a) If the Shareholders Agreement is in force, a chairperson may only be appointed in accordance with the applicable provisions of the Shareholders Agreement. Otherwise, the directors may elect one of the directors to the office of chairperson of directors and may decide the period for which that director is to be chairperson of directors.
- (b) The office of chairperson of directors may, if the directors so resolve, be treated as an extra service or special exertion performed by the director holding that office for the purposes of rule 7.3(d).
- (c) The chairperson of directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as chairperson at each meeting of directors.
- (d) If at a meeting of directors:
 - (1) there is no chairperson of directors;
 - (2) the chairperson of directors is not present within 10 minutes after the time appointed for the meeting; or
 - (3) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,the directors present must elect one of themselves to be chairperson of the meeting.

7.12 Decisions of directors

- (a) A meeting of directors at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under this constitution. However if the company has only one director, the director may pass a resolution and make a declaration by recording it and signing the record.
- (b) If the Shareholders Agreement is in force, questions arising at a meeting of directors must be decided in accordance with the applicable provisions of the Shareholders Agreement. Otherwise, questions arising at a meeting of directors are to be decided by a majority of votes cast by the directors present and any such decision is for all purposes a decision of the directors.

- (c) If votes are equal on a proposed resolution:
 - (1) the chairperson of the meeting does not have a casting vote in addition to any deliberative vote; and
 - (2) the proposed resolution is to be taken as having been lost.

7.13 Written resolutions of directors

- (a) If the Shareholders Agreement is in force, a written resolution will be taken to be passed by a meeting of the directors if it is passed in accordance with the applicable provisions of the Shareholders Agreement as a written resolution of the directors or otherwise if:
 - (1) all the directors (other than any director on leave of absence approved by the director, any director who disqualifies himself or herself from considering the resolution in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest or any director who the directors reasonably believe is not entitled at law to vote on the resolution in question) assent to a document containing a statement to the effect that a resolution has been passed; and
 - (2) the directors who assent to the document would have constituted a quorum at a meeting of directors held to consider that resolution.
- (b) For the purposes of rule 7.13(a):
 - (1) the meeting is to be taken as having been held if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a director or if the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a director;
 - (2) 2 or more separate documents in identical terms each of which is assented to by one or more directors are to be taken as constituting one document; and
 - (3) 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 electronic means.
- (c) Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the directors attended by that director, but failure to do so does not invalidate the thing or resolution to which the document relates.
- (d) Where a document is assented to in accordance with rule 7.13(a), the document is to be taken as a minute of a meeting of directors.

7.14 Alternate directors

- (a) A director may appoint:
 - (1) a person to be the director's alternate director for such period as the director thinks fit; and
 - (2) another person to be the director's alternate director in the absence of any alternate director appointed under rule 7.14(a)(1),



where:

- (3) if the Shareholders Agreement is in force, the Shareholders Agreement permits such appointment; or
 - (4) otherwise, a majority of the other directors resolves to approve such appointment.
- (b) An alternate director may, but need not, be a member or a director of the company.
 - (c) One person may act as alternate director to more than one director.
 - (d) An alternate director is entitled, if the appointer does not attend a meeting of directors, to attend and vote in place of and on behalf of the appointer.
 - (e) An alternate director has 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.
 - (f) In the absence of the appointer, an alternate director may exercise any powers that the appointer may exercise and the exercise of any such power by the alternate director is to be taken to be the exercise of the power by the appointer.
 - (g) The office of an alternate director is vacated if and when the appointer vacates office as a director.
 - (h) The appointment of an alternate director may be terminated at any time by the appointer even though the period of the appointment of the alternate director has not expired.
 - (i) An appointment, or the termination of an appointment, of an alternate director must be in writing signed by the director who makes or made the appointment, and does not take effect until the company has received written notice of the appointment or termination.
 - (j) An alternate director is not to be taken into account in determining the minimum or maximum number of directors allowed under this constitution.
 - (k) In determining whether a quorum is present at a meeting of directors, an alternate director who attends the meeting is to be counted as a director for each director on whose behalf the alternate director is attending the meeting.
 - (l) An alternate director is entitled to be paid such remuneration as the directors think fit, either in addition to or in reduction of the remuneration payable to the director for whom the alternate director acts as alternate.
 - (m) An alternate director is not entitled to be remunerated by the company for his or her services as an alternate director except as provided in rule 7.14(l).
 - (n) An alternate director, while acting as a director, is responsible to the company for his or her own acts and defaults and is not to be taken to be the agent of the director by whom he or she was appointed.

7.15 Committees of directors and delegation to a director

- (a) The directors may delegate any of their powers to a committee or committees consisting of the number of directors they think fit.
- (b) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.



- (c) The provisions of this constitution applying to meetings and resolutions of directors apply, so far as they can and with such changes as are necessary, to meetings and resolutions of a committee of directors.
- (d) Membership of a committee of directors may, if the directors so resolve, be treated as an extra service or special exertion performed by the members for the purposes of rule 7.3(d).
- (e) The directors may delegate any of their powers to a director.
- (f) A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (g) The acceptance of a delegation of powers by a director may, if the directors so resolve, be treated as an extra service or special exertion performed by the delegate for the purposes of rule 7.3(d).

7.16 Validity of acts

An act done by a person acting as a director or by a meeting of directors or a committee of directors attended by a person acting as a director is not invalidated merely because of:

- (a) a defect in the appointment of the person as a director;
- (b) the person being disqualified from being a director or having vacated office; or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person or the directors or committee (as applicable) when the act was done.

8 Executive officers

8.1 Managing directors and executive directors

- (a) The directors may appoint one or more of the directors to the office of managing director or other executive director.
- (b) Unless the directors decide differently, or the company has agreed otherwise with the relevant director, the appointment of a managing director or other executive director as an employee terminates if the managing director ceases to be a director.
- (c) A managing director or other executive director may be referred to by any title the directors nominate.

8.2 Secretaries

- (a) The directors may appoint one or more secretaries.
- (b) The directors may appoint one or more assistant secretaries.

8.3 Provisions applicable to all executive officers

- (a) A reference in this rule 8.3 to an executive officer is a reference to a managing director, other executive director, secretary or assistant secretary appointed under this rule 8.



- (b) The appointment of an executive officer may be for the period, at the remuneration and on the conditions the directors think fit.
- (c) Subject to any contract between the company and the relevant executive officer, an executive officer of the company may be removed or dismissed by the directors at any time, with or without cause, and if he or she is also a director, the executive officer ceases to be a director on termination of his or her employment.
- (d) The directors may:
 - (1) confer on an executive officer such powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the directors) as they think fit;
 - (2) withdraw, suspend or vary any of the powers, discretions and duties so conferred; and
 - (3) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on the executive officer.
- (e) An executive officer need not hold any shares to qualify for appointment.
- (f) An act done by a person acting as an executive officer is not invalidated merely because of:
 - (1) a defect in the person's appointment as an executive officer; or
 - (2) the person being disqualified from being an executive officer, if that circumstance was not known by the person when the act was done.

9 Seals

9.1 Common seal

Without limiting the ways in which the company can execute documents in accordance with the Act, if the directors so decide, the company may have a common seal.

9.2 Use of seal

The directors may decide on procedures for the use of the seal.

10 Winding up

10.1 Distribution of surplus

Subject to this constitution and the rights or restrictions attached to any shares or class of shares and subject to the rights attaching to Preference Shares:

- (a) if the company is wound up and the property of the company available for distribution among the members is more than sufficient to pay:
 - (1) all the debts and liabilities of the company; and
 - (2) the costs, charges and expenses of the winding up,



the excess must be divided among the members in proportion to the number of 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 10.1(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 10.1(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 10.1(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.

10.2 Division of property

Subject to the rights attaching to Preference Shares:

- (a) If the company is wound up, the liquidator may, with the sanction of a special resolution:
 - (1) divide among the members the whole or any part of the company's property; and
 - (2) decide how the division is to be carried out as between the members or different classes of members.
- (b) A division under rule 10.2(a) need not accord with the legal rights of the members and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part.
- (c) Where a division under rule 10.2(a) does not accord with the legal rights of the members, a member 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 Act.
- (d) If any of the property to be divided under rule 10.2(a) includes securities with a liability to calls, any 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 10.2(a), by written notice direct the liquidator to sell the person's proportion of the securities and to account for the net proceeds. The liquidator must, if practicable, act accordingly.
- (e) Nothing in this rule 10.2 takes away from or affects any right to exercise any statutory or other power which would have existed if this rule were omitted.
- (f) Rule 4.3 applies, so far as it can and with any necessary changes, to a division by a liquidator under rule 10.2(a) as if references in rule 4.3 to the directors and to a distribution or capitalisation were respectively references to the liquidator and to the division under rule 10.2(a).

11 Indemnity and insurance

11.1 Persons to whom rules 11.2 and 11.4 apply

Rules 11.2 and 11.4 apply to:

- (a) each person who is or has been a director, or alternate director of the company; and
- (b) any other officers or former officers of the company or of its related bodies corporate as the directors in each case decide.

11.2 Indemnity

The company must indemnify, on a full indemnity basis and to the full extent permitted by law, each person to whom this rule 11.2 applies against all losses or liabilities (including costs and expenses) incurred by the person as an officer of the company.

11.3 Extent of indemnity

The indemnity in rule 11.2:

- (a) is a continuing obligation and is enforceable by a person to whom rule 11.2 applies even though that person has ceased to be an officer of the company; and
- (b) operates only to the extent that the loss or liability in question is not covered by insurance.

11.4 Insurance

The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this rule 11.4 applies against any liability incurred by the person as an officer of the company where the directors consider it appropriate to do so.

11.5 Savings

Nothing in rule 11.2 or 11.4:

- (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 or pay for insurance for any person to whom those rules do not apply.

11.6 Deed

Without limiting a person's right under this rule 11, the company may enter into a deed agreeing with the person to give effect to the rights of the person conferred by this rule 11 or the exercise of a discretion under this rule 11, on such terms and conditions as the directors think fit, as long as they are not inconsistent with this rule 11.



12 Access to documents

- (a) A person who is not a director does not have the right to inspect any of the board papers, books, records or documents of the company, except as provided by law, the Shareholders Agreement or this constitution, or as authorised by the directors or by a resolution of the members.
- (b) The company may enter into contracts with its directors agreeing to provide continuing access for a specified period after they cease to be a director to board papers, books, records and documents of the company which relate to the period during which the director was a director on such terms and conditions as the directors think fit and which are not inconsistent with this rule 12.
- (c) The company may procure that its subsidiaries provide similar access to board papers, books, records or documents as that set out in rules 12(a) and 12(b).

13 Notices

13.1 Notices by the company to members

- (a) The company may give notices, including a notice of general meeting to a member:
 - (1) personally;
 - (2) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member;
 - (3) by sending it to the fax number or electronic address (if any) nominated by the member; or
 - (4) in the manner prescribed in the Shareholders Agreement.
- (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 13.1(a) to the joint holder first named in the register of members in respect of the share.
- (c) A notice given to a member in accordance with rule 13.1(a) or 13.1(b) is, despite the occurrence of a Transmission Event and whether or not the company has notice of that occurrence:
 - (1) duly given in respect of any shares registered in that person's name, whether solely or jointly with another person; and
 - (2) sufficient service on any person entitled to the shares as a result of the Transmission Event.
- (d) A notice given to a person who is entitled to a share as a result of a Transmission Event is sufficient service on the member in whose name the share is registered.
- (e) Any person who, because of a transfer of shares, becomes entitled to any 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 13.1.



- (f) A certificate signed by a director or secretary of the company to the effect that a notice has been given in accordance with this constitution is conclusive evidence of that fact.

13.2 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 usual residential or business address, or by electronic means or fax to such electronic address or fax number, as the director or alternate director has supplied to the company for giving notices.

13.3 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 means to the principal fax number or the principal electronic address of the company at its registered office.

13.4 Time of service

- (a) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
 - (1) in the case of a notice of a general meeting, on the day after the date of its posting; or
 - (2) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (b) Where a notice is sent by fax, service of the notice is to be taken to be effected if the correct fax number appears on the fax report generated by the sender's fax machine and to have been effected at the time the fax is sent.
- (c) Where a notice is sent by electronic means, service of the notice is to be taken to be effected:
 - (1) in the case of an electronic messaging system that contains a delivery verification function, on the generation by the electronic messaging system of a delivery verification notice or log entry, or other confirmation; or
 - (2) in the case of electronic mail or other electronic messaging system (other than those referred to in rule 13.4(c)(1)), on the delivery to where the addressee is a natural person, the addressee's electronic mail or electronic messaging system account or where the addressee is a corporation, the corporation's computer systems.
- (d) If service under rule 13.4(c) is on a day which is not a Business Day or is after 4.00pm (addressee's time), the notice is regarded as having been received at 9.00am on the next following Business Day.

13.5 Other communications and documents

Rules 13.1 to 13.4 (inclusive) apply, so far as they can and with any necessary changes, to the service of any communication or document.



13.6 Notices in writing

A reference in this constitution to a written notice includes a notice given by fax or electronic transmission or any other form of written communication.

14 General

14.1 Submission to jurisdiction

Each member submits to the non-exclusive jurisdiction of the Supreme Court of the state or territory in which the company is taken to be registered, the Federal Court of Australia and the courts which may hear appeals from those courts.

14.2 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

15 Transitional provisions

If this constitution has been adopted other than as the original constitution of the company at its formation, then this constitution must be interpreted in such a way that:

- (a) every director, managing director and secretary in office in that capacity immediately before this constitution is adopted continues in office subject to, and is taken to have been appointed or elected under, this constitution;
- (b) any register maintained by the company immediately before this constitution is adopted is taken to be a register maintained under this constitution;
- (c) any seal adopted by the company immediately before this constitution is adopted is taken to be a seal which the company has under a relevant authority given by this constitution;
- (d) unless a contrary intention appears in this constitution, all persons, things, agreements and circumstances appointed, approved or created by or under the constitution of the company in force before this constitution is adopted, continue to have the same status, operation and effect after this constitution is adopted; and
- (e) except where expressly stated to the contrary, the adoption of this constitution does not alter the rights attaching to any class of shares which exist at the date this constitution is adopted.



Schedule 1

Definitions

The meanings of the terms used in this constitution are set out below.

Term	Meaning
Act	the <i>Corporations Act 2001</i> (Cth).
Approved Technology	has the meaning given in rule 7.7(b).
Beneficial Holder	has the meaning given in the Custodian Terms.
Board	the board of directors of the company, from time to time.
Business Day	a day, not being a Saturday, Sunday or public holiday on which trading banks are open for business in Sydney, Australia.
CDN	CHESS Depository Nominees Pty Ltd (ACN 071 346 506).
Convertible Security	any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Ordinary Shares, but excluding Options.
Custodian	has the meaning given in the Custodian Terms.
Custodian Terms	the terms of trust set out in Schedule 3, as amended from time to time in accordance with Schedule 3.
Deed of Accession	is defined in the Shareholders Agreement.
Demerger Scheme	the scheme of arrangement under Part 26 of the Companies Act 2006 (UK) between Tulla and Tulla Shareholders as set out in Part Four I (The Schemes of Arrangement: Demerger Scheme) of the Scheme Circular.



Term	Meaning
Demerger Scheme Effective Date	has the meaning given to that term in the Scheme Circular.
Implementation Date	the date on which the Demerger Scheme is implemented in accordance with its terms.
Initial Redeemable Preference Share	the redeemable preference share on issue in the capital of company upon its incorporation on the terms of issue set out in Schedule 2.
Options	rights, options or warrants to subscribe for, purchase or otherwise acquire Ordinary Shares or securities in the capital of the company.
Ordinary Shares	ordinary shares in the capital of the company.
Preference Shares	preference shares in the capital of the company on issue by the company from time to time.
Redemption Amount	an amount equal to the RPS Issue Price.
representative	in relation to a member which is a body corporate, means a person authorised by the body corporate under the Act to act as its representative.
RPS Issue Price	the issue price of the Initial Redeemable Preference Share, being \$1.
RPS Shareholder	the holder of the Initial Redeemable Preference Share
Scheme Circular	the circular issued by Tulla dated 9 May 2023 in respect of, among other things, the Demerger Scheme addressed to Tulla Shareholders and persons with information rights containing, among other things, a copy of the Demerger Scheme.
Security Interest	has the meaning given in rule 5.2(c).
share	a share in the capital of the company, including an Ordinary Share and a Preference Share.



Term	Meaning
Shareholder	a shareholder of the company from time to time.
Shareholders Agreement	the shareholders agreement in respect of the company to be entered into by the company and its then shareholders on or about June 2023, as in force and as amended, amended and restated or replaced from time to time.
subsidiary	a subsidiary as defined in the Act.
Transmission Event	<ol style="list-style-type: none">1 for a member who is an individual – the member’s death, the member’s bankruptcy or the member becoming of unsound mind (as certified by a registered medical professional) or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; and2 for a member 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.
Tulla	Tulla Resources Plc (ARBN 122 088 073) of Suite 5, Level 2, 2 Grosvenor Street, Bondi Junction NSW 2022.
Tulla CDI	CHESS Depository Interest, being a unit of beneficial ownership of an Ordinary Share legally held by CDN.
Tulla CDI Holder	a holder of a Tulla CDI.
Tulla Shareholder	each person who is registered as the holder of an Ordinary Share (including for the avoidance of doubt, any person who holds beneficial ownership of an Ordinary Share via a Tulla CDI) in register of members of Tulla maintained in accordance with the Companies Act 2006 (UK).



Schedule 2

Initial Redeemable Preference Share – Terms of Issue

1 Definitions and interpretation

- (a) All references to \$ are to Australian dollars.
- (b) The definitions set out in Schedule 1 apply to these Terms of Issue and a reference in these terms of issue to the **Constitution** is a reference to the constitution of the company (as amended from time to time).

2 Initial Redeemable Preference Share

The Initial Redeemable Preference Share:

- (a) is in a separate class of shares in the company;
- (b) has a face value equal to the RPS Issue Price;
- (c) has the rights, powers, privileges and obligations referred to in these Terms of Issue and the Constitution;
- (d) is redeemable only in accordance with these Terms of Issue; and
- (e) is not convertible into any other class of shares in the company.

3 Dividends

The Initial Redeemable Preference Share provides no entitlement to receive any dividends.

4 Participation in liquidation

4.1 Winding up

On a winding up or liquidation of the company or other return of share capital of the company (other than a buy-back of shares), the Initial Redeemable Preference Share confers the right to receive the Redemption Amount out of the assets of the company available for distribution before any return of capital is made to the holders of other classes of the company's shares.



4.2 No further participation

Other than as set out in rule 4.1, the Initial Redeemable Preference Share does not confer any entitlement to participate in the surplus profits or assets of the company if there are any other classes of shares on issue in the company.

5 Redemption

5.1 Redemption of the Initial Redeemable Preference Shares

- (a) Subject to rules 5.1(b), 5.1(c), 5.2 and 5.3 of these Terms of Issue, the company will redeem the Initial Redeemable Preference Share at the Redemption Amount on the earlier of:
- (1) the Implementation Date; and
 - (2) the 9th anniversary after the date on which the Initial Redeemable Preference Share was issued,
- unless the RPS Shareholder and the company agree otherwise in writing.
- (b) The company may subject to rule 5.1(c), redeem the Initial Redeemable Preference Share at any time for the Redemption Amount in its absolute discretion.
- (c) In effecting any redemption the company must comply with the Act.
- (d) If the company is prohibited by law from paying the full Redemption Amount in respect of the Initial Redeemable Preference Share, the company must pay as much as it may lawfully pay towards the Redemption Amount.
- (e) Redemption of the Initial Redeemable Preference Share by the company is effective on the date that the Redemption Amount has been fully paid.
- (f) From and after redemption of the Initial Redeemable Preference Share, the rights, privileges, powers, and obligations attached to the Initial Redeemable Preference Share will cease.

5.2 Capital reduction

The company may undertake a capital reduction to cancel the Initial Redeemable Preference Share for an amount which the holder would otherwise have received on redemption of the Initial Redeemable Preference Share under rule 5.1(a) (occurring on the same date as the date of completion of the capital reduction), provided that the capital reduction complies with Part 2J.1 of the Act.

5.3 Buy-back

The company may undertake a buy-back to offer to acquire the Initial Redeemable Preference Share for an amount which the holder would otherwise have received on redemption of the Initial Redeemable Preference Share under rule 5.1(a) (on the same date as the date of completion of the buy-back), provided that the buy-back complies with Part 2J.2 of the Act.



5.4 Transfers

The RPS Shareholder must not transfer or otherwise dispose of the Initial Redeemable Preference Share except in accordance with the provisions of the Constitution.

6 Payments

6.1 Manner of payment

Any money payable in cash in respect of the Initial Redeemable Preference Share (including a Redemption Amount), must be paid in the lawful currency of Australia and may be paid by electronic funds transfer to the account nominated by the RPS Shareholder or as otherwise directed by the RPS Shareholder and approved by the company.

6.2 Deductions

All payments (including any amounts capitalised) in respect of the Initial Redeemable Preference Share must be made without deduction or withholding, unless required by law.

7 Voting rights

Prior to redemption of the Initial Redeemable Preference Share, the RPS Shareholder is entitled to:

- (a) receive notice of a general meeting of the company;
- (b) attend a general meeting of the company; and
- (c) vote at a general meeting of the company or otherwise on a matter on which a holder of shares is entitled to vote.

8 Amendment

- (a) The company may, without the authority, assent, or approval of the RPS Shareholders, amend or add to these Terms of Issue where the amendment or addition, in the reasonable opinion of the company:
 - (1) is of a formal, minor, or technical nature;
 - (2) is made to cure any ambiguity or correct any manifest error;
 - (3) is expedient for the purpose of enabling the Initial Redeemable Preference Share to be redeemed under the laws for the time being in force in any place and it is otherwise not considered by the company to be materially prejudicial to the interests of the RPS Shareholder; or
 - (4) is necessary to comply with the provisions of any statute or the requirements of any statutory authority,



and in any other case, will not materially adversely affect the rights of the RPS Shareholder.

- (b) An amendment not falling within rule 8(a) may only be made if it has been approved by the RPS Shareholder.
- (c) For the purposes of the Act, the Constitution, and these Terms of Issue any issue of any issue of other classes of shares will not be regarded as a variation or abrogation of the rights of the RPS Shareholder.



Schedule 3

Custodian Terms

[Attached]



HERBERT
SMITH
FREEHILLS

Terms

Custodian Terms

Phoenix Industrial Minerals Pty Ltd

Custodian



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1 Definitions and interpretation

1.1 Definitions

The meanings of certain terms used in these Terms are set out below.

Term	Meaning
Beneficial Holder	each person from time to time on whose behalf the Custodian holds Shares in accordance with these Terms and the Shareholders Agreement.
Beneficial Shares	in respect of a Beneficial Holder, the Shares held by the Custodian as bare trustee for the Beneficial Holder in accordance with these Terms.
Business Day	a day, not being a Saturday, Sunday or public holiday on which trading banks are open for business in Sydney, Australia.
Company	Phoenix Industrial Minerals Pty Ltd (ACN 667 231 816) of Suite 5, Level 2, 2 Grosvenor Street, Bondi Junction NSW 2022.
Constitution	the constitution of the Company from time to time.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Cost	any liability, cost, expense, loss or damage.
Custodian	<ol style="list-style-type: none"> 1 on establishment of the bare trust constituted by these Terms, Perpetual Nominees Limited (ACN 000 733 700) of Level 18, 123 Pitt Street, Sydney NSW 2000; and 2 any replacement for the party referred to in paragraph 1 of this definition as appointed from time to time by the Company under the Constitution and in accordance with these Terms to hold the Beneficial Shares on bare trust in accordance with these Terms.
Demerger Scheme	has the meaning given in the Constitution.
Government Agency	any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.
Overhead Costs	overhead expenses, including rent, office maintenance and salaries.

Term	Meaning
Related Corporation	a 'related body corporate' as that expression is defined in the Corporations Act.
Relevant Trust	in respect of a Beneficial Holder, the trust created under these Terms and the Shareholders Agreement in relation to that Beneficial Holder's Beneficial Shares.
Rights	in respect of a Beneficial Share, all accretions and rights attaching to that Beneficial Share, including all voting rights, rights to dividends, bonus issues, rights issues and other distributions and any proceeds attaching to or in respect of that Beneficial Share.
Shareholders Agreement	the shareholders agreement relating to the Company dated on or about June 2023, as amended, amended and restated or replaced from time to time.
Shares	shares in the capital of the Company.
Terms	this document, being Schedule 3 to the Constitution.

1.2 Interpretation

In these Terms:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of these Terms.
- (b) The singular includes the plural and the plural includes the singular, and words of any gender include all genders. Other parts of speech and grammatical forms of a word or phrase defined in these Terms have a corresponding meaning.
- (c) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (d) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (e) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document, and a reference to an agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (f) A reference to a party to a document includes that party's successors and permitted assignees.
- (g) A reference to a body (including an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or

- (2) whose powers or functions are transferred to another body,
is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

1.3 Interpretation of inclusive expressions

Specifying anything in these Terms after the words 'include' or 'for example' or similar expressions does not limit what else is included.

1.4 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

2 Shares to be held on bare trust by the Custodian

2.1 Transfer or issue of Shares to Custodian

- (a) At completion of any transfer or issue of Shares the subject of rule 1.10 of the Constitution, the Custodian agrees:
- (1) to receive the transfer, or accept the issue, of such Shares (which, in the case of the issue of Shares pursuant to the Demerger Scheme are listed in Schedule 2 of the Shareholders Agreement as at the date on which that agreement is executed);
 - (2) to become a member of the Company and to be bound by the Constitution; and
 - (3) to execute or accede to the Shareholders Agreement in its capacity as trustee in respect of the Shares issued to it.
- (b) As soon as practicable after such completion, the Company will issue the Custodian with share certificates in respect of the Shares transferred or issued to the Custodian.
- (c) Schedule 6 of the Shareholders Agreement constitutes the terms of each trust established under these Terms.
- (d) No Beneficial Holder may by any instrument executed by the Beneficial Holder amend the terms of any Relevant Trust other than in accordance with these Terms and the Shareholders Agreement.

2.2 Custodian conduct

- (a) Notwithstanding any other provision of these Terms, but subject to clause 2.2(b), any direction, notice or instruction to be given by a Beneficial Holder to the Custodian pursuant to or for the purposes of these Terms must be given to the Company.
- (b) Notwithstanding any other provision of these Terms but subject to the requirements of the Shareholders Agreement, the Custodian:
- (1) must take any action directed by a proper instruction received by the Custodian from the Company (**Proper Instruction**); and
 - (2) must not take any action prohibited by a Proper Instruction.



- (c) Proper Instructions may be standing instructions and may specify the limits of authority for actions taken by the Custodian.
- (d) The Company acknowledges that, subject at all times to the Constitution, the Shareholders Agreement and these Terms:
 - (1) the Custodian has the day-to-day control over the operations of each Relevant Trust; and
 - (2) except as otherwise expressly required under these Terms or by law, the Custodian may, in absolute discretion, exercise or refrain from exercising any of its powers and discretions.
- (e) Subject to clause 3.3, the Company expressly acknowledges and agrees that if the Custodian acts in accordance with (or is prevented from acting as a result of) a Proper Instruction:
 - (1) the Custodian will be released from any Cost for the relevant action or inaction to the extent the Cost arises from the relevant action or inaction; and
 - (2) if the Custodian is released from any Cost pursuant to clause 2.2(e)(1), any limitation on the indemnity protection that the Custodian enjoys under these Terms that would otherwise apply as a result of that relevant action or inaction in relation to a Relevant Trust, will not apply and the Custodian will be entitled to recover under that indemnity to the fullest extent possible under these Terms as if that relevant action or inaction had not occurred.

3 Declaration of trust

3.1 Custodian holds as bare trustee

- (a) On and from the transfer or issue of any Shares to the Custodian, the Custodian will hold those Shares as trustee under separate trusts for each Beneficial Holder constituted by clause 2 so that:
 - (1) each Beneficial Holder's Beneficial Shares are held by the Custodian as bare trustee for the personal benefit of that Beneficial Holder and separate from each other bare trust of each other Beneficial Holder created pursuant to these Terms and the Shareholders Agreement; and
 - (2) each Beneficial Holder is the sole beneficiary of the trust in respect of its Beneficial Shares and is absolutely entitled to its Beneficial Shares as against the Custodian.
- (b) The Custodian is not obliged to recognise any person other than the Beneficial Holder as having any right to or interest in the Beneficial Shares.
- (c) The Custodian has no powers under each such trust except to act in accordance with (as applicable):
 - (1) the instructions of the relevant Beneficial Holder;
 - (2) the provisions of these Terms; and
 - (3) the provisions of the Shareholders Agreement to the extent they relate to the relationship between the Custodian, the Company and the relevant Beneficial Holder in relation to its Beneficial Shares.



3.2 Custodian has no beneficial interest

Subject to clause 3.3, the Custodian declares that the Custodian has no beneficial interest in any Beneficial Holder's Beneficial Shares (or any Rights in respect of them).

3.3 Custodian's indemnity and liability as trustee

- (a) Without prejudice to the Custodian's right of indemnity at law or in equity, the Custodian is indemnified against, and entitled to be reimbursed out of or have paid from each Relevant Trust, any Cost which the Custodian suffers, incurs or is liable for as trustee of that Relevant Trust, except:
- (1) to the extent that the relevant Cost arises from the Custodian's (or any of its officers', employees' or agents') fraud, negligence, dishonesty, wilful misconduct, breach of any of its obligations under these Terms, the Shareholders Agreement or the Constitution or breach of trust;
 - (2) to the extent that the Custodian is entitled to recover and is actually indemnified for any such Costs by the Company under clause 9.2 of these Terms or by the Beneficial Holders under the Shareholders Agreement; or
 - (3) for the Overhead Costs of the Custodian, fees of a Related Corporation of the Custodian as custodian of the Custodian and fees of a subcustodian, nominee or other delegate of such a custodian of the Custodian.
- (b) Except where these Terms expressly provide otherwise and except in respect of its fraud, negligence, dishonesty, wilful misconduct, breach of any obligations under these Terms, the Shareholders Agreement or the Constitution or breach of trust:
- (1) each director and officer of the Custodian is not personally liable to a Beneficial Holder or any other person in connection with the office of director or officer of the Custodian; and
 - (2) the Custodian will not be liable to any Beneficial Holder to any greater extent than the extent to which it is entitled to be and is in fact indemnified out of the assets of the Relevant Trust actually vested in the Custodian.
- (c) Other than in relation to its Overhead Costs, all duties, obligations and liabilities incurred by the Custodian under these Terms, the Shareholders Agreement and the Constitution and in respect of any asset of a Relevant Trust are incurred by the Custodian solely in its capacity as trustee of the Relevant Trust and except in the case of and to the extent of any fraud, negligence, dishonesty, wilful misconduct, breach of any of its obligations under these Terms, the Shareholders Agreement or the Constitution or breach of trust on the part of the Custodian (or any of its officers, employees or agents), the Custodian will not be liable to satisfy any such duties, obligations or liabilities except:
- (1) to the extent that the Custodian is entitled to recover and is actually indemnified for any such Costs by the Company under clause 9.2 of these Terms or by a Beneficial Holder under the Shareholders Agreement; or
 - (2) otherwise out of the assets of the Relevant Trust.
- (d) Other than in relation to its Overhead Costs, the Custodian is not required to do anything which involves it incurring any liability unless its liability is limited in a manner satisfactory to it (acting reasonably). The Custodian acknowledges that



its liability is limited in a manner satisfactory to it under these Terms and the Shareholders Agreement in respect of actions taken by it in relation to the Beneficial Shares at the direction of the relevant Beneficial Holder, and in respect of its obligations under these Terms, the Shareholders Agreement, the Constitution and as trustee of each Relevant Trust.

- (e) The Custodian is not obliged to take any action against any person in respect of any loss suffered by a Relevant Trust unless it is first indemnified to its absolute satisfaction for all Costs which it may incur in taking such action.
- (f) The obligations of the Custodian under these Terms are owed to and given for the benefit of:
 - (1) the Company; and
 - (2) where the obligations relate to a Beneficial Holder's Beneficial Shares, the Beneficial Holder,

and the Company accepts and holds such obligations in its own capacity and also in the capacity as trustee for and on behalf of each of the Beneficial Holders.

4 Further acquisitions of Shares by Custodian

4.1 Issues or transfers to existing Beneficial Holders

- (a) If any Beneficial Holder becomes entitled to receive any additional Shares, whether by way of issue or transfer, the Beneficial Holder may direct the Custodian to accept the issue or transfer of those Shares on the basis that the Shares are to be added to the Beneficial Holder's then existing Beneficial Shares and to be held by the Custodian as bare trustee with those existing Beneficial Shares in accordance with these Terms.
- (b) The Custodian must sign all documents and take all action necessary to enable the Company to complete and register any such issue or transfer.
- (c) The Custodian must update the register of Beneficial Holders and Beneficial Shares under clause 6 following any such issue or transfer of Shares.

4.2 Issues or transfers to new Beneficial Holders

- (a) The Company may from time to time direct the Custodian to accept:
 - (1) an issue of Shares from the Company; or
 - (2) a transfer of Shares from any person,on the basis that the Shares are to be held as bare trustee for one or more nominated new Beneficial Holders in accordance with these Terms.
- (b) With effect from the time of any such issue or transfer the relevant Shares will be held by the Custodian as bare trustee for the benefit of the relevant new Beneficial Holders on the terms set out in these Terms.
- (c) The Custodian must sign all documents and take all action necessary to enable the Company to complete and register any such issue or transfer.
- (d) The Custodian must update the register of Beneficial Holders and Beneficial Shares under clause 6 following any such issue or transfer of Shares.

5 Dealing with Shares

5.1 Transfers and other dealings

- (a) The Custodian must:
- (1) do such things and execute such documents in respect of a Beneficial Holder's Beneficial Shares; and
 - (2) exercise all rights, powers and privileges conferred by or arising from a Beneficial Holder's Beneficial Shares,
- as the Beneficial Holder or any attorney of the Beneficial Holder (including an attorney or sub-attorney appointed under the Shareholders Agreement) directs the Custodian in writing.
- (b) The Custodian must:
- (1) transfer, deal with or otherwise dispose of a Beneficial Holder's Beneficial Shares as directed under clause 5.1(a) or as required under the Shareholders Agreement; and
 - (2) take all action with respect to a Beneficial Holder's Beneficial Shares as directed under clause 5.1(a) or as required under the Shareholders Agreement.
- (c) A Beneficial Holder or any attorney of the Beneficial Holder (including an attorney or sub-attorney appointed under the Shareholders Agreement) may by direction in writing require the Custodian to accept and sign a transfer of all or any of the Beneficial Holder's Beneficial Shares in favour of any person.
- (d) The Custodian must sign all documents and take all action necessary to enable the Company to complete and register any transfer referred to in clauses 5.1(b)(1) or 5.1(c) or otherwise in these Terms.
- (e) The Custodian must update the register of Beneficial Holders under clause 6 following any such transfer.
- (f) Where a person provides a direction under this clause 5.1 as an attorney of a Beneficial Holder, the Custodian may only act on such direction if the person establishes to the Custodian's satisfaction that the Beneficial Holder has appointed that person as its attorney to exercise rights in respect of the Shares held by the Custodian in respect of that Beneficial Holder.

5.2 Transfers of beneficial interest only

- (a) A Beneficial Holder may from time to time direct the Custodian in writing that the Beneficial Holder wishes to transfer its beneficial interest in any of its Beneficial Shares to another person without a transfer of legal title.
- (b) The Custodian must give effect to any such direction in accordance with its terms. With effect from the time of any such transfer the relevant Beneficial Shares will be held by the Custodian as bare trustee for the benefit of the transferee on the terms set out in these Terms.
- (c) The Custodian must update the register of Beneficial Holders and Beneficial Shares under clause 6 following any such transfer.

5.3 Appointment of attorney

- (a) The Custodian irrevocably appoints each Beneficial Holder as the Custodian's attorney with the power on behalf of the Custodian as registered holder of the Beneficial Shares to:
- (1) execute all proxies and exercise all voting rights in respect of;
 - (2) execute any form of transfer in respect of; and
 - (3) generally deal with (including giving directions to the Company in respect of the payment of dividends and proceeds),
- that Beneficial Holder's Beneficial Shares (and any Rights in respect of them).
- (b) A Beneficial Holder may exercise any of these powers:
- (1) in the Beneficial Holder's own or the Custodian's name; and
 - (2) even if the Beneficial Holder benefits from the exercise of the power.
- (c) The Custodian will ratify anything done by a Beneficial Holder under this clause 5.3.

6 Register of Beneficial Holders

- (a) The Custodian must maintain a register which records from time to time:
- (1) the name and address of each Beneficial Holder on whose behalf the Custodian holds Shares; and
 - (2) the Beneficial Shares held on bare trust for each Beneficial Holder.
- (b) The Company must provide to the Custodian all information required by the Custodian in order to maintain the register of Beneficial Holders under this clause 6 including:
- (1) the name and address of each Beneficial Holder; and
 - (2) details of the Beneficial Shares held by the Custodian on bare trust for each Beneficial Holder.
- (c) The Company or a Beneficial Holder may at any time request from the Custodian a copy of the register or any part of the register, and the Custodian will promptly comply with such request.

7 Copies of documents

- (a) The Company agrees that it will give to the Beneficial Holders copies of any financial statements, reports, circulars or any other documents in relation to the affairs of the Company which are given by the Company to its holders of Shares, at the same time and in the same manner as such documentation is given to such shareholders (including electronically).
- (b) The Custodian must as soon as practicable provide to each Beneficial Holder copies of all notices and other documents it receives regarding the Beneficial Holder's Beneficial Shares, except to the extent that the notices or other

documents are required to be sent directly by the Company to the Beneficial Holder under clause 7(a).

8 Replacement of the Custodian

- (a) If the Custodian is no longer able to act, or wishes to retire, it may resign as trustee of all (but not some only) of the trusts created by these Terms by giving at least 10 Business Days' notice to the Company and to each Beneficial Holder.
- (b) The Company may remove the Custodian as trustee of all (but not some only) of the trusts created by these Terms by giving at least 10 Business Days' notice to the Custodian and to each Beneficial Holder.
- (c) If the Custodian resigns or is removed in accordance with this clause, then subject to clause 8(d):
 - (1) the Company may appoint a new trustee of the trusts created by these Terms; and
 - (2) the Custodian must transfer the Beneficial Shares to such trustee as directed by the Company in writing.
- (d) Nothing in clause 8(c) affects the rights or powers of any Beneficial Holder to direct the transfer of its Beneficial Shares, including to:
 - (1) require the transfer of its Beneficial Shares to a trustee nominated by the Beneficial Holder; or
 - (2) require the transfer of its Beneficial Shares to itself or to any other person.

9 Custodian's fees, Costs and limitation of liability

9.1 Custodian's fees

- (a) The Company will pay the Custodian a fee for its role, as separately agreed between the Company and the Custodian from time to time.
- (b) The parties acknowledge that this fee is intended to cover the Overhead Costs of the Custodian (as well as a margin for the Custodian), and further acknowledge that subject to clause 9.1(c)(2), internal costs incurred by the Custodian in directly performing its obligations under his deed in the ordinary course constitute Overhead Costs of the Custodian for the purposes of these Terms, including for the avoidance of doubt:
 - (1) doing things directed by a Beneficial Holder as contemplated by clause 5.1(a);
 - (2) accepting and signing transfers of shares and ensuring completion and registration as contemplated by clauses 5.1(b) and 5.1(c);
 - (3) giving effect to directions in relation to the transfer of beneficial interests as contemplated by clause 5.2;
 - (4) establishing and maintaining the register of Beneficial Holders; and



- (5) providing copies of documents as contemplated by clause 7, and accordingly neither the Company nor any Beneficial Holder will be required to pay any additional amount to the Custodian in respect of such matters.
- (c) For the avoidance of doubt, the Custodian's fee does not cover:
- (1) reasonable out of pocket Costs (including taxes or duties) payable by the Custodian to third parties (other than Overhead Costs and fees of a Related Corporation of the Custodian as custodian of the Custodian or fees of a subcustodian, nominee or other delegate of such a custodian of the Custodian); or
 - (2) Costs (including reasonable internal Costs) suffered or incurred other than in the ordinary course or where the work actually undertaken by the Custodian substantially exceeds the work that was within the reasonable expectation of the parties as at the date of these Terms,
- and accordingly the Custodian is entitled to recover those Costs under clause 3.3 of these Terms, clause 9.2 of these Terms or the Shareholders Agreement (as applicable).

9.2 Indemnity for Costs

- (a) The Company agrees to indemnify the Custodian against any Cost which the Custodian pays, suffers, incurs or is liable for arising out of or in connection with anything done by the Custodian at the lawful direction of or on behalf of a Beneficial Holder, or by reason of a Beneficial Holder's Beneficial Shares being registered in the name of the Custodian, except:
- (1) to the extent that the relevant Cost arises from the Custodian's (or any of its officers', employees' or agents') fraud, negligence, dishonesty, wilful misconduct, breach of any of its obligations under these Terms, the Shareholders Agreement or the Constitution or breach of trust;
 - (2) to the extent that the Custodian is entitled to recover and is actually indemnified for any such Costs out of the assets of the Relevant Trust under clause 3.3 of these Terms or by the Beneficial Holder under the Shareholders Agreement; or
 - (3) for the Overhead Costs of the Custodian, fees of a Related Corporation of the Custodian as custodian of the Custodian and fees of a subcustodian, nominee or other delegate of such a custodian of the Custodian.
- (b) Each indemnity in this clause 9 is an additional, separate and independent obligation of the Company and no one indemnity limits the generality of any other indemnity.

10 Notices

10.1 How and where Notices may be sent

A notice or other communication under these Terms (**Notice**) must be in writing and delivered by hand or sent by pre-paid post or email to a party at the address or email address for that party set out below or as otherwise specified by a party by Notice.

Party	Notice Details
Company	<p>Address: Suite 5, Level 2, 2 Grosvenor Street, Bondi Junction NSW 2022</p> <p>Email: stephen.maffey@tulla.com.au</p> <p>Attention: Stephen Maffey</p>
Custodian	<p>Address: Level 18, 123 Pitt Street, Sydney NSW 2000</p> <p>Email: custodymanagement@perpetual.com.au with a copy to ccscustody@perpetual.com.au</p> <p>Attention: Head of Custody</p>

10.2 Other means of electronic communication

A Notice must not be given by electronic means of communication (other than email as permitted in this clause 10).

10.3 When Notices are taken to have been given and received

- (a) A Notice sent by post is regarded as given and received on the second Business Day following the date of postage.
- (b) A Notice sent by email is regarded as given and received when transmitted to the addressee, but if the delivery or receipt is on a day which is not a Business Day or is after 4.00 pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day.
- (c) A Notice delivered or received other than on a Business Day or after 4.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day and a Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.

10.4 Standing notice

A Beneficial Holder may, by notice in writing to the Custodian, provide standing notice to the Custodian in respect of a matter or matters concerning that Beneficial Holder's Beneficial Shares. Any such notice will continue to apply until further notice in writing is given by the Beneficial Holder in relation to the same matter or matters which revokes or varies the previous standing notice.

11 General

11.1 Governing law and jurisdiction

- (a) These Terms are governed by the law in force in New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with these Terms.



Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

11.2 Invalidity and enforceability

- (a) If any provision of these Terms is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 11.2(a) does not apply where enforcement of the provision of these Terms in accordance with clause 11.2(a) would materially affect the nature or effect of the parties' obligations under these Terms.

11.3 Variation

Any special resolution to amend a provision of these Terms will only have effect if also approved in writing by the Company and the Custodian.

11.4 Further assurances

Each party must do all things and execute all further documents necessary to give full effect to these Terms.