

**BVI COMPANY NUMBER: 1915974**

**TERRITORY OF THE BRITISH VIRGIN ISLANDS  
THE BVI BUSINESS COMPANIES ACT, 2004**

**MEMORANDUM AND ARTICLES**

**OF ASSOCIATION**



**A COMPANY LIMITED BY SHARES**

**Incorporated on the 13th day of June, 2016**

**INCORPORATED IN THE BRITISH VIRGIN ISLANDS**

TERRITORY OF THE BRITISH VIRGIN ISLANDS  
THE BVI BUSINESS COMPANIES ACT, 2004

MEMORANDUM OF ASSOCIATION

OF

VGX Limited

A COMPANY LIMITED BY SHARES

**1. DEFINITIONS AND INTERPRETATIONS**

- 1.1. In this Memorandum of Association and the Articles of Association of the Company, if not inconsistent with the subject or context:

“**Act**” means the Corporations Act 2001 of Australia and includes regulations made thereunder;

“**Approved Exchange**” means one or more of National Stock Exchange of Australia Limited, ASX Limited, SIM Venture Securities Exchange or other licensed securities exchange approved by the Board, or the financial market which an Approved Exchange operates, as the context may require;

“**Articles**” means the Articles of Association of the Company;

“**ASX Settlement**” means ASX Settlement Pty Limited an approved clearing and settlement facility under the Act;

“**ASX Settlement Business Rules**” means the business rules of ASX Settlement from time to time;

“**Auditor**” means the duly appointed and incumbent auditor of the Company;

“**Board**” means the Directors acting as a board of directors;

“**BVI Act**” means the BVI Business Companies Act 2004 (No. 16 of 2004) as may be amended from time to time and includes regulations made thereunder;

“**CHESS**” means the Clearing House Electronic Sub-register System established and operated by ASX Settlement;

“**CHESS approved securities**” means securities approved by ASX Settlement in accordance with the ASX Settlement Business Rules;

“**Constitution**” means the Memorandum and the Articles;

“**Directors**” means the directors of the Company from time to time;

“**Distribution**” means a distribution by the Company to Shareholders made or to be made by way of direct or indirect payment of cash or transfer of an asset or a combination thereof in relation to Shares held by the Shareholders, and includes the payment of a dividend;

**“Financial Year”** means the period in respect of which any profit and loss account of the Company laid before the Members in a general meeting is made up, whether that period is a calendar year or not;

**“Listed”** means the Company being admitted to and remain on the Official List at the relevant time, and “is Listed” shall be construed accordingly;

**“Listing Rules”** means the Listing Rules of the Approved Exchange and any other rules of the Approved Exchange which applies while the Company is admitted to and remain on the Official List, each rule as amended or replaced from time to time, except to the extent of any express written waiver by the Approved Exchange;

**“Member”** or **“Shareholder”** means a person who is entered in the Register as the holder of Shares, and if any of Shares-linked securities issued by the Company are CHES approved securities, means a person who is entitled to the Shares attaching to the said Shares-linked securities;

**“Memorandum”** means the Memorandum of Association of the Company;

**“Office”** means the registered office of the Company for the time being or, if the Company is registered with the Australian Securities and Investments Commission, the office of the Company's registered agent in Australia for the time being as the case may be;

**“Official List”** has the meaning ascribed to it in the Listing Rules;

**“Qualified Auditor”** means a person duly licensed to practice as an auditor in and under the laws of a jurisdiction that adopts, or whose mandatory financial reporting standards are substantially consistent with, the International Financial Reporting Standards promulgated by the International Accounting Standards Board

**“Registrar”** means the Registrar of Corporate Affairs appointed under section 229 of the BVI Act;

**“Register”** means the register and/or subregisters of Members to be kept pursuant to Regulation 2.8 and the Listing Rules;

**“Registered Agent”** means the registered agent appointed pursuant to and for the purposes of Clause 3.

**“Related Body Corporate”** has the same meaning given to the term “related body corporate” in the Act

**“Resolution of Directors”** means a resolution of Directors duly passed in accordance with the regulations;

**“Resolution of Shareholders”** means a resolution of Shareholders duly passed in accordance with the regulations;

**“Restricted Securities”** has the same meaning given to it in the Listing Rules

**“Seal”** means any seal which has been duly adopted as the common seal of the Company;

**“Securities”** means Shares and debt obligations of every kind of the Company, and includes, without limitation, options, warrants and rights to acquire Shares or debt obligations;

**“Share”** means a share issued or to be issued by the Company and, if the Company issues any depository interests on its shares, the depository interest on that share;

**“Shareholder”** or **“Member”** means a person who is entered in the Register as the holder of Shares, and if any of Shares-linked securities issued by the Company are CHES approved securities, means a person who is entitled to the Shares attaching to the said Shares-linked securities;

**“Special Resolution”** means a Resolution of Shareholders which has been specified in the notice of the general meeting as being a resolution proposed as a special resolution, and was passed by a majority of not less 75% of such members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy present at that general meeting;

**“Treasury Shares”** means a Share that was previously issued but was repurchased, redeemed or otherwise acquired by the Company and not cancelled;

**“Written”** or any term of like import includes information generated, sent, received or stored by electronic, electrical, digital, magnetic, optical, electromagnetic, biometric or photonic means, including electronic data interchange, electronic mail, telegram, telex or telecopy, and “in writing” shall be construed accordingly;

1.2. In the Memorandum and the Articles, unless the context otherwise requires, a reference to:

- (a) a **“regulation”** is a reference to a regulation of the Articles;
- (b) a **“clause”** is a reference to a clause of the Memorandum;
- (c) voting by Shareholders is a reference to the casting of the vote attached to the Shares held by the Shareholder voting;
- (d) the Act, the BVI Act, the Memorandum or the Article is a reference to the Act, the BVI Act or those documents as amended or, in the case of the Act and the BVI Act, any re-enactment thereof and any subsidiary legislation made thereunder;
- (e) references to a “person” includes individuals, corporations, trusts, the estates of deceased individuals or of bankrupt individuals, partnerships and unincorporated associations of persons;
- (f) the singular includes the plural and vice versa; and
- (g) the masculine includes the feminine and vice versa.

1.3. Any word or expression defined in the Act or the BVI Act unless the context otherwise requires bear the same meaning in this Constitution unless otherwise defined herein.

1.4. In this Constitution, unless the context otherwise requires, an expression defined in, or given a meaning for the purposes of, the Listing Rules has the same definition or meaning in this Constitution to the extent it relates to the same matter for which it is defined or given a meaning in the Listing Rules.

1.5. This Constitution is subject to the BVI Act and the Act and, where there is any inconsistency between:

- (a) a provision of this Constitution and the BVI Act and/or the Act, the BVI Act and/or the Act (as the case may be) prevails to the extent of the inconsistency; and
- (b) a provision in the BVI Act and a provision in the Act, the BVI Act prevails to the extent of the inconsistency.

1.6. Headings are inserted for convenience only and shall be disregarded in interpreting the Constitution.

## **2. NAME**

The name of the Company is VGX Limited.

## **3. STATUS**

The Company is a company limited by Shares.

#### **4. REGISTERED OFFICE AND REGISTERED AGENT**

- 4.1. The first registered office of the Company is at P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands, the office of the first Registered Agent.
- 4.2. The first registered agent of the Company is Offshore Incorporations Limited of P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands.
- 4.3. The Company may by Resolution of Shareholders or by Resolution of Directors change the location of its registered office or change its Registered Agent.
- 4.4. Any change of registered office or Registered Agent will take effect on the registration by the Registrar of a notice of the change filed by the existing Registered Agent or a legal practitioner in the British Virgin Islands acting on behalf of the Company.

#### **5. CAPACITY AND POWERS**

- 5.1. Subject to the BVI Act and any other British Virgin Islands legislation, the Company has, irrespective of corporate benefit:
  - (a) full capacity to carry on or undertake any business or activity, do any act or enter into any transaction; and
  - (b) for the purposes of paragraph (a), full rights, power and privileges.
- 5.2. For the purposes of section 9(4) of the BVI Act, there are no limitations on the business that the Company may carry on.

#### **6. NUMBER AND CLASS OF SHARES**

- 6.1. Shares in the Company shall be issued in the currency of the United States of America.
- 6.2. The Company is authorised to issue a maximum of 500,000,000 shares with no par value.
- 6.3. Shares shall only be issued in accordance with the regulations.

#### **7. RIGHTS OF SHARES**

- 7.1. Each Share confer on the Shareholder:
  - (a) the right to one vote at a meeting of Shareholders or on any Resolution of Shareholders;
  - (b) the right to an equal share in any dividend paid whether paid in cash or otherwise by the Company;
  - (c) the right to an equal share in the distribution of the surplus assets of the Company on its liquidation.
- 7.2. Subject to Regulation 8, the Company may purchase or otherwise acquire its own shares on such terms and subject to such conditions as the Company may think fit.

#### **8. VARIATION OF RIGHTS**

The rights attached to the Shares or, if the Shares are divided into different classes, to a class of Shares may only be varied in accordance with the regulations set out in Regulation 10.

**9. RIGHTS NOT VARIED BY ISSUE OF SHARES PARI PASSU**

The rights conferred upon the holders of the Shares of any class is not, unless otherwise expressly provided by the terms of issue of the Shares of that class, be deemed to be varied by the creation or issue of further Shares ranking pari passu therewith.

**10. REGISTERED SHARES**

- 10.1. The Company shall issue registered shares only.
- 10.2. The Company is not authorised to issue bearer shares, convert registered shares to bearer shares or exchange registered shares to bearer shares.

**11. TRANSFER AND TRANSMISSION OF SHARES**

- 11.1. A transfer of shares or an application for the transfer of shares shall be dealt with in accordance with the regulations set out in Regulation 5.
- 11.2. A transmission of shares or an application for the transmission of shares shall be dealt with in accordance with the regulations set out in Regulation 6.

**12. AMENDMENT TO THE MEMORANDUM AND THE ARTICLES**

- 12.1. Subject to Clause 8 and Regulation 10, the Company may amend the Memorandum and/or the Articles only by Resolution of Shareholders.
- 12.2. Any amendment of the Memorandum or the Articles will take effect on the registration by the Registrar of a notice of amendment, or restated Memorandum and Articles, filed by the Registered Agent.

We, OFFSHORE INCORPORATIONS LIMITED of P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands for the purpose of incorporating a BVI Business Company under the laws of the British Virgin Islands hereby sign this Memorandum of Association the 13th day of June, 2016.

Incorporator



.....  
(Sd.) Rexella D. Hodge  
Authorised Signatory  
OFFSHORE INCORPORATIONS LIMITED

**TERRITORY OF THE BRITISH VIRGIN ISLANDS  
THE BVI BUSINESS COMPANIES ACT, 2004**

**MEMORANDUM OF ASSOCIATION**

**OF**

**VGX Limited**

**A COMPANY LIMITED BY SHARES**

**1. APPLICABILITY OF LISTING RULES**

**1.1. Listing Rules and ASX Settlement Business Rules only to have effect if Company is listed**

In this Constitution, a reference to the Listing Rules or ASX Settlement Business Rules is to have effect only if at the relevant time the Company is Listed and is otherwise to be disregarded.

**1.2. Constitution subject to Listing Rules only if Company is listed**

If the Company is listed, the following regulations apply:

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

**2. DIRECTORS' POWERS TO ISSUE SHARES**

**2.1. Allotment and issue of Shares under control of Directors**

The allotment and issue of Shares is under the control of the Directors. Subject to the regulations and Listing Rules, the Directors:

- (a) may allot, issue or otherwise dispose of Shares to any persons, on any terms and conditions, at that issue price and at those times as the Directors think fit;

- (b) have full power to give any person a call or option over any Shares during any time and for any consideration as the Directors think fit; and
- (c) may issue Shares with any preferential, deferred or special rights, privileges or conditions or with any restrictions (whether in regard to dividend, voting, return of capital or otherwise) as the Directors determine.

2.2. Shares must be fully paid up or credited as being fully paid up on issue

Directors are not authorised to issue any Shares unless the subscription price for such Shares are either fully paid up or are credited as being fully paid up on issue.

2.3. Interest on issued shares

The Company is authorised to pay interest on issued shares only in the circumstances and on the conditions provided for in the Act.

2.4. Brokerage or commission

Subject to the provisions and restrictions contained in the Act and the Listing Rules, the Company may pay brokerage or commission to any person in consideration of the person subscribing or agreeing to subscribe (whether absolutely or conditionally) for any Shares in the Company or for procuring or agreeing to procure subscriptions (whether absolutely or conditionally) for any Shares in the Company. Any brokerage or commission may be paid or satisfied in cash, Shares, debentures or debenture stock of the Company or otherwise.

2.5. Joint Holders

Where two (2) or more persons are registered as the holders of any Share, they are deemed to hold the Share as joint tenants with benefits of survivorship, subject to the following provisions:

- (a) on the death of any joint holder, the survivor or survivors are the only person or persons recognised by the Company as having any title to the Share, but the Directors may require evidence of death;
- (b) any one joint holder may give a valid receipt for any dividend, bonus or return of capital payable to the joint holders; and
- (c) delivery of a notice or a certificate for a Share to any joint holder is sufficient delivery to all the joint holders.

2.6. Recognition of trusts or other interests

Subject to the provisions of the Act, the Company is entitled to treat the registered holder of any Shares as the absolute owner of those Shares and, accordingly, the Company is not bound to recognise (whether or not it has notice):

- (a) a person as holding a Share upon any trust; or
- (b) any equitable, contingent, future or partial interest in any Share or unit of a Share.

2.7. Consideration paid for Shares not liability

The Consideration paid for any Share shall not be treated as a liability or debt of the Company for purposes of sections 197 and 209 of the BVI Act and the solvency test in Regulations 8.1(b) and 32.1, or for any other purpose.



2.8. Company to keep register of members

The Company shall keep a register of members containing:

- (a) the names and addresses and, where applicable, the electronic addresses of the persons who hold Shares;
- (b) the number of each class or series of Shares held by each Shareholder;
- (c) the date on which the name of each Shareholder was entered in the register of members; and
- (d) the date on which any person cease to be a Shareholder.

The register of members may be in any such form as the directors may approve, but if it is in a magnetic, electronic or other data storage form, the Company must be able to produce legible evidence of its contents. Until the Directors otherwise determine, the magnetic, electronic or other data storage form shall be the original register of members.

**3. CERTIFICATES**

3.1. Certificated holdings

The provisions of this regulation apply only to the extent that the Company is required by the Listing Rules or the ASX Settlement Business Rules to issue certificates for Shares or other marketable securities of the Company, and then only for those Shares or other marketable securities for which certificates are required to be issued.

3.2. Issue of certificates

Where the Company is required by the Constitution, the Listing Rules or the ASX Settlement Business Rules to issue certificates for Shares or other marketable securities of the Company, the certificates must be issued under the Seal and in accordance with the Listing Rules and ASX Settlement Business Rules and must include the name and registered address of the Shareholder, the number of Shares held by him, and all other information required by the Listing Rules and ASX Settlement Business Rules.

3.3. Entitlement of Member to certificate

Every Member is entitled free of charge to one certificate for each class of Shares or other marketable securities registered in his name or to several certificates each for a reasonable proportion of those Shares or marketable securities.

3.4. Certificate for joint holders

Where Shares or other marketable securities are registered in the names of two or more persons, only one certificate is required to be issued for each class of those Shares or marketable securities.

3.5. Cancellation of certificate on transfer

- (a) Subject to this Constitution, on every application to register the transfer of any Shares or other marketable securities or to register any person as a Member in respect of any Shares or other marketable securities which may have been transmitted to that person by operation of law, the certificate for those Shares or other marketable securities must be delivered up to the Company for cancellation and a new certificate in similar form specifying the Shares or other marketable securities transferred or transmitted must be delivered to the transferee or transmittee within five business days after the day of lodgement with the Company of the registrable transfer or transmission notice.

- (b) If registration is required for only some of the Shares or other marketable securities specified on the certificate delivered up to the Company, a new certificate specifying the Shares or other marketable securities remaining untransferred or untransmitted must be delivered to the transferor or transmitter (as the case may be).

### 3.6. Replacement of certificates

The Company must issue a replacement certificate:

- (a) if the certificate is worn out or defaced, upon production of the certificate to the Company to be replaced and cancelled; or
- (b) if the certificate is lost or destroyed, upon the Company being furnished with:
  - (i) evidence that the certificate has been lost or destroyed, and has not been disposed of or pledged;
  - (ii) an undertaking to return the certificate, if found; and
  - (iii) if the Directors consider it necessary, a bond or indemnity.

All replacement certificates must be issued within five business days after the Company receives the original certificate or evidence of loss or destruction.

## 4. CHES

### 4.1. Participation in CHES

- (a) The Board may at any time resolve that the Company participates in CHES.
- (b) This regulation will apply if the Company is granted participation in CHES.

### 4.2. Compliance with ASX Settlement Business Rules

The Company must comply with the ASX Settlement Business Rules if any of its securities are CHES approved securities. In particular the Company must comply with the requirements of the ASX Settlement Business Rules and Listing Rules regarding the maintenance of registers, the issuing of holding statements and transfers in relation to its CHES approved securities.

### 4.3. Registers

If the Company's securities are CHES approved securities, in addition to the CHES subregister, it must provide for an issuer sponsored subregister, or a certificated subregister, or both (at least if the Company has Restricted Securities on issue).

### 4.4. No interference with proper ASX Settlement transfer

The Company must not in any way prevent, delay or interfere with the generation or registration of a proper ASX Settlement transfer or the registration of a paper-based transfer in registrable form (which satisfies the requirements of Regulation 5.1), except as permitted by Regulation 5.4, the Listing Rules or ASX Settlement Business Rules.

## **5. TRANSFER OF SHARES**

### **5.1. Transfer document**

- (a) Subject to this Constitution, the BVI Act, the Listing Rules and ASX Settlement Business Rules, a Member may transfer all or any Shares:
  - (i) if the Approved Exchange on which the Company is listed is a “recognised exchange” as defined by the Securities and Investment Business Act 2010, through the clearing system of the Approved Exchange or in such manner as may be prescribed by the Approved Exchange including but not limited to the rules set out in the ASX Settlement Business Rules; or
  - (ii) if the Approved Exchange on which the Company is listed is not a “recognised exchange” as defined by the Securities and Investment Business Act 2010, or if the Company is not Listed, by a transfer document duly stamped (if necessary) and delivered to the Company.
- (b) The transfer document referred to in Regulation 5.1(a)(ii) must be in writing in the usual or common form or in any other form as the Directors may from time to time prescribe or, in particular circumstances, agree to accept and must signed by or on behalf of the transferor or as otherwise permitted by the Act.

### **5.2. Registration procedure**

Subject to this Constitution, the BVI Act, the Listing Rules and ASX Settlement Business Rules every transfer document must be delivered to the Company accompanied by the certificate for the Shares to be transferred and any other evidence the Directors may require to prove the title of the transferor or its right to transfer the Shares. All transfer documents that are registered must be retained by the Company but any transfer document which the Directors refuse to register must (except in the case of fraud or suspected fraud) be returned on demand to the person who deposited that document.

### **5.3. Registration of transfer**

Subject to Regulation 5.4, the Company must register each registrable paper-based transfer of Shares which complies with Regulation 5.1, the BVI Act and the Listing Rules and must do so without charge.

### **5.4. Restrictions on transfer**

Except as otherwise provided for in the Listing Rules and ASX Settlement Business Rules, the Directors may in their absolute discretion ask ASX Settlement to apply a holding lock to prevent a proper ASX Settlement transfer, or refuse to register a paper-based transfer, of a Share where:

- (a) the Company is served with a court order that restricts a Member's capacity to transfer the Shares;
- (b) registration of the transfer may break a law in the jurisdictions of Australia or of the British Virgin Islands, and the Approved Exchange has agreed in writing: (i) to the application of a holding lock (which must not breach a ASX Settlement Business Rule); or (ii) that the Company may refuse to register a transfer;
- (c) the transfer is of Restricted Securities, during the escrow period of the Restricted Securities;
- (d) if the transfer is paper-based, either a law related to stamp duty prohibits the Company from registering it or the Company is otherwise allowed to refuse to register it under the Listing Rules; or
- (e) the transfer does not comply with the terms of any employee incentive scheme of the Company.

5.5. Notice of refusal to register

- (a) If the Company refuses to register a paper-based transfer under Regulation 5.4, it must tell the lodging party in writing of the refusal and the reason for it, within five business days after the date on which the transfer was lodged.
- (b) If the Company asks ASX Settlement to apply a holding lock under Regulation 5.4, it must tell the holder of the Shares in writing of the holding lock and reason for it, within five business days after the date in which it asked for the holding lock.

5.6. Transfer not complete until name entered in the Register

Subject to the ASX Settlement Business Rules, the transferor of a Share remains the holder of the Share until the name of the transferee is entered in the Register in respect of that Share. The transfer of a Share is effective when the name of the transferee is entered on the register of members.

5.7. More than three persons registered

If more than three persons are noted in the Register as holders of Shares, or a request is made to register more than three persons then (except in the case of executors or trustees or administrators of a deceased Member), the first three persons named in the Register or the request (as the case may be) are deemed to be the holders of those Shares and no other persons will be regarded by the Company as a holder of those Shares for any purpose whatsoever.

**6. TRANSMISSION OF SHARES**

6.1. Death of a Member

In the event of the death of a Member:

- (a) where the Member was a joint holder of any Shares, the surviving joint holder (or holders) is (or are) the only person (or persons) recognised by the Company as having any title to or interest in those Shares; or
- (b) where the Member is sole holder of any Shares, the legal personal representatives of the Member (not being one of two or more joint holders) are the only persons recognised by the Company as having any title to or interest in those Shares.

6.2. Transmission on death or bankruptcy

Any person becoming entitled to a Share as a consequence of the death or bankruptcy of a Member or otherwise by operation of law may, upon production of any evidence of its entitlement which the Directors may require, elect either to be registered himself as holder of that Share or to have some person nominated by him registered as the holder of that Share.

6.3. Election as to registration on transmission

- (a) If the person becoming entitled to a Share elects to be registered himself, he must deliver or send to the Company a notice in writing signed by him stating that he so elects.
- (b) If the person becoming entitled to a Share elects to have another person registered, he must effect a transfer of the Share in favour of that person.

All the limitations, restrictions and provisions of this Constitution relating to the right to transfer, the form of transfer and the registration of transfers of Shares will be applicable to any notices or transfers made under this regulation.

## **7. ALTERATION OF ISSUED SHARES**

### **7.1. Company's power to alter its issued shares**

The Company may by Resolution of Shareholders:

- (a) consolidate all or any of its Shares into Shares of a larger amount; or
- (b) subdivide its Shares or any of them into Shares of a smaller amount.

### **7.2. Cancellation of issued shares**

Subject to the BVI Act and the Listing Rules, the Company may reduce its number of issued shares by way of cancellation of issued shares in any manner or reduce the monetary value that the Directors may assign to issued shares in any manner.

## **8. COMPANY MAY PURCHASE ITS OWN SHARES**

### **8.1. The Company may, and if the Company is Listed, subject to the Listing Rules, purchase or otherwise acquire its own shares on such terms as the Company may think fit, save that:**

- (a) the Company may not purchase or otherwise acquire any Share without the consent from the Shareholder whose shares are to be purchased or otherwise acquired; and
- (b) the Company may not purchase or otherwise acquire any Share unless the Directors are satisfied, on reasonable grounds, that, immediately after the purchase or acquisition:
  - (i) the value of the Company's assets will exceed its liabilities; and
  - (ii) the Company will be able to pay its debts as they fall due.

### **8.2. Sections 60 (Process for acquisition of own shares), 61 (Offer to one or more shareholders) and 62 (Shares redeemed otherwise than at the option of the company) of the BVI Act shall not apply to the Company.**

### **8.3. Shares that the Company purchases or otherwise acquire pursuant to this regulation may be either cancelled or held as Treasury Shares, except to the extent that such Shares which are in excess of 50% of the issued Shares must be cancelled, but they shall be available for reissue.**

## **9. RIGHTS ATTACHING TO CERTAIN SHARES SUSPENDED IN CERTAIN CIRCUMSTANCES**

### **9.1. Treasury Shares**

All rights and obligations attaching to a Treasury Share are suspended and shall not be exercised by the Company while it holds the Share as a Treasury Share.

### **9.2. Shares held by another body corporate which the Company holds more than 50% voting rights**

Where Shares are held by another body corporate which the Company holds, directly or indirectly, shares having more than 50% of the votes in that other body corporate, all rights and obligations attaching to the Shares held by that other body corporate are suspended and shall not be exercised by that other body corporate.

## **10. VARIATION OR CANCELLATION OF RIGHTS**

### **10.1. Variation or cancellation of rights of class of Shares**

Subject to the BVI Act and the Listing Rules, all or any of the rights and privileges attached to any class of Shares (unless otherwise provided by the terms of issue of the Shares of that class) may be varied or cancelled with the consent in writing of the holders of at least 75% of the Shares issued in that class or with the sanction of a Special Resolution passed at a meeting of holders of the Shares of that class. In relation to any meeting to approve that Resolution:

- (a) the necessary quorum is the holders present personally or by proxy, attorney or representative and entitled to vote in respect of at least 5% of the issued Shares of that class; and
- (b) the provisions contained in this Constitution relating to notice of meetings, the appointment of a chairman and of proxies, attorneys and representatives, the depositing and form and validity of proxies and the conduct of general meetings will otherwise apply to any meeting of a class of Shareholders.

### **10.2. No consent or sanction required for redemption**

A consent or sanction referred to in Regulation 10.1 is not required for the redemption of any Shares or any other variation of rights attaching to any Shares where that redemption or variation is in accordance with the terms of issue of those Shares.

## **11. RESTRICTED SECURITIES**

The Company must comply with all the requirements of the Listing Rules relating to Restricted Securities. Notwithstanding any other provision of this Constitution:

- (a) Restricted Securities cannot be disposed of (as the term “disposed” is defined in the Listing Rules) during the escrow period for those Restricted Securities, except as permitted by the Listing Rules or the Approved Exchange;
- (b) the Company must refuse to acknowledge a disposal (including registering a transfer) of Restricted Securities during escrow period for any Restricted Securities except as permitted by the Listing Rules or the Approved Exchange; and
- (c) during a breach of the Listing Rules relating to Restricted Securities, or a breach of a restriction agreement, the holder of the Restricted Securities is not entitled to any dividend or distribution, or voting rights, in respect of the Restricted Securities.

## **12. APPLICABILITY OF AUSTRALIAN TAKEOVER RULES**

If:

- (a) the Company is admitted to and remain on the Official List of an Approved Exchange, and
- (b) that Approved Exchange is constituted under or subject to the laws of Australia,

the takeover rules set out in Chapter 6 of the Act shall apply, with any modifications as the circumstances require, as if the Company was incorporated in Australia.

### 13. PROPORTIONAL TAKEOVER BIDS

#### 13.1. Applicability

This regulation shall be applicable and effective only if the Australian Takeover Rules apply pursuant to Regulation 12.

#### 13.2. Definitions

In this regulation:

**“approving resolution”** has the meaning specified in section 648D(1) of the Act;

**“approving resolution deadline”** has the meaning specified in section 648D(2) of the Act;

**“associate”** has the meaning specified in section 9 of the Act; and

**“proportional takeover bid”** has the meaning specified in section 9 of the Act.

#### 13.3. Prohibition on registration of transfer unless takeover scheme approved

Where an offer has been made under a proportional takeover bid in respect of Shares included in a class of Shares in the Company, the registration of a transfer giving effect to a contract resulting from the acceptance of an offer made under the proportional takeover bid is prohibited unless and until an approving resolution to approve the proportional takeover bid is passed in accordance with the provisions of this Constitution.

#### 13.4. Approving resolution

An approving resolution is to be voted on at a meeting, convened and conducted by the Company of the persons entitled to vote on the approving resolution under section 648D(1)(b) of the Act.

#### 13.5. Entitlement to vote on approving resolution

A person (other than the bidder or an associate of the bidder) who, as at the end of the day on which the first offer under the proportional takeover bid was made, held Shares included in that class is entitled to vote on an approving resolution and, for the purposes of so voting, is entitled to one vote for each of those Shares.

#### 13.6. Bidder and associates not entitled to vote

The bidder or an associate of the bidder is not entitled to vote on an approving resolution.

#### 13.7. Approving resolution passed

An approving resolution is taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the approving resolution is greater than 50%, and otherwise is taken to have been rejected.

#### 13.8. General meeting provisions to apply

The provisions of this Constitution that apply to a general meeting of the Company shall apply, with any modifications as the circumstances require, to a meeting that is convened pursuant to this regulation and apply as if that meeting was a general meeting of the Company.

13.9. Meeting to be held before approving resolution deadline

Where takeover offers have been made under a proportional takeover bid, then the Directors of the Company must ensure that a approving resolution to approve the proportional takeover bid is voted on in accordance with this regulation before the approving resolution deadline in relation to the proportional takeover bid.

13.10. Notice as to whether approving resolution is passed

Where an approving resolution to approve a proportional takeover bid is voted on, in accordance with this regulation, before the approving resolution deadline in relation to the proportional takeover bid, the Company must, on or before the approving resolution deadline:

- (a) give to the bidder; and
- (b) serve on the Approved Exchange,

a notice in writing stating that an approving resolution to approve the proportional takeover bid has been voted on and that the approving resolution has been passed, or has been rejected, as the case requires.

13.11. Approving resolution deemed to have been passed

Where, as at the end of the day before the approving resolution deadline in relation to a proportional takeover bid under which offers have been made, no approving resolution to approve the proportional takeover bid has been voted on in accordance with this regulation, an approving resolution to approve the proportional takeover bid is, for the purposes of this regulation, be deemed to have been passed in accordance with this regulation.

13.12. Effect of this regulation

This regulations ceases to have effect on the third anniversary of the date of its adoption, or of it becoming applicable or of its most recent renewal.

**14. GENERAL MEETINGS**

14.1. Annual general meetings

- (a) The Company shall hold an “annual general meeting”, in addition to any other meetings, once in every calendar year and not more than fifteen months after the holding of the last preceding annual general meeting.
- (b) The Company shall hold its first annual general meeting within 18 months of its incorporation.
- (c) Annual general meetings of the Company are to be held in accordance with the this Constitution and the Listing Rules. The business of an annual general meeting is:
  - (i) to receive and consider the profit and loss account and balance sheet and the reports of the Directors and of the auditors and the statement of the Directors;
  - (ii) to elect Directors;
  - (iii) to appoint the auditor;
  - (iv) to fix the remuneration of the auditor; and
  - (v) to transact any other business which may be properly brought before the meeting.



- (d) All general meetings, other than the annual general meetings, of the Company shall be considered extraordinary general meetings.

#### 14.2. General meetings

The Directors may convene a general meeting of the Company, whether an annual general meeting or an extraordinary general meeting, whenever they think fit and, subject to notice being given to all persons entitled to receive notice of the meeting, a general meeting may be held at any place and at any time.

#### 14.3. Members may requisition meeting

- (a) Upon written request of Shareholders entitled to exercise 20% or more of the voting rights at a general meeting in respect of the matter for which the meeting is requested, the Directors shall immediately proceed to convene an extraordinary general meeting of the company to be held as soon as practicable but in any case not later than two months after the receipt by the Company of the requisition.
- (b) The written request shall state the object or objects of the meeting and shall be signed by the requesting Shareholders and deposited at the Office, and may consist of several documents in like form each signed by one or more requesting Shareholders.
- (c) If the Directors do not within twenty-one days after the date of the deposit of the requisition proceed to convene the requested extraordinary general meeting, the requesting Shareholder, or any of them representing more than 50% of the total voting rights of all of them, may themselves, in the same manner as nearly as possible as that in which meetings are to be convened by Directors, convene a meeting, but any meeting so convened shall not be held after the expiration of three months from that date.
- (d) Any reasonable expenses incurred by the requesting Shareholders by reason of the failure of the Directors to convene the requested meeting shall be paid to the requesting Shareholders by the Company.

#### 14.4. Notice of general meeting

- (a) Notice of every annual general meeting, extraordinary general meeting or meeting of any class of Members must be given in the manner provided by this Constitution to the Members and those persons who are otherwise entitled under this Constitution to receive notices.
- (b) A general meeting of the Company or a meeting of any class of members shall be called by notice in writing of not less than twenty-eight days.

#### 14.5. Contents of notice of general meeting

Every notice convening a general meeting must include or be accompanied by all information required by the Listing Rules and must at least:

- (a) set out the place, the day and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the business to be transacted at the meeting and any Special Resolution to be proposed;
- (c) include a statement that:
  - (i) a Member entitled to attend and vote is entitled to appoint a proxy;
  - (ii) a proxy need not be a Member; and

- (iii) a Member who is entitled to cast two or more votes may appoint two proxies and must specify the proportion or number of votes each proxy is appointed to exercise;
- (iv) be accompanied by an instrument of proxy in the form described in this Constitution or in any other form as the Directors may from time to time prescribe or accept; and
- (v) if required by the Listing Rules, include a voting exclusion statement.

14.6. Omission to give notice

The accidental omission to give notice of a meeting to any Member or the non-receipt of notice of a meeting by any Member does not invalidate any of the proceedings at that meeting.

**15. PROCEEDINGS AT GENERAL MEETING**

15.1. Member deemed to be present

A Member may attend a general meeting at which it is entitled to be present, and is deemed to be present, in any of the following ways:

- (a) in person;
- (b) by attorney;
- (c) by proxy;
- (d) in the case of a Member that is a body corporate, by a representative appointed by that Member in accordance with Regulation 15.3.

15.2. Attorney of Member

Any Member may appoint an attorney to act on its behalf at all meetings of the Company or all meetings of the Company during a specified period. Before the first meeting at which the attorney acts on the Member's behalf, a power of attorney must be deposited at the Office or at any place specified in the notice convening that meeting.

15.3. Representative of body corporate

Any Member that is a body corporate may, by resolution of its directors authorise any person to act as its representative at a particular meeting or at all meetings. That representative is then entitled to exercise the same powers as the body corporate appointing the representative could have exercised as a Member, if he was a natural person. A certificate under the seal of the body corporate shall be prima facie evidence of the appointment or of the revocation of the appointment, as the case may be, of a representative pursuant this regulation.

15.4. Quorum for general meeting

No business may be transacted at any general meeting unless a quorum is present at the commencement of the business. A quorum is three Members present in person or by attorney or proxy.

15.5. No quorum

- (a) If a quorum is not present within thirty minutes after the time appointed for the meeting:
  - (i) any meeting convened on a requisition of Members is dissolved; but

- (ii) any other meeting stands adjourned to the same day in the next week at the same time and place or to any other day, time and place as the Directors may appoint by notice to the Members.
- (b) If at the adjourned meeting a quorum is not present within thirty minutes after the time appointed for the adjourned meeting, then those Members who are present in person are deemed to be a quorum and may transact the business for which the meeting was called.

**15.6. Chairman of general meeting**

The chairman of the Directors or, in the chairman's absence, the deputy chairman (if any), will be entitled to take the chair at every general meeting. If there is no chairman or if at any meeting the chairman is not present within thirty minutes after the time appointed for holding the meeting or if the chairman is unwilling to act, the Directors present may choose a chairman. If the Directors do not choose a chairman, the Members present must choose one of the Directors to be chairman, and if no Director is present or willing to take the chair, the Members must choose one of the Members to be chairman.

**15.7. Powers of chairman**

The chairman is responsible for the general conduct of the general meeting. At any general meeting, a declaration by the chairman that a proposed resolution or special resolution has been carried or carried by a particular majority or not carried and an entry to that effect in the minutes of proceedings of the Company is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against that resolution or special resolution.

**15.8. Adjournment of general meeting**

The chairman of a general meeting may adjourn the meeting from time to time and from place to place, but no business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

**15.9. Notice of adjourned meeting**

If any general meeting is adjourned for more than one month, a notice of the adjournment must be given to Members in the same manner as notice was or ought to have been given of the original meeting.

**16. VOTING**

**16.1. Resolution determined by majority**

At a general meeting, all resolutions submitted to the meeting will be decided by a simple majority of votes, except where:

- (a) the proposed resolution is proposed as a special resolution; or
- (b) a greater majority is required by this Constitution or the Listing Rules.

**16.2. Casting vote of chairman**

In the case of an equality of votes, the chairman will have a casting vote in addition to the vote or votes to which the Chairman may be entitled as a Member, unless: (i) the chairman is not entitled for some other reason to cast a vote on the proposed resolution, or (ii) if the chairman casts a vote and the Listing Rules or this Constitution require that no account be taken of the vote, in which case the proposed resolution is not passed.

16.3. Method of voting

Every proposed resolution submitted to the meeting, in the first instance, will be determined by a show of hands unless a poll is demanded in accordance with Regulation 16.4 either before or on the declaration of the result of the vote on a show of hands.

16.4. Demand for poll

A poll may be demanded on any proposed resolution by:

- (a) the chairman;
- (b) at least five Members present in person or by attorney or proxy or by representative; or
- (c) any one or more Members holding Shares conferring not less than 5% of the total voting rights of all Members having the right to vote on the proposed resolution.

16.5. Conduct of poll

The chairman will decide in each case the manner in which a poll is taken, but in all cases it must ascertain the number of votes attaching to Shares held or represented by persons voting in favour of a proposed resolution or special resolution and the number of votes attaching to Shares held or represented by persons voting against the proposed resolution or special resolution. Any dispute as to the admission or rejection of a vote will be determined by the chairman and that determination made in good faith will be final and conclusive.

16.6. Votes

Subject to this Constitution, the Listing Rules and the rights or restrictions on voting which may attach to or be imposed on any class of Shares:

- (a) on a show of hands every Member (including each holder of preference Shares who has a right to vote) present in person or by proxy or attorney or representative will have one vote; and
- (b) on a poll every Member (including each holder of preference Shares who has a right to vote) present in person or by proxy, attorney or representative will have one vote for each Share held by that Member

16.7. Voting by joint holders

Where there are joint holders of any Share, any joint holder may vote at any meeting either personally or by proxy or attorney or representative in respect of the Shares as if they were solely entitled to those Shares, but if more than one joint holder is present at any meeting (whether personally, by proxy or by attorney or by representative) and tenders a vote, only the vote of the joint holder whose name appears first on the register will be counted. Several legal personal representatives of a deceased Member will for the purpose of this regulation be deemed to be joint holders of the Shares registered in the name of that Member.

16.8. Voting by transmittee

A person entitled to transmission of a Share under Regulation 6 who, at least forty-eight hours before the time notified for a general meeting (or an adjourned meeting), satisfies the Board of his right to that Share, may vote at that general meeting in respect of that Share as if the person were registered as the holder of the Share.

16.9. Voting by Member of unsound mind

If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under a law relating to mental health, that Member's committee or trustee or other person who properly has the management of the Member's estate may, if that person has at least forty-eight hours before the time notified for a general meeting (or an adjourned meeting) satisfied the Board of its relationship to the Member or the Member's estate, exercise the rights of the Member in respect of the general meeting as if the committee, trustee or other person were the Member.

16.10. Voting exclusions

If:

- (a) in accordance with the requirements of the Listing Rules; or
- (b) to ensure that a proposed resolution on which the Listing Rules require that particular persons do not cast a vote so that the proposed resolution has a specified effect,

and the notice of general meeting includes a voting exclusion statement specifying that, in relation to particular business to be considered at that general meeting, and that votes cast by particular persons (whether specified by name or description of particular classes of persons) are to be disregarded by the Company, the Company must take no account, in determining the votes cast on a proposed resolution relating to that business (whether a special resolution or an ordinary resolution) or for any other purpose, of any vote cast or purported to be cast by or on behalf of any of those persons (whether on a show of hands or on a poll) in relation to that proposed resolution except to the extent permitted by the Listing Rules.

16.11. Ruling on entitlements and votes

An objection may be raised with the chairman of a general meeting as to the qualification of a purported voter or the admission or rejection of a vote by any person present and entitled (or claiming to be entitled) to vote but that objection may be made only at the general meeting or adjourned meeting at which the purported voter wishes to vote or the vote objected to is given or tendered and, in relation to that objection:

- (a) the decision of the chairman is final and conclusive; and
- (b) a vote not disallowed as a result is valid and effective for all purposes.

**17. PROXIES**

17.1. Instrument appointing proxy

The instrument appointing a proxy must be in writing and signed by the appointor or the appointor's attorney duly authorised in writing, or, if the appointor is a body corporate, by its corporate representative or at least two of its officers.

17.2. Deposit of proxy with company

The instrument appointing a proxy and the original power of attorney (if any) under which it is signed or a certified copy of the power of attorney must be received by the Company at least forty-eight hours before the meeting by delivery to the Company's office, by facsimile received at the Company's office or at any other place, fax number or electronic address specified for the purpose in the notice of meeting.

17.3. Presence of Member

If a Member is present either in person or by its corporate representative, and a person appointed by that Member as proxy is also present at that meeting, that person may not exercise the rights conferred by the instrument of proxy while the Member is present.

17.4. Validity of vote given in accordance with proxy

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy or attorney voted:

- (a) the Member dies;
- (b) the Member is mentally incapacitated;
- (c) the Member revokes the proxy's appointment;
- (d) the Member revokes the authority under which the proxy was appointed by a third party; or
- (e) the Member transfers the Share for which the proxy was given.

17.5. Form of proxy

- (a) Every instrument of proxy must specify the Member's name and address, the Company's name, the proxy's name or the name of the office held by the proxy and the meetings at which the proxy may be used.
- (b) The instrument of proxy may be worded so that a proxy is directed to vote either for or against each of the resolutions to be proposed. Any instrument of proxy deposited in accordance with this Constitution in which the name of the appointee is not filled will be deemed to be given in favour of the chairman of the meeting to which it relates. The instrument of proxy may specify the proportion or number of votes that the proxy may exercise.

**18. DIRECTORS**

18.1. First Director(s) and consent to act

- (a) the first Director(s) shall be appointed by the first Registered Agent within six months from the date of incorporation of the Company, and thereafter, the Directors shall be elected in accordance with the provisions of this Constitution.
- (b) No person shall be appointed as a Director or as an Alternate Director unless he has consented in writing to be so appointed.

18.2. Number of Directors

- (a) If the Company is not Listed, the minimum number of Directors shall be one and there shall be no maximum number of Directors.
- (b) If the Company is Listed, the number of Directors must not be less than three, nor, until otherwise determined by the Company in general meeting, more than ten.

18.3. No Share qualification

A Director need not be the holder of any Share.

18.4. Election of Directors by company

Subject to Regulation 19, the election of Directors must be made by way of Resolution of Shareholders.

18.5. Directors may fill casual vacancies or appoint additional Directors

Notwithstanding Regulation 19, the Directors have the power at any time and from time to time to appoint any other person as a Director either to fill a casual vacancy or as an addition to the Board provided always that the total number of Directors must not at any time exceed the maximum number for the time being fixed by or under this Constitution. A Director appointed under this regulation while the Company is Listed must retire from office, and will be eligible for re-election, at the next annual general meeting following his appointment, but that Director will not be taken into account in determining the number of Directors who are to retire by rotation.

18.6. Eligibility for election as a Director

Except in the case of a Director retiring from the Board under this Constitution or a person recommended for appointment by the Board, a person is only eligible to be appointed as a Director by Resolution of Shareholders, where the Company receives at its Office at least ten business days before a general meeting:

- (a) a nomination of the person by a Member; and
- (b) a consent to that nomination signed by the person nominated for election as a Director.

18.7. Alternate Director

Subject to the Listing Rules, each Director may from time to time by written notice to the Company appoint any person (whether or not a Member) to act as an alternate Director in his place during any period he thinks fit. The following provisions apply to any alternate Director:

- (a) that alternate Director may be removed or suspended from office by written notice to the Company from his appointor;
- (b) that alternate Director is entitled to:
  - (i) receive notice of meetings of the Board; and
  - (ii) attend meetings and be counted towards a quorum at meetings (if and only if his appointor is not present);
- (c) that alternate Director is entitled to vote at meetings he attends on all Resolutions on which his appointor could vote had his appointor attended and, where that alternate Director is a Director in his own right, he has a separate vote on behalf of his appointor in addition to his own vote;
- (d) that alternate Director may exercise any powers that his appointor may exercise in his own right where his appointor is unavailable for any reason except the power to appoint an alternate Director. The action of an alternate Director will be conclusive evidence as against third parties of the unavailability of his appointor;
- (e) that alternate Director automatically vacates office if his appointor is removed or otherwise ceases to hold office for any reason;
- (f) that alternate Director, whilst acting as a Director, is responsible to the Company for his own acts and defaults and is not deemed to be the agent of his appointor;
- (g) that alternate Director is not entitled to receive any remuneration from the Company but is entitled to reimbursement for reasonable travelling and other expenses incurred by him in attending meetings of the Board or otherwise on the Company's business;
- (h) that alternate Director is not to be taken into account in determining the number of Directors for the purposes of this Constitution; and

- (i) that Director may act as an alternate for more than one Director.

18.8. Auditor cannot be Director

The Auditor or partner or employee of the Auditor can not be appointed as a Director or an alternate Director.

18.9. Company to keep register of Directors

The Company shall keep a register of Directors containing:

- (a) the names and addresses of the persons who are Directors;
- (b) the date on which each person whose name was entered in the register of Directors was appointed as a Director;
- (c) the date on which each person whose name was entered in the register of Directors ceased to be a Director.

The register of Directors may be in any such form as the directors may approve, but if it is in a magnetic, electronic or other data storage form, the Company must be able to produce legible evidence of its contents. Until the Directors otherwise determine, the magnetic, electronic or other data storage form shall be the original register of members.

**19. DIRECTORS' TENURE OF OFFICE**

19.1. Directors' tenure of office

Each Director, subject to the Listing Rules and this Constitution, must not hold office (without re-election) past the third annual general meeting following his appointment or election or three years, whichever is longer, after which he must retire from office. This regulation does not apply to the managing director, but if there is more than one managing director, only one is entitled not to be subject to this regulation.

19.2. Retirement by rotation

Unless otherwise determined by a Resolution of Shareholders, while the Company is Listed, one-third of the Directors for the time being, or if their number is not a multiple of three, then the whole number nearest one-third, must retire from office at each annual general meeting. The Directors to retire will be those who have been longest in office since their last election, but as between persons who became Directors on the same day, those to retire will, unless they otherwise agree among themselves, be determined by drawing lots. A retiring Director may act as a Director throughout the meeting at which he retires and at any adjournment. This regulation does not apply to the managing director, but if there is more than one managing director, only the managing director who was first appointed is entitled not to be subject to re-election.

19.3. Retiring Director eligible for re-election

A Director who retires or whose office is vacated under this Constitution will be eligible for election or re-election to the Board. If another person is not elected by the Company to fill the vacated office, the retiring Director will, if offering himself for re-election and not being disqualified under the BVI Act or this Constitution from holding office as a Director, be deemed to have been re-elected as a Director unless at that general meeting:

- (a) it is expressly resolved not to fill the vacated office or to reduce the number of Directors; or
- (b) a Resolution for the re-election of that Director is tabled and is not carried.



19.4. Removal of Director by the Company

The Company may by Resolution of Shareholders remove any Director at any time.

19.5. Vacation of office

- (a) The office of a Director will be automatically vacated if:
- (i) the Director becomes a bankrupt, or an insolvent under administration or similar judicial or administrative order in any jurisdiction which he is subject to; or
  - (ii) the Director becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the laws relating to mental health;
  - (iii) the Director's office is vacated or the Director is prohibited from being a Director in accordance with any of the provisions of the Listing Rules, the BVI Act or the Act (as the case may be), or any order made under the BVI Act or the Act (as the case may be);
  - (iv) the Director resigns his office by notice in writing to the Company;
  - (v) the Director, either by himself or by his alternate Director, fails to attend three consecutive Board meetings without leave of absence from the Board; or
  - (vi) the Director is an executive director upon termination of his employment or services agreement with the Company.
- (b) A Director whose office is vacated under Regulations 19.5(a)(i), 19.5(a)(ii) and 19.5(a)(iii) will not be eligible for re-election until the disability (or disabilities) referred to is (or are) removed.

**20. DIRECTOR'S REMUNERATION**

20.1. Remuneration for non-executive directors

- (a) Subject to Regulation 21 and the Listing Rules, the Directors will be paid remuneration for services rendered as Directors (but excluding any remuneration payable to any Director under any executive service contract with the Company or a Related Body Corporate) as the Company in general meeting may from time to time determine, which may be divided among the Directors in any proportions and in any manner as they may from time to time determine. The remuneration of a Director will be deemed to accrue from day to day.
- (b) The remuneration of an alternate Director (if any) shall be payable out of the remuneration payable to the Director appointing him (if any), as agreed between such alternate Director and his appointor.

20.2. Additional remuneration for extra services

If any Director performs extra services or makes any special exertions, whether in going or residing abroad or otherwise for any of the purposes of the Company, that Director may be paid an additional sum for those services and exertions. This payment may be either in addition to or in place of any remuneration determined under the preceding regulation.

20.3. Remuneration to be in accordance with Listing Rules

The remuneration payable to Directors must comply with the Listing Rules and in particular:

- (a) fees payable to non-executive directors must be by way of a fixed sum, and not by way of a commission on or a percentage of profits or operating revenue;

- (b) the remuneration payable to executive directors must not include a commission on or percentage of operating revenue; and
- (c) the total fees payable to Directors must not be increased without the prior approval of Members in general meeting.

#### 20.4. Expenses of Directors

In addition to any remuneration, the Directors must also be paid all travelling and other expenses incurred by them in attending and returning from meetings of the Directors, any committee of the Directors or any general meetings of the Company or otherwise in connection with the business of the Company.

### 21. DIRECTORS' CONTRACTS

#### 21.1. Directors not disqualified from holding office or contracting with Company

Except as otherwise provided in the Listing Rules:

- (a) no Director will be disqualified by virtue of its office from holding any office or place of profit (other than as auditor) with the Company or with any company promoted by the Company or with any corporation in which the Company is a Member or which is a Member of the Company or in which the Company is otherwise interested;
- (b) no Director will be disqualified by virtue of its office from contracting with the Company (whether as vendor, purchaser or otherwise);
- (c) no contract referred to in this regulation or any contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested can be avoided and no Director will be liable to account to the Company for any profit arising from that contract or arrangement or from any office referred to in this regulation by reason only of that Director holding that office or of the Director's fiduciary relationship with the Company.

#### 21.2. Director can act in professional capacity

Subject to the Listing Rules, a Director or a Director's firm may act in a professional capacity (other than as auditor) for the Company and that Director or that Director's firm is entitled to remuneration for professional services as if the relevant Director was not a Director.

#### 21.3. Director not to vote on contract in which it has a material personal interest

A Director nor its alternate may vote at any meeting of the Board on any contract or arrangement in which the Director has, whether directly or indirectly, a material personal interest, nor be present while the relevant matter is considered at the meeting.

#### 21.4. Directors to declare interest

- (a) Any Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of the interest, unless:
  - (i) the interest is of a type referred to in section 191(2)(a) of the Act; or
  - (ii) all of the conditions referred to in section 191(2)(c) of the Act are satisfied.
- (b) The Director must declare the nature and extent of the Director's interest and the relation of the interest to the affairs of the Company at the meeting of the Directors as soon as possible after the Director becomes aware of their interest in the matter.

- (c) A Director who has an interest in a matter may give a standing notice to the other Directors of the nature and extent of that Director's interest in the matter.

21.5. Directors to declare potential conflicts

Any Director who holds any office or possesses any property the holding or possession of which might (whether directly or indirectly) create duties or interests in conflict with his duties or interests as a Director of the Company must declare the fact of his holding that office or possessing that property and the nature and extent of any conflict at the first meeting of Directors held after he becomes a Director or, if he is already a Director, at the first meeting of Directors held after the relevant facts come to his knowledge.

21.6. Secretary to record declarations of Directors

The Secretary must record in the minutes of the meeting any declarations made or notices given by a Director under this Constitution.

**22. POWERS OF DIRECTORS**

22.1. Powers of Directors

Subject to the BVI Act and to any provision of this Constitution, the Directors will manage, or cause the management of, the business of the Company and the Directors may pay, or cause to be paid, all expenses incurred in promoting and forming the Company and may exercise, or cause to be exercised, all powers of the Company that are not, by the BVI Act or by this Constitution, required to be exercised by the Company in general meeting.

22.2. Powers to borrow or raise money

Without limiting the generality of this regulation, the Directors may from time to time at their discretion borrow or raise any sum or sums of money or obtain other financial accommodation for the purposes of the Company and may grant security for the repayment of that sum or sums or the payment, performance or fulfilment of any debts, liabilities, contracts or obligations incurred or undertaken by the Company in any manner and upon any terms and conditions as they think fit and in particular by the issue or re-issue of bonds, perpetual or redeemable debentures or any mortgage, charge or other security on the undertaking or the whole or any part of the property of the Company (both present and future).

22.3. Directors may vote in respect of shares in other corporations

Subject to the Listing Rules, the Directors may exercise the voting power conferred by shares in, or securities of, any corporation held by the Company in any manner they think fit, including in circumstances where a Director may be interested in the exercise, such as an exercise in favour of any resolution appointing a Director as an officer of that corporation or voting or providing for the payment of remuneration to officers of the other corporation.

22.4. Agent or attorney

The Directors may at any time appoint any person or persons to be an agent or attorney of the Company for any purposes and with any powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for any period and subject to any conditions as the Directors think fit. Any appointment may be made in favour of any company or the members, directors, nominees or managers of any company or firm or in favour of any fluctuating body of persons (whether nominated by the Directors or otherwise) and any document appointing an agent or power of attorney may contain provisions for the protection or convenience of the agent or attorney and of persons dealing with the agent or attorney as the Directors may think fit.

22.5. Sub-delegation of powers

Any agent or attorney appointed by the Directors may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in them.

22.6. Acts of Directors conclusive in absence of fraud

For purposes of section 175 (Disposition of assets) of the BVI Act, the Directors may by Resolution of Directors determine that any sale, transfer, lease, exchange or other disposition in the usual or regular course of the business carried on by the Company, and such determination is, in the absence of fraud, conclusive.

**23. EXECUTIVE DIRECTORS**

23.1. Managing director

The Directors may at any time appoint one or more members of the Board to the office of managing director or to any other executive office for any period and on any terms they think fit and, subject to the terms of any agreement entered into in any particular case, may revoke any appointment. Any such appointment is automatically determined if the person ceases to be a Director.

23.2. Directors may confer powers on executive directors

The Directors may confer upon a managing director or other executive director any of the powers exercisable by the Directors upon those terms and conditions and with any restrictions as they think fit. Any powers so conferred may be concurrent with or to the exclusion of their own powers. The Directors may at any time revoke, withdraw, alter or vary all or any of those powers.

23.3. Remuneration of executive directors

Subject to the Listing Rules and the terms of any agreement entered into with any executive director, the Board may fix the remuneration of each executive director which may comprise salary or commission on or participation in profits of the Company.

**24. PROCEEDINGS OF DIRECTORS**

24.1. Board meetings

The Directors may meet either:

- (a) in person;
- (b) by telephone;
- (c) by audiovisual link-up; or
- (d) by any other instantaneous communications medium for conferring;

for dispatch of business, and adjourn and otherwise regulate their meetings as they think fit.

24.2. Director to be regarded as present at meeting

A Director is regarded as present at a meeting where the meeting is conducted by telephone, audiovisual link-up or other instantaneous communications medium for conferring, if the Director is able to hear, and to be heard by, all others attending the meeting.

24.3. Place of meeting

A meeting conducted by telephone, audiovisual link-up or other instantaneous communications medium for conferring, will be deemed to be held at the place agreed upon by the Directors attending that meeting, provided that at least one of the Directors present at the meeting was at that place for the duration of the meeting. The Directors may meet at such places within or outside the British Virgin Islands as the Directors may determine to be necessary or desirable.

24.4. Convening of Directors meeting

A Director may at any time, and the Secretary upon the request of a Director must, convene a meeting of Directors.

24.5. Notice of meeting

Notice of every meeting of Directors must be given to each Director, but failure to give or receive that notice will not invalidate any meeting.

24.6. Directors may act notwithstanding vacancy

The Directors may act notwithstanding any vacancy on the Board, but if and so long as their number is below the number required for a quorum, they must not act except in the case of emergency or for the purpose of filling up vacancies or summoning a general meeting.

24.7. Quorum for Board meetings

At a meeting of Directors, the number of Directors necessary to constitute a quorum is two.

24.8. Meeting competent to exercise all powers

A meeting of the Directors at which a quorum is present will be competent to exercise all or any of the powers and discretions vested in or exercisable by the Directors generally.

24.9. Chairman of Board meetings

The Directors may elect a chairman and deputy chairman of their meetings and determine the periods for which they are to hold office. If no chairman or deputy chairman is elected or if at any meeting neither the chairman nor the deputy chairman is present at the time appointed for the meeting, the Directors present at the meeting may choose one of the Directors present to be chairman of the meeting.

24.10. Documents tabled at meeting

An original document, or a photocopy or facsimile copy of that document, which is in the possession of, or has been seen by, all Directors attending the Directors' meeting prior to, or at the time of, that meeting, will be deemed to be a document tabled at that meeting.

24.11. Questions to be decided by majority

Questions arising at any meeting of the Board will be decided by a majority of votes of Directors present and voting. Subject to the Listing Rules, in the case of an equality of votes, the chairman of the meeting will have a second or casting vote, but the chairman will not have a second or casting vote where there are only two Directors present who are competent to vote on the question at issue.

24.12. Resolution in writing

A Resolution in writing of which notice has been given to all Directors for the time being entitled to receive notice of a meeting of the Directors and which is signed by a majority of Directors for the time being entitled to attend and vote at meetings of the Directors will be as valid and effectual as if it had been passed at a meeting of the Directors duly convened and held. That Resolution may consist of several documents in like form each signed by one or more of the Directors wherever they may be situated. For the purposes of this regulation, the signature of an alternate Director will be as effective as, and may be substituted for, the signature of his appointor. The effective date of that Resolution is the date upon which the document or any of the counterpart documents was last signed.

24.13. Resolution passed deemed to be determination of Board

Any Resolution properly passed at a duly convened meeting of the Directors at which a quorum is present will be deemed to be a determination by all the Directors or the Board for the purposes of this Constitution.

24.14. Memorandum signed by sole Director

- (a) If the Company has only one Director, the provisions in this Constitution for meetings of Directors do not apply, and:
  - (i) if the Company is Listed, such sole Director shall only exercise the powers of Directors under this regulation for the purposes set out in Regulation 24.6; or
  - (ii) if the Company is not Listed, such sole Director has full power to represent and act for the Company in all matters as are not by the BVI Act or by this Constitution required to be exercised by the Shareholders.
- (b) In lieu of minutes of a meeting, the sole Director shall record in writing and sign a note or memorandum of all matters requiring a Resolution of Directors. Such a note or memorandum when signed by the sole Director shall constitute sufficient evidence of such resolution for all purposes.

24.15. Committee powers and meetings

The Directors may delegate their powers to a committee of Directors or to a sole Director as they think fit and may revoke that delegation. Any committee can exercise the powers delegated to it in accordance with any directions that may from time to time be imposed upon it by the Board. The meetings and proceedings of any committee consisting of two or more Directors will be governed by the provisions of this Constitution regulating the meetings and proceedings of the Directors so far as they are applicable and are not superseded by any direction made by the Board under this regulation.

Notwithstanding the above, the Directors have no power to delegate the following powers to a committee of directors:

- (1) to designate committees of directors;
- (2) to delegate powers to committees of directors;
- (3) to appoint or remove directors;
- (4) to appoint or remove an agent;
- (5) to approve a plan or merger, consolidation or arrangement;
- (6) to make a declaration of solvency for the purposes of section 198(1) of the Act or approve a liquidation plan; or

- (7) to make a determination under section 57(1) of the Act that the Company will, immediately after a proposed distribution, satisfy the solvency test.

**24.16. Validity of acts of Directors**

All acts done by any meeting of the Directors or by a committee of the Directors or by any person acting as a Director will be valid even it is discovered afterwards that there was some defect in the appointment or election of that Director or person acting as a Director or that any Director was disqualified or had vacated office or was otherwise not entitled to vote or act.

**25. SECRETARY**

- (a) A Secretary or Secretaries of the Company must be appointed by the Directors.
- (b) If:
- (i) the Company is Listed; and
  - (ii) that Approved Exchange is constituted under or subject to the laws of Australia; and
  - (iii) the Company does not have at least one Secretary who is ordinarily resident in Australia,
- the Company must appoint a registered agent in Australia.
- (c) The Directors may also appoint acting and assistant Secretaries. Those appointments may be for any term, at any remuneration and upon any conditions as the Directors think fit and any person so appointed may be removed by the Directors.

**26. MINUTES AND REGISTERS TO BE KEPT**

**26.1. Minutes**

The Directors must cause to be entered in minute books of the Company within one month of the relevant meeting, minutes containing details of:

- (a) the names of the Directors present at each meeting of the Directors and of any committee of Directors, and all resolutions and proceedings of such a meeting;
- (b) all declarations made or notices given by any Director (either generally or specifically) of his interest in any contract or proposed contract or of his holding of any office or property whereby any conflict of duty or interest may arise; and
- (c) all resolutions and proceedings of general meetings of Shareholders, or any class of Shareholders.

**26.2. Minutes to be signed by chairman**

Any minutes of any general meetings of the Company, meetings of the Directors or meetings of any committee of the Directors must be signed by the chairman of the meeting or by the chairman of the next succeeding meeting and once signed will constitute prima facie evidence of the matters stated in the minutes.

**26.3. Registers**

In accordance with the provisions of the Listing Rules, the Directors must cause the Company to keep:

- (a) a register of the holders of any debentures issued by the Company;
- (b) a register of charges; and

- (c) any other registers or subregisters required by the Listing Rules or ASX Settlement Business Rules.

## **27. OTHER RECORDS**

### **27.1. Documents to be kept at the office of the Registered Agent**

The Company shall keep the following documents at the office of its Registered Agent:

- (a) the Memorandum and Articles;
- (b) the register of Members, or a copy of the register of Members;
- (c) the register of Directors, or a copy of the register of Directors;
- (d) copies of all notices and other documents filed by the Company with the Registrar of Corporate Affairs in the previous ten years.

### **27.2. Until the Directors determine otherwise by Resolution of Directors, the Company shall keep the original register of Members and the original register of Directors at the office of its Registered Agent.**

### **27.3. If the Company maintains only a copy of the register of Members or a copy of the register of Directors at the office of its Registered Agent, it shall:**

- (a) within fifteen days of any change in either register, notify the Registered Agent in writing of the change; and
- (b) provide the Registered Agent with a written record of the physical address of the place or places at which the original register of Members or the original register of Directors is kept.

### **27.4. The Company shall keep the following records at the office of its Registered Agent or at such other place or places, within or outside the British Virgin Islands, as the Directors may determine:**

- (a) minutes of meetings of Shareholders and classes of Shareholders;
- (b) minutes of meetings of Directors and committees of Directors, together with declarations made or notices given by Directors;
- (c) Resolution of Directors passed by written means in accordance with provisions of this Constitution; and
- (d) an impression of the Seal.

### **27.5. Where any original records referred to in this regulation are maintained other than at the office of the Registered Agent, and the place at which the original records is changed, the Company shall provide the Registered Agent with the physical address of the new location of the records of the Company within 14 days of the change of location.**

### **27.6. The records kept by the Company under this regulation shall be in written form or either wholly or partly as electronic records complying with the requirements of the Electronic Transactions Act, 2001 (No. 5 of 2001) as from time to time amended or re-enacted.**



## **28. REGISTER OF CHARGES**

The Company shall maintain at the office of its Registered Agent the register of charges to be kept in accordance with this regulation in which there shall be entered the following particulars regarding each mortgage, charge and other encumbrance created by the Company:

- (a) the date of the creation of the mortgage, charge or encumbrance;
- (b) a short description of the liability secured by the mortgage, charge or encumbrance;
- (c) a short description of the property mortgaged, charged or encumbered;
- (d) the name and address of the trustee for the security or, if there is no such trustee, the name and address of the mortgagee or chargee or of the person to whom the encumbrance is given; and
- (e) details of any prohibition or restriction contained in the instrument creating the charge on the power of the Company to create any future charge ranking in priority to or equally with the charge.

## **29. COMMON SEAL**

The Company shall have a seal (i.e., the Seal), and:

- (a) the Directors must provide for the safe custody of the Seal;
- (b) the Seal must be used only with the authority of the Directors or a committee of the Directors with authority from the Directors to authorise the use of the Seal; and
- (c) every document to which the Seal is affixed must be signed by a Director and countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents which includes that document.

## **30. NEGOTIABLE INSTRUMENTS**

All cheques, bills of exchange, promissory notes and other negotiable instruments may be signed, drawn, accepted, made or endorsed (as the case may be) for and on behalf of the Company by any persons and in any manner as the Directors may determine.

## **31. RESERVES**

### **31.1. Reserves**

Before declaring any dividends, the Directors may set aside out of the profits of the Company any sums they think proper as reserves to be applied to meet contingencies, to equalise dividends, to pay special dividends, to repair, improve or maintain any property of the Company or for any other purpose the Directors in their absolute discretion consider to be in the interests of the Company. Pending that application, the reserves may, at the discretion of the Directors, be used in the business of the Company or be invested in any investments the Directors think fit (including the purchase of Shares of the Company). The Directors may deal with and vary these investments and dispose of all or any part for the benefit of the Company and may divide the reserves into special reserves as they think fit.

### **31.2. Carry forward of profits**

The Directors may carry forward any profits they consider ought not to be distributed as dividends without transferring those profits to a reserve.

31.3. Revaluation of assets

The Directors may revalue any assets of the Company.

**32. DISTRIBUTIONS**

32.1. The Directors may by Resolution of Directors, authorise a Distribution at a time and of an amount they think fit if they are satisfied, on reasonable grounds, that, immediately after the Distribution:

- (a) the value of the Company's assets will exceed its liabilities; and
- (b) the Company will be able to pay its debts as and when they fall due.

32.2. Distributions may be paid in money or by way of transfer of other property or a combination thereof.

32.3. Notice of any Distribution that may have been declared shall be given to each Shareholder in accordance with the provisions of this Constitution, and all Distributions unclaimed for three years after having been declared may be forfeited by Resolution of Directors for the benefit of the Company.

32.4. No Distribution shall bear interest as against the Company and no Distribution shall be paid on Treasury Shares.

**33. CAPITALISATION OF PROFITS**

33.1. Capitalisation of profits

The Directors may resolve to capitalise any sum for the time being standing to the credit of any of the Company's reserve accounts, profit and loss account, arising from a revaluation or sale of assets or otherwise available for distribution to Members. The sum capitalised will be applied for the benefit of Members (in the proportions to which those Members would have been entitled in a distribution of that sum by way of dividend) in paying up in full any unissued Shares to be allotted and distributed to those Members.

33.2. Directors powers in relation to capitalisation of profits

In giving effect to any Resolution for capitalisation under this regulation, the Directors may:

- (a) issue fractional certificates or make cash payments where Shares or debentures become issuable in fractions; and
- (b) otherwise make provisions for adjusting differences and settling any difficulty arising pursuant to the Resolution including a determination that fractions will be disregarded or that a fractional entitlement be increased to the next whole number.

**34. FINANCIAL STATEMENTS**

34.1. Financial records

The Directors must cause financial and other records to be kept to correctly record and explain the transactions and financial position of the Company, to enable true and fair profit and loss accounts and balance sheets to be prepared and to permit preparation of any other documents required by the Listing Rules or this Constitution. The records must be kept:

- (a) in a manner which will enable them to be conveniently and properly audited;
- (b) for seven years after the completion of the transactions or operations to which they relate; and

- (c) at the Office or at any other place as the Directors think fit and at all times be open to inspection by the Directors.

34.2. Financial, Director's and auditor's reports to be laid before annual general meeting

- (a) At each annual general meeting after the Company is Listed and remains Listed, the Directors must lay before the Shareholders:
  - (i) financial statements prepared under and in accordance with the International Financial Reporting Standards promulgated by the International Accounting Standards Board;
  - (ii) a Directors' report; and
  - (iii) an auditors report,for the last Financial Year of the Company that ended before that annual general meeting which comply with all applicable provisions of this Constitution and the Listing Rules.
- (b) Where Regulation 34.2(a) applies, copies of the financial statements and reports referred to in that regulation to be laid before the Company in general meeting shall be sent to all persons entitled to receive notice of general meetings of the company not less than 14 days before the date of the meeting.

34.3. Financial statements and reports

The Company must cause copies of the Company's financial statements and other reports to be lodged with ASIC and the Approved Exchange (if applicable) and sent to holders of its securities as required by this Constitution and the Listing Rules.

**35. AUDIT**

35.1. Auditors

- (a) The Auditor is appointed and removed and his remuneration, rights and duties are regulated by this Constitution.
- (b) The Directors shall, within three months after incorporation of the Company, appoint a Qualified Auditor to be the Auditor, and any person so appointed shall, subject to this Constitution, hold office until the conclusion of the first annual general meeting.
- (c) The Company shall at each annual general meeting appoint a Qualified Auditor to be the Auditor, and any person so appointed shall, subject to this Constitution, hold office until the conclusion of the next annual general meeting.
- (d) The Directors may appoint another Qualified Auditor to fill any vacancy in the office of Auditor arising either from the removal or the resignation of the Auditor, and any person so appointed shall, subject to this Constitution, hold office until the conclusion of the next annual general meeting.
- (e) The Auditor may be removed from office by resolution of the Company at a general meeting of which special notice has been given, but not otherwise. Where special notice of a resolution to remove the Auditor is received by the Company:
  - (i) the Company shall immediately send a copy of the notice to the Auditor; and

- (ii) the Auditor may, within seven (7) days after the receipt by him of the copy of the notice, make representations in writing to the Company (not exceeding a reasonable length) and request that, prior to the meeting at which the resolution is to be considered, a copy of the representations be sent by the Company to every Member to whom notice of the meeting is sent.
- (f) The Auditor may resign by giving notice in writing to the Directors that he desires to resign, and the Directors shall, within twenty (21) days after receipt of the notice, appoint another Qualified Auditor in place of the auditor who desires to resign. On the appointment of another auditor, the resignation shall take effect.
- (g) A Qualified Auditor shall not be capable of being appointed Auditor at an annual general meeting unless:
  - (i) he held office as Auditor immediately before the meeting; or
  - (ii) notice of his nomination as auditor was given to the Company by a Member not less than twenty-one days before the meeting. Where a notice of nomination of a Qualified Auditor as auditor of the Company is received by the Company, the Company shall, not less than seven days before the annual general meeting, send a copy of the notice to:
    - (A) the Qualified Auditor nominated;
    - (B) the Auditor; and
    - (C) each person entitled to receive notice of general meetings of the Company.
- (h) the fees and expenses of the Auditor shall:
  - (i) in the case the Auditor being appointed by the Company at a general meeting, be fixed by the Company in the general meeting or, if so authorised by the Members at the last preceding annual general meeting, by the Directors; or
  - (ii) in the case of the Auditor being appointed by the Directors, be fixed by the Directors.

35.2. Financial statements to be audited

- (a) The financial statements of the Company for each Financial Year must be audited by the Auditor in accordance with the provisions of the International Standards on Auditing issued by the International Auditing and Assurance Standards Board.
- (b) The Auditor shall report to the Members on the financial statements required to be laid before the Company in general meetings and if the Company is a company for which consolidated financial statements are required to be prepared shall also report to the Members on the consolidated financial statements.
- (c) The Auditor shall, in his report for each Financial Year, state whether the financial statements and, if the Company is required to prepare consolidated financial statements, the consolidated financial statements are in his opinion in compliance with the requirements of the International Financial Reporting Standards so as to:
  - (i) in the case of the statement of financial position, give a true and fair view of the Company's affairs as of the end of that Financial Year; and
  - (ii) in the case of the statement of comprehensive income, give a true and fair view of the Company's profit or loss for that Financial Year.

35.3. The Auditor's right of access and entitlement to information and explanations

- (a) The Auditor has right of access at all times to the accounting and other records, including registers, of the Company, and is entitled to require from any officer of the Company and any auditor of a related company, such information and explanations as he desires for the purposes of audit.
- (b) If the Company is required to prepare consolidated financial statements, the Auditor has right of access at all times to the accounting and other records, including registers, of any subsidiary, deemed subsidiary or controlled entity (as the case may be), and is entitled to require from any officer or auditor of any subsidiary, deemed subsidiary or controlled entity (as the case may be) such information and explanations in relation to the affairs of the subsidiary, deemed subsidiary or controlled entity (as the case may be) as he requires for the purpose of reporting on the consolidated accounts.
- (c) The Directors shall, at the Company's cost and expense, provide or cause the Auditor to be provided with such right of access and entitlement to information and explanations as set out under this regulation.

35.4. Auditor's right to attend general meetings of the Company

The Auditor or a person authorised by him in writing for this purpose is entitled to attend any general meeting of the Company and to receive all notices of, and other communications relating to, any general meeting which a Member is entitled to receive, and to be heard at any general meeting which he attends on any part of the business of the meeting which concerns the Auditor in his capacity as auditor.

35.5. Approval of financial statements

The financial statements of the Company when approved by a general meeting will be conclusive except as regards any error identified within three months after the date of approval. If any error is identified within this period, the financial statements must then be corrected and are then conclusive.

35.6. Register to be audited

The Register, including any subregisters kept pursuant to the Listing Rules or ASX Settlement Business Rules, and any branch register of Members of the Company must be audited at least once every twelve months or whenever the Approved Exchange otherwise asks.

**36. INSPECTION OF RECORDS**

The Directors may determine whether, to what extent, at what times and places and under what conditions the accounting and other records of the Company or any of them will be open to the inspection of the Members. No Member (who is not a Director) will have any right to inspect any account, book or document of the Company or receive any information concerning the business, trading or customers of the Company or any trade secret or secret process of the Company except as authorised by the Directors or a resolution of the Company in general meeting.

**37. NOTICES**

37.1. Service of notices by Company

A notice may be given by the Company to any Member either personally, by facsimile or electronically to the relevant facsimile number or electronic address of the Member as shown on the Register or provided by the Member, by sending it by post addressed to the Member at its address as shown in the Register or otherwise by any method (including by advertisement) as the Directors may determine.

37.2. Posting notices to overseas Members

In the case of a Member whose registered address is outside Australia, a notice sent by post will be sent by airmail.

37.3. Notices to joint holders

A notice may be given by the Company to the joint holders of a Share by giving the notice to the joint holder whose name appears first in the Register and that notice will be sufficient notice to all the joint holders.

37.4. Notice deemed to be served

- (a) Any notice by advertisement or public announcement will be deemed to have been served on:
  - (i) the day of publication of the newspaper containing the advertisement, or
  - (ii) if the Company is Listed, the day of publication of the public announcement on the official announcement platform of the Approved Exchange.
- (b) Any notice sent by post will be deemed to have been served on the day following the day on which the notice is posted unless sent by airmail to an address outside the country in which it was posted, in which case it will be deemed to have been served on the fifth day following the day on which it is posted.
- (c) A notice sent by facsimile or other electronic means will be deemed to have been served on the same day that it is sent.

37.5. Service by post

In proving service by post, it will be sufficient to prove that the notice was properly addressed and posted with the required postage. A certificate in writing signed by any manager, Secretary or other officer of the Company that the notice was so addressed and posted is conclusive evidence of proper service by post.

37.6. Notices to Members whose whereabouts unknown

Where:

- (a) the Company has bona fide reason to believe that a Member is not known at the address shown for that Member in the Register;
- (b) the Company has subsequently made an enquiry at that address as to the whereabouts of the Member; and
- (c) the enquiry either elicits no response or a response indicating that the Member's present whereabouts are unknown;

all future notices will be deemed to be given to the Member if the notice is exhibited in the Office for a period (not including weekends and public holidays) of forty-eight hours and will be deemed to be duly served at the commencement of that period. This regulation will apply unless and until the Member informs the Company that the Member has resumed residence at the Member's address shown in the Register or notifies the Company of a new address to which the Company may send the Member notices (which new address is deemed to be the Member's registered place of address).

37.7. Notices binding on transferees

Every person who by operation of law, transfer or otherwise becomes entitled to any Share will be bound by every notice in respect of the Share which, prior to its name and address being entered on the Register, is duly given to the person from whom it derives its title to the Share.

37.8. Notice to deceased or bankrupt Members

Any notice or document given to a Member will be deemed to have been duly given in respect of any Shares held solely or jointly by the Member despite that the Member is deceased or bankrupt and whether or not the Company has notice of its decease or bankruptcy until some other person is registered in its stead as the holder or joint holder.

37.9. Signing of notices

The signature to any notice to be given by the Company may be written or printed.

37.10. Counting of days

Where a given number of days' notice or notice extending over any other period is required to be given, the day on which notice is deemed to be given will not be counted in the number of days or other period.

**38. VOLUNTARY LIQUIDATION**

The Company may by Resolution of Shareholders or, subject to section 199(2) of the BVI Act, by Resolution of Directors appoint a voluntary liquidator.

**39. WINDING UP**

39.1. Distribution of surplus assets

If in a winding up, there remains any assets available for distribution to Members, then subject to the rights of the holders of Shares issued upon special terms and conditions, Clause 7, this Constitution and the Listing Rules, those assets will be distributed amongst the Members in returning capital paid up on their Shares and distributing any surplus in proportion to the number of Shares held by them.

39.2. Fee or commission paid to liquidator to be approved in general meeting

No fee or commission will be paid by the Company to any Director or liquidator upon any sale or realisation of the Company's undertaking or assets or any part thereof except with the approval of the Company in general meeting, that meeting to be convened by notice specifying the fee or commission proposed to be paid.

39.3. Distribution in specie

If the Company is wound up (whether voluntarily or otherwise), the liquidator may, with the sanction of a Special Resolution, divide among the contributories in specie or kind any part of the assets of the Company and may, subject to obtaining the same sanction, vest any part of the assets of the Company in trustees upon those trusts for the benefit of the contributories or any of them as the liquidator thinks fit. For the purposes of this regulation, the liquidator may set values as it considers fair and reasonable on any property to be divided and determine how the division is to be carried out.

## **40. INDEMNITY AND INSURANCE**

### **40.1. Indemnity**

To the extent permitted by law:

- (a) the Company must indemnify each Director and other officer of the Company against any liability (other than legal costs) incurred in acting as a Director or officer of the Company other than:
  - (i) a liability owed to the Company or a Related Body Corporate;
  - (ii) a liability for a pecuniary penalty order under section 1317G or a compensation order under section 1317H of the Act; or
  - (iii) a liability that did not arise out of conduct in good faith;
- (b) the Company must indemnify each Director and other officer of the Company for costs and expenses incurred by a Director or officer of the Company in defending an action for a liability incurred in acting as a Director or officer of the Company except for legal costs incurred:
  - (i) in defending or resisting any proceedings, whether civil or criminal, in which the Director or officer is found to have a liability for which they could not be indemnified under this regulation;
  - (ii) in defending or resisting criminal proceedings in which the Director or officer is found guilty;
  - (iii) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or by a liquidator for a court order if the grounds for making the order are found by the court to have been established, except for costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for the court order; or
  - (iv) in connection with proceedings for relief to the Director or other officer under the Act in which the relief is denied by the court; and
- (c) the Company may make a payment, or agree to make a payment, whether by way of advance, loan or otherwise, for any legal costs incurred by a Director or officer, on the condition that the Director or officer must repay the amount paid by the Company to the extent that the Company is ultimately found not liable to indemnify the Director or officer for those legal costs.

### **40.2. Insurance**

To the extent permitted by law the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been a Director or other officer of the Company or of a subsidiary of the Company other than a liability arising out of:

- (a) conduct involving wilful breach of duty in relation to the Company; or
- (b) a contravention of section 182 or 183 of the Act.



We, OFFSHORE INCORPORATIONS LIMITED of P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands for the purpose of incorporating a BVI Business Company under the laws of the British Virgin Islands hereby sign these Articles of Association the 13th day of June, 2016.

Incorporator



.....  
(Sd.) Rexella D. Hodge  
Authorised Signatory  
OFFSHORE INCORPORATIONS LIMITED

