

I hereby confirm that this is a true and correct copy of the Constitution as approved by the Shareholders of Phosphate Australia Limited on 28 March 2008.

Jim Richards

Chairman 28 March 2008

This Constitution is marked "A" and initialled by the Chairman and is to be approved and adopted by a circulating unanimous resolution of shareholders of 28 March 2008.

**PHOSPHATE AUSTRALIA LIMITED  
(ACN 129 158 550)**

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**CONSTITUTION**

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## 1. PRELIMINARY

### 1.1 Nature of Company

The Company is a public company limited by shares.

### 1.2 Status of Constitution

- (a) This Constitution is adopted by the Company in substitution for any former memorandum and articles of association or constitution of the Company.
- (b) To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

### 1.3 Definitions

In this Constitution, unless the context otherwise requires:

"**Alternate Director**" means a person holding office as an alternate director of the Company pursuant to Rule 7.4;

"**Applicable Law**" means the Corporations Act, the Listing Rules and the ASTC Settlement Rules;

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

"**ASTC**" means ASX Settlement and Transfer Corporation Pty Ltd (ACN 008 504 532);

"**ASTC Settlement Rules**" means the operating rules of ASTC for the purposes of the Corporations Act;

"**ASX**" means ASX Limited (ACN 008 624 691);

"**Auditor**" means any person appointed to perform the duties of auditor of the Company from time to time;

"**Business Day**" has the meaning which it bears in the Listing Rules;

"**Certificated Subregister**" means that part of the Register for a class of the Company's securities that is administered by the Company and records certificated holdings of securities in that class;

"**CHESS**" means the Clearing House Electronic Subregister System operated by ASTC or such other securities clearing house as is approved pursuant to the Corporations Act from time to time and to which the Listing Rules apply;

"**CHESS Approved Securities**" means securities of the Company for which CHESS approval has been given in accordance with the ASTC Settlement Rules;

"**CHESS Holding**" means the holding of securities on CHESS;

"**CHESS Subregister**" means that part of the Register for a class of Chess Approved Securities that records uncertificated holdings of securities in that class;

"**Company**" means Phosphate Australia Limited (ACN 129 158 550);

"**Constitution**" means this Constitution;

"**Corporations Act**" means the Corporations Act 2001 of the Commonwealth of Australia;

"**Directors**" means the directors of the Company from time to time and "**Director**" means anyone of them;

"**Dividend**" includes an interim dividend and a final dividend;

"**Executive Director**" means a Director who is an employee (whether full-time or part-time) of the Company or of any Related Corporation;

"**Holding Lock**" means a facility that, in accordance with the ASTC Settlement Rules, prevents securities being deducted from, or entered into, a holding pursuant to a transfer or conversion (that is a transfer of securities from a CHESS Holding or to any other holding or from any holding to a CHESS Holding or a movement from a holding on one subregister to a holding on another subregister without any change in legal ownership);

"**Home Branch**" means the state branch of ASX designated as such by ASX in relation to the Company;

"**Issuer Sponsored Subregister**" means that part of the Register for a class of Chess Approved Securities that is administered by the Company (and not by ASTC) and records uncertificated holdings of securities in that class;

"**Legal Costs**" means, in relation to a person, legal costs incurred by that person in defending an action in respect of a Liability of that person;

"**Liability**" means, in relation to a person, any liability incurred by that person as an officer of the Company or a Subsidiary;

"**Listed Securities**" means any Shares, options, stock, debentures or other securities issued by the Company from time to time and quoted on the Official List;

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

"**Member**" means a person whose name is entered in the Register as the holder of a Share from time to time;

"**Non-executive Director**" means any Director other than an Executive Director;

"**Officer**" means a Director, an Alternate Director or a Secretary;

"**Official List**" means the official list of entities that ASX has admitted and not removed;

"**Official Quotation**" means the official quotation of the Company's securities on ASX;

"**Personal Representative**" means the legal personal representative, executor or administrator of the estate of a deceased person;

"**Proper ASTC Transfer**" has the same meaning as in the regulations under the Corporations Act;

"**Register**" means the register of Members and, where applicable, includes the Certificated Subregister, the CHESSE Subregister and the Issuer Sponsored Subregister;

"**Related Corporation**" means a corporation that is related to the Company by virtue of the definition of "related body corporate" in sections 9 and 50 of the Corporations Act;

"**Relevant Officer**" means a person who is, or has been, a Director or Secretary;

"**Representative**" means any person authorised to act as a representative of a body corporate pursuant to section 250D of the Corporations Act;

"**Restricted Securities**" has the meaning which it bears in the Listing Rules;

"**Rules**" means rules under this Constitution;

"**Seal**" means the common seal of the Company (if any) and, where the context so requires, includes any Share seal, certificate seal or official seal of the Company;

"**Secretary**" means any person appointed to perform the duties of secretary of the Company from time to time;

"**Securities**" has the meaning which it bears in section 92(3) of the Corporations Act;

"**Share**" means a share in the capital of the Company;

"**Subsidiary**" means a body corporate that is a subsidiary of the Company by virtue of sections 9 and 46 of the Corporations Act; and

"**Transmission Event**" means:

- (a) if a Member is an individual:
  - (i) the death or bankruptcy of that Member; or
  - (ii) that Member becoming of unsound mind or becoming a person whose property is liable to be dealt with under a law relating to mental health;

- (b) if a Member is a body corporate, the deregistration of that Member; or
- (c) in any case, the vesting in, or transfer to, a person of the Shares of a Member without that person becoming a Member.

#### **1.4 Interpretation**

In this Constitution:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention;
- (b) a reference to a partly paid Share is a reference to a Share in respect of which there is an amount unpaid;
- (c) a reference to a call or an amount called in respect of a Share includes an amount that, by the terms of issue of a Share or otherwise, is payable at one or more fixed times;
- (d) a reference to a meeting of Members includes a meeting of any class of Members;
- (e) a Member is taken to be present at a meeting of Members if the Member is present in person or by proxy, attorney or Representative;
- (f) a reference to a notice or document in writing includes a notice or document given by facsimile, electronic address or any other form of written communication;
- (g) a reference to this Constitution is a reference to this Constitution (and where applicable any of its provisions) as modified, substituted or repealed from time to time;
- (h) references to rules or schedules are references to rules or schedules of this Constitution;
- (i) a reference in a schedule to a paragraph is a reference to a paragraph of that schedule;
- (j) words importing the singular include the plural (and vice versa), words denoting a given sex include the other sex, and words denoting individuals include corporations (and vice versa);
- (k) references to any legislation, or to any section or provision of any legislation, includes any statutory modification or re-enactment or any statutory provision substituted for it, and any ordinances, bylaws, regulations, and other statutory instruments issued under any legislation;
- (l) if any day appointed or specified by this Constitution for the doing of any thing falls on a day which is not a Business Day, the day so appointed or specified shall be deemed to be the next Business Day; and



- (m) words and expressions defined in the Applicable Law shall, unless otherwise defined in this Constitution or unless the context otherwise requires, have the same meanings when used in this Constitution.

### **1.5 Exercise of Powers**

Where this Constitution confers a power or imposes a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.

### **1.6 Severability**

If, at any time, any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, it shall not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that provision or any other provision of this Constitution.

### **1.7 Transitional**

- (a) Subject to Rule 1.7(b), the provisions of this Constitution which relate to Official Quotation including, but not limited to, Rules which refer to ASX, the Listing Rules, the ASTC Settlement Rules, the Home Branch, CHES Approved Securities, Restricted Securities or Listed Securities shall not come into effect until such time as the Company is admitted to the Official List.
- (b) To the extent that any of the provisions referred to in Rule 1.7(a) can continue to have effect following severance of the matters relating to Official Quotation, then such provisions shall be valid and effectual, notwithstanding Rule 1.7(a), as from the date of adoption of this Constitution by special resolution of the Members.

## **2. SHARE CAPITAL**

### **2.1 Issue of Shares and Options**

- (a) Subject to the Applicable Law and any rights attached to a class of Shares, the Company (under the control of the Directors) may:
  - (i) allot and issue Shares; and
  - (ii) grant options over Shares,on any terms and conditions, at any time and for any consideration, as the Directors resolve.

- (b) The Company may issue preference Shares, including redeemable preference Shares.
- (c) Subject to the Applicable Law, the Company may pay brokerage or commission to a person in respect of that person or another person agreeing to subscribe for Shares or other securities of the Company.
- (d) The payment of brokerage or commission pursuant to Rule 2.1 (c) may include any or all of the payment of cash, the issue of Shares or other securities, the grant of options and the transfer of assets.

## **2.2 Variation of Rights**

- (a) Subject to the Applicable Law and the terms of issue of Shares in a particular class, the Company may:
  - (i) vary or cancel rights attached to Shares in that class; or
  - (ii) convert Shares from one class to another, by special resolution of the Company; and
  - (iii) by special resolution passed at a meeting of Members holding Shares in that class; or
  - (iv) with the written consent of Members with at least 75% of the votes in that class.
- (b) The provisions of this Constitution relating to meetings of Members apply (so far as they are capable of application and with the necessary changes) to every meeting held pursuant to Rule 2.2(a)(iii) except that:
  - (i) a quorum for each meeting is 2 Members who together hold, or represent by proxy, one-third of the issued Shares of the relevant class; and
  - (ii) if a person holds all of the issued Shares of the relevant class, a quorum is constituted by that person.

## **2.3 Conversion of Shares**

Subject to the Listing Rules, the Company may, by ordinary resolution passed at a general meeting of Members, convert all or any of its Shares into a larger or smaller number of Shares.

## **2.4 Reductions of Capital and Buy-backs**

- (a) Subject to the Applicable Law, the Company may:
  - (i) reduce its share capital; and
  - (ii) buy-back Shares in itself, on any terms and at any time.

- (b) The distribution of any reduction or buy-back in respect of the share capital of the Company may include any or all of the payment of cash, the issue of Shares or other securities, the grant of options and the transfer of assets.
- (c) If the distribution of any reduction or buy-back in respect of the share capital of the Company includes an issue or transfer of shares in a body corporate, each Member:
  - (i) agrees to become a member of that body corporate; and
  - (ii) in the case of a transfer, appoints the Company and each Director as its agent to execute an instrument of transfer or other document required to transfer the relevant shares to that Member.

## **2.5 Recognition of Ownership**

Except as required by law or this Constitution, the Company is not required to recognise any interest in, or right in respect of, a Share except an absolute right of legal ownership of the Member registered as the holder of that Share.

## **2.6 Joint Holders**

- (a) If a Share is held jointly by 2 or more persons, those persons hold that Share as joint tenants.
- (b) The Company is not required to register more than 3 persons as joint holders of a Share.

## **2.7 Certificates**

Subject to the Applicable Law and this Constitution, each person whose name is entered as a Member in the Register is entitled, free of charge, to receive a Share certificate under the Seal in accordance with the Corporations Act in respect of each class of Shares registered in the Member's name. In addition:

- (a) the Company shall despatch all Share certificates, required by this Constitution to be issued, within 5 Business Days of the issue of the relevant Shares;
- (b) if any Shares are jointly held:
  - (i) the Company is not required to issue more than one Share certificate; and
  - (ii) delivery of a Share certificate to anyone of the joint holders is deemed to be delivery to all of them;
- (c) each Share certificate issued in accordance with this Rule 2.7 must include all information required by the Listing Rules or the ASTC Settlement Rules to be provided to the holder of the Shares; and

- (d) subject to the Corporations Act, the Company must issue a replacement Share certificate if:
  - (i) the Company receives and cancels the existing Share certificate; or
  - (ii) the Company is satisfied that the existing Share certificate has been lost or destroyed and the Member pays such fee as the Directors resolve from time to time.

## **2.8 Non-issue or Cancellation of Certificates**

- (a) Notwithstanding any other provision of this Constitution, the Company:
  - (i) need not issue a Share certificate; and
  - (ii) may cancel any Share certificate without issuing a substitute Share certificate, in respect of any Shares in any circumstances where the non-issue or cancellation of that Share certificate is permitted by the Applicable Law.
- (b) Where the Directors have determined not to issue Share certificates or to cancel existing Share certificates, a Member is entitled to receive such statements of the holdings of the Member as are required to be distributed to the Member under the Applicable Law.

## **2.9 Restricted Securities**

- (a) The Company must comply with the Listing Rules in respect of Restricted Securities.
- (b) Notwithstanding the generality of Rule 2.9(a):
  - (i) Restricted Securities cannot be disposed of during the escrow period except as permitted by the Listing Rules or ASX;
  - (ii) the Company must refuse to acknowledge an assignment or disposal (including registering a transfer) of Restricted Securities during the escrow period except as permitted by the Listing Rules or ASX; and
  - (iii) during a breach of the Listing Rules relating to Restricted Securities or a breach of any escrow agreement, the holder of the Restricted Securities is not entitled to any dividend or distribution, or voting rights, in respect of the Restricted Securities.

## **2.10 Unmarketable Parcels**

Schedule 1 applies and forms part of this Constitution.

### **2.11 No Prohibition on Foreign Ownership**

Nothing in this Constitution shall have the effect of limiting or restricting the ownership of any securities of the Company by foreign persons except where such limits or restrictions are prescribed by Australian law.

## **3. CALLS, COMPANY PAYMENTS, FORFEITURE AND LIENS**

Schedule 2 applies and forms part of this Constitution.

## **4. TRANSFER OF SHARES**

### **4.1 Participation in CHES**

Subject to the Applicable Law, the Directors may do anything they consider necessary or desirable to facilitate participation by the Company in CHES or any other computerised or electronic share transfer registration or stock market settlement system introduced by, or acceptable to, ASX in respect of transfers of, or dealings in, marketable securities.

### **4.2 Form of Transfer**

Subject to this Constitution, Members may transfer any Shares held by them by:

- (a) a Proper ASTC Transfer or any other method of transferring or dealing in Shares introduced by ASX or operated in accordance with the ASTC Settlement Rules or the Listing Rules and, in such case, recognised under the Corporations Act; or
- (b) an instrument in writing in any usual or common form or in any other form that the Directors, in their absolute discretion, approve from time to time.

### **4.3 CHES Transfers**

- (a) The Company must comply with all obligations imposed on it under the Applicable Law in respect of a Proper ASTC Transfer or any other transfer of Shares.
- (b) Subject to Rules 4.13 and 4.14, the Company must not prevent, delay or interfere with the registration of a Proper ASTC Transfer or any other transfer of Shares.

### **4.4 Registration Procedure**

Where an instrument of transfer referred to in Rule 4.2(b) is used by a Member to transfer Shares, the following provisions apply:

- (a) the instrument of transfer must be executed by, or on behalf of, both the transferor and the transferee unless it is a sufficient transfer of marketable securities within the meaning of the Corporations Act;

- (b) the instrument of transfer must be left at the registered office of the Company for registration accompanied by the relevant Share certificate (if any) and such other evidence as the Directors may require to prove:
  - (i) the title of the transferor; and
  - (ii) the transferor's right to transfer the Shares;
- (c) a fee must not be charged on the registration of the transfer; and
- (d) on registration of the transfer, the Company must cancel the old Share certificate (if any).

#### **4.5 Refusal to Register Transfers**

- (a) The Directors may refuse to register any transfer of Shares (other than a Proper ASTC Transfer) where:
  - (i) the Applicable Law permits the Company to do so;
  - (ii) the Applicable Law or any law relating to stamp duty requires the Company to do so; or
  - (iii) the transfer is a transfer of Restricted Securities which is, or might be, in breach of the Listing Rules or any escrow agreement entered into by the Company in respect of the Restricted Securities.
- (b) Where the Directors refuse to register a transfer pursuant to Rule 4.5(a), they must give notice in writing of such refusal (including the reasons for such refusal) to the transferee and the lodging broker (if any) in accordance with the Applicable Law.

#### **4.6 Non-interference with Registration**

Subject to Rules 4.13 and 4.14, the Company must not prevent or interfere with the registration of a transfer of Shares in a manner which is contrary to the Listing Rules or the ASTC Settlement Rules.

#### **4.7 Closure of Register**

Subject to the Listing Rules and the ASTC Settlement Rules, the Register may be closed during such times as the Directors may determine, not exceeding:

- (a) 30 days in each calendar year; or
- (b) anyone period of more than 5 consecutive Business Days.

#### **4.8 Retention of Transfers**

- (a) Subject to the ASTC Settlement Rules, all registered instruments of transfer must be retained by the Company.

- (b) Any instrument of transfer which the Directors decline or refuse to register must be returned to the transferee on demand (except in the case of fraud).

#### **4.9 Powers of Attorney**

Any power of attorney granted by a Member which empowers the grantee to transfer Shares and is lodged, produced or exhibited to the Company or any Officer:

- (a) shall be taken and deemed to continue and remain in full force and effect, as between the Company and the grantor of the power;
- (b) may be acted upon until express notice in writing of:
  - (i) its revocation; or
  - (ii) the death of the grantor of the power, is lodged at the registered office of the Company or at the place where the Register is kept.

#### **4.10 Other Securities**

The provisions of this Rule 4 shall apply, with the necessary alterations, to any other Listed Securities issued by the Company from time to time.

#### **4.11 Compliance with Rules**

The Company must comply with the Listing Rules and the ASTC Settlement Rules in relation to all matters covered by such rules.

#### **4.12 Transferor Remains Holder Until Registration**

A transferor of Shares remains the registered holder of the Shares until:

- (a) a Proper ASTC Transfer has taken effect in accordance with the ASTC Settlement Rules; or
- (b) the transfer is registered in the name of the transferee and is entered in the Register,

whichever is the earlier.

#### **4.13 Holding Lock**

The Company may ask ASTC to apply a Holding Lock to prevent a Proper ASTC Transfer, or refuse to register a paper-based transfer, in any of the following circumstances:

- (a) the Company has a lien on the Securities;
- (b) the Company is served with a court order that restricts the holder's capacity to transfer the Securities;

- (c) registration of the transfer may break an Australian law and ASX has agreed in writing to the application of a Holding Lock or that the Company may refuse to register a transfer. The application of the Holding Lock must not breach an ASTC Settlement Rule;
- (d) during the escrow period of Restricted Securities;
- (e) if the transfer is paper-based, a law related to stamp duty prohibits the Company from registering it;
- (f) the transfer does not comply with the terms of an employee incentive scheme or plan of the Company;
- (g) the holder has agreed in writing to the application of a Holding Lock. The application of the Holding Lock must not breach an ASTC Settlement Rule; or
- (h) the Company is otherwise permitted to do so by the Listing Rules.

#### **4.14 Proportional Takeover Bids**

Schedule 3 applies and forms part of this Constitution.

### **5. TRANSMISSION OF SHARES**

Schedule 4 applies and forms part of this Constitution.

### **6. PROCEEDINGS OF MEMBERS**

#### **6.1 Written Resolutions of Members**

- (a) The Company may pass a resolution without a meeting of Members being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) For the purposes of Rule 6.1 (a), each Member of a joint membership must sign the document.
- (c) While the Company has only one Member, the Company may pass a resolution by the Member recording it and signing the record.

#### **6.2 Convening of Members' Meetings**

- (a) Subject to the Corporations Act, the Directors may call a meeting of Members at any time and place as the Directors resolve.
- (b) The Directors must call and arrange to hold a meeting of Members on the request of Members in accordance with the Corporations Act.
- (c) The Members may call and arrange to hold a meeting of Members as provided by the Corporations Act.



**6.3 Annual General Meeting**

- (a) The Company must hold an annual general meeting of Members (AGM) in accordance with the Corporations Act.
- (b) The business of an AGM may include any or all of the following, even if not referred to in the notice of meeting:
  - (i) the consideration of the annual financial report, Director's report and Auditor's report;
  - (ii) the election of Directors;
  - (iii) the appointment of the Auditor; and
  - (iv) the fixing of the Auditor's remuneration.
- (c) The chairperson of an AGM must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about, or make comments on, the management of the Company.
- (d) If the Auditor or their representative is at the meeting, the chairperson of an AGM must allow a reasonable opportunity for the Members as a whole at the meeting to ask the Auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the Auditor's report.

**6.4 Notice of Members' Meetings**

- (a) The Company must give not less than the required notice under the Corporations Act for a meeting of Members.
- (b) Notice of a meeting of Members must be given to:
  - (i) each Member;
  - (ii) each Director;
  - (iii) each Alternate Director;
  - (iv) the Auditor; and
  - (v) if the Company has issued and there are currently any Listed Securities, the Home Branch.
- (c) Subject to Rule 6.13(h), a notice of a meeting of Members must:
  - (i) set out the place, date and time of the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
  - (ii) state the general nature of the business to be transacted at the meeting;

- (iii) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
- (iv) if a Member is entitled to appoint a proxy, contain a statement setting out the following information:
  - (A) that the Member has a right to appoint a proxy;
  - (B) whether or not the proxy needs to be a Member; and
  - (C) that a Member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise; and
- (v) if the Company is included in the Official List:
  - (A) specify a place and fax number for the purposes of receipt of proxy appointments (and may specify an electronic address for such purposes); and
  - (B) comply with the Listing Rules.
- (d) A person may waive notice of any meeting of Members by notice in writing to the Company to that effect.
- (e) Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting of Members is not invalid if either or both:
  - (i) a person does not receive notice of the meeting; or
  - (ii) the Company accidentally does not give notice of the meeting to a person.
- (f) Subject to the Corporations Act, the attendance of a person at a meeting of Members waives any objection that person may have:
  - (i) to a failure to give notice of the meeting to that person in accordance with this Constitution; and
  - (ii) to the consideration of a particular matter at the meeting which is not:
    - (A) business referred to in the notice of meeting; or
    - (B) business referred to in Rule 6.3(b),unless the person objects to the consideration of that matter when it arises.

## **6.5 Notice to Home Branch**

Notwithstanding the generality of Rule 6.4(b)(v), if the Company is included in the Official List, the Company must notify the Home Branch:

- (a) of any meeting at which Directors are to be elected, at least 5 Business Days before the closing day for receipt of nominations for Directors;
- (b) and in any other case, on the Business Day that the notice of meeting is dispatched to Members; and
- (c) as soon as is practicable after any general meeting of Members:
  - (i) in the case of special business, whether or not the resolutions were carried; and
  - (ii) in the case of ordinary business, which resolutions were not carried or were amended or withdrawn.

#### **6.6 Right to Attend Meetings**

- (a) Subject to Rule 6.6(b), the following persons are entitled to attend a meeting of Members:
  - (i) each Member, in person or by proxy, attorney or Representative;
  - (ii) each Director;
  - (iii) each Alternate Director (if any);
  - (iv) the Auditor; and
  - (v) any other person or persons as the chairperson may approve from time to time.
- (b) The chairperson of a meeting of Members may refuse any person admission to, or require a person to leave and remain out of, the meeting if that person:
  - (i) in the opinion of the chairperson, is not complying with the reasonable directions of the chairperson;
  - (ii) has any audio or visual recording device;
  - (iii) has a placard or banner;
  - (iv) has an article the chairperson considers to be dangerous, offensive or liable to cause disruption;
  - (v) refuses to produce, or to permit examination of, any article, or the contents of any article, in the person's possession;
  - (vi) behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
  - (vii) is not:
    - (A) a Member;

- (B) a proxy, attorney or Representative of a Member; or
- (C) the Auditor.

### **6.7 Meetings in 2 or More Places**

- (a) A meeting of Members may be held in 2 or more places linked together by any technology that:
  - (i) gives the Members as a whole in those places a reasonable opportunity to participate in the proceedings;
  - (ii) enables the chairperson to be aware of the proceedings in each place; and
  - (iii) enables the Members in each place to vote on a show of hands and on a poll.
- (b) If a meeting of Members is held in 2 or more places pursuant to Rule 6.7(a):
  - (i) a Member present at one of the places is taken to be present at the meeting; and
  - (ii) the chairperson of the meeting may determine at which place the meeting is taken to be held.

### **6.8 Quorum**

- (a) A quorum for a meeting of Members is:
  - (i) 2 Members entitled to vote at that meeting; or
  - (ii) where the Company has only one Member, that Member.
- (b) In determining whether a quorum for a meeting of Members is present:
  - (i) where more than one proxy, attorney or Representative of a Member is present, only one of those persons is counted; —
  - (ii) where a person is present as a Member and as a proxy, attorney or Representative of another Member, that person is counted separately for each appointment provided that there is at least one other Member present; and
  - (iii) where a person is present as a proxy, attorney or Representative for more than one Member, that person is counted separately for each appointment provided that there is at least one other Member present.
- (c) A quorum for a meeting of Members must be present at the commencement of the meeting, in which case it is taken to be present at all times during the meeting unless the chairperson otherwise determines.

- (d) If a quorum for a meeting of Members is not present within 15 minutes after the time appointed for a meeting of Members:
  - (i) where the meeting was called pursuant to Rules 6.2(b) or 6.2(c), the meeting is dissolved; and
  - (ii) in any other case, the meeting is adjourned to either:
    - (A) the same day in the next week at the same time and place; or
    - (B) such other date, time and place as the Directors specify.
- (e) If a quorum for a meeting of Members is not present within 15 minutes after the time appointed for an adjourned meeting of Members, the meeting is dissolved.

### **6.9 Chairperson**

- (a) The chairperson of Directors elected pursuant to Rule 10.5(a) must (if present within 15 minutes after the time appointed for the meeting and willing to act) chair each meeting of Members.
- (b) If, at a meeting of Members:
  - (i) there is no chairperson of Directors;
  - (ii) the chairperson of Directors is not present within 15 minutes after the time appointed for the meeting; or
  - (iii) the chairperson of Directors is present within that time but is not willing to chair all or part of the meeting, the Directors may, by majority vote, elect a person present to chair all or part of the meeting.
- (c) Subject to Rule 6.9(a), if, at a meeting of Members:
  - (i) a chairperson of the meeting has not been elected by the Directors pursuant to Rule 6.9(b); or
  - (ii) the chairperson elected by the Directors is not willing to chair all or part of the meeting,

the Members present must elect another person present and willing to act to chair all or part of the meeting.

### **6.10 General Conduct of Meetings**

- (a) Subject to the Corporations Act, the chairperson of a meeting of Members:
  - (i) is responsible for the general conduct of, and the procedures to be adopted at, the meeting;

- (ii) may make rulings or adjourn the meeting without putting a question (or any question) to the vote if that action is required to ensure the orderly conduct of the meeting;
  - (iii) may determine the procedures to be adopted for the casting or recording of votes;
  - (iv) may determine any dispute concerning the admission, validity or rejection of a vote at the meeting;
  - (v) may terminate debate or discussion on any matter being considered at the meeting and require that matter to be put to a vote;
  - (vi) may refuse to allow debate or discussion on any matter which is not business referred to in the notice of meeting or is not business referred to in Rule 6.3(b);
  - (vii) may refuse to allow any amendment to be moved to a resolution set out in the notice of meeting; and
  - (viii) may delegate to any person any power conferred by this Rule 6.10(a).
- (b) The powers conferred on the chairperson of a meeting of Members pursuant to Rule 6.10(a) shall not limit the powers otherwise conferred by law.
- (c) Unless the approval of the chairperson of the meeting of Members is obtained, no person may move at any meeting of Members:
- (i) any resolution (other than a resolution in the same terms as specified in the notice of meeting); or
  - (ii) any amendment of a resolution, in respect of any business other than:
    - (A) the consideration of the annual financial report, Director's report and Auditor's report;
    - (B) the election of Directors;
    - (C) the appointment of the Auditor; and
    - (D) the fixing of the Auditor's remuneration.

#### **6.11 Resolutions of Members**

- (a) Subject to the Corporations Act, a resolution is passed if more votes are cast in favour of the resolution by Members entitled to vote on the resolution than against the resolution.
- (b) Unless a poll is demanded pursuant to Rule 6.12, a resolution put to the vote at a meeting of Members must be decided on a show of hands.

- (c) On a show of hands, a declaration by the chairperson of a meeting of Members is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received.

### **6.12 Polls**

- (a) A poll may be demanded on any resolution at a meeting of Members except on a resolution concerning:
  - (i) the election of a chairperson of that meeting; or
  - (ii) the adjournment of that meeting.
- (b) A poll on a resolution at a meeting of Members may be demanded by:
  - (i) at least 5 Members present and entitled to vote on the resolution;
  - (ii) Members with at least 5% of the votes that may be cast on the resolution on a poll; or
  - (iii) the chairperson of that meeting.
- (c) A poll on a resolution at a meeting of Members may be demanded:
  - (i) before a vote is taken; or
  - (ii) before or immediately after the voting results on a show of hands are declared.
- (d) A demand for a poll on a resolution at a meeting of Members may be withdrawn at any time.
- (e) A poll demanded on a resolution at a meeting of Members (other than for the election of the chairperson of that meeting or the adjournment of that meeting) must be taken when, and in the manner, the chairperson directs.
- (f) A demand for a poll on a resolution at a meeting of Members shall not prevent:
  - (i) the continuation of the meeting; or
  - (ii) the transaction of any other business of the meeting.

### **6.13 Adjourned, Cancelled and Postponed Meetings**

- (a) Subject to the Corporations Act, the chairperson:
  - (i) may adjourn a meeting of Members to any date, time and place as the chairperson determines; and
  - (ii) must adjourn a meeting of Members (to a date, time and place to be determined by the chairperson) if the Members present with a majority

of votes that may be cast at that meeting agree or direct the chairperson to do so.

- (b) No person other than the chairperson of a meeting of Members may adjourn that meeting.
- (c) A resolution passed at a meeting of Members resumed after an adjournment is passed on the day it was passed.
- (d) Only unfinished business may be transacted at a meeting of Members resumed after an adjournment.
- (e) Subject to the Corporations Act and this Rule 6.13, the Directors may, at any time, postpone or cancel a meeting of Members by giving notice, not less than 5 Business Days before the time at which the meeting was to be held, to:
  - (i) each Member;
  - (ii) each Director;
  - (iii) each Alternate Director (if any); and
  - (iv) the Auditor, as at the date of the notice.
- (f) A meeting of Members called pursuant to Rule 6.2(b) must not be cancelled by the Directors without the consent of the Members who requested the meeting.
- (g) A meeting of Members called pursuant to Rule 6.2(c) must not be cancelled or postponed by the Directors without the consent of the Members who called the meeting.
- (h) A notice of a meeting of Members resumed from an adjourned meeting and a notice postponing a meeting of Members must set out the place, date and time for the revised meeting (and if the revised meeting is to be held in 2 or more places, the technology that will be used to facilitate this).

#### **6.14 Voting Rights**

- (a) Subject to this Constitution and any rights or restrictions attached to a class of Shares, on a show of hands at a meeting of Members, every Member present has one vote.
- (b) Subject to this Constitution and any rights or restrictions attached to a class of Shares, on a poll at a meeting of Members, every Member present has:
  - (i) one vote for each fully paid up Share (whether the issue price of the Share was paid up or credited or both) that the Member holds; and
  - (ii) for each partly paid up Share that the Member holds, a fraction of one vote equal to the proportion which the amount paid or credited on that Share (excluding any amounts paid up in advance of the relevant due



date for payment) bears to the total amounts paid and payable (including amounts credited) on that Share.

- (c) If the total number of votes to which a Member is entitled on a poll does not constitute a whole number, the Company shall disregard the fractional part of that total.
- (d) In the case of an equality of votes, on a resolution at a meeting of Members (whether on a show of hands or on a poll), the chairperson of the meeting has a casting vote in addition to any vote the chairperson of the meeting has in respect of that resolution.
- (e) If a Share is held jointly and more than one Member votes in respect of that Share, only the vote of the Member whose name appears first in the Register counts.
- (f) A person may vote in respect of a Share at a meeting of Members if:
  - (i) the person is entitled to be registered as the holder of that Share because of a Transmission Event; and
  - (ii) the person satisfies the Directors of that entitlement not less than 48 hours before the meeting.
- (g) A Member present at a meeting of Members is not entitled to vote on any resolution in respect of any Shares on which any calls (or any other amounts due and payable in respect of those Shares) have not been paid.
- (h) A Member present at a meeting of Members is not entitled to vote on a resolution at that meeting where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction.
- (i) The Company must disregard any vote on a resolution purported to be cast by a Member present at a meeting of Members where that person is not entitled to vote on that resolution.
- (j) The authority of a proxy, attorney or Representative for a Member to speak or vote at a meeting of Members in respect of the Shares to which the authority relates is suspended while the Member is present in person at that meeting.
- (k) If more than one proxy, attorney or Representative for a Member is present at a meeting of Members:
  - (i) none of them are entitled to vote on a show of hands; and
  - (ii) on a poll, the vote of each one is of no effect where the aggregate number or proportion of the Member's votes for which they have been appointed exceeds the total number or proportion of votes that could be cast by that Member.

### **6.15 Objections to Voting**

- (a) An objection to the qualification of any person to vote at a meeting of Members may only be made:
  - (i) before the meeting, to the Directors; or
  - (ii) at the meeting (or any resumed meeting if the meeting is adjourned), to the chairperson of that meeting.
- (b) Any objection pursuant to Rule 6.15(a), must be decided in good faith by the Directors or the chairperson of the meeting of Members (as the case may be), whose decision shall be final and conclusive.

### **6.16 Proxies, Attorneys and Representatives**

- (a) A Member, who is entitled to attend and cast a vote at a meeting of Members, may vote on a show of hands and on a poll:
  - (i) in person or, if the Member is a body corporate, by its Representative;
  - (ii) by proxy or, if the Member is entitled to cast 2 or more votes at the meeting, by not more than 2 proxies; or
  - (iii) by attorney or, if the Member is entitled to cast 2 or more votes at the meeting, by not more than 2 attorneys.
- (b) A proxy, attorney or Representative of a Member need not be a Member.
- (c) A Member may appoint a proxy, attorney or Representative for:
  - (i) all or any number of meetings of Members; or
  - (ii) a particular meeting of Members.
- (d) An instrument appointing a proxy is valid if it is signed by the Member making the appointment and contains:
  - (i) the name and address of that Member;
  - (ii) the name of the Company;
  - (iii) the name of the proxy or the name of the office held by the proxy; and
  - (iv) the meeting of Members at which the proxy may be used.
- (e) An appointment of a proxy may be a standing one.
- (f) The chairperson of a meeting of Members may determine that an instrument appointing a proxy is valid even if it contains only some of the information specified in Rule 6.16(d).

- (g) An instrument appointing an attorney or Representative must be in a form that the Directors prescribe or accept from time to time.
- (h) Subject to the Corporations Act, the decision of the chairperson of a meeting of Members as to the validity of an instrument appointing a proxy, attorney or Representative is final and conclusive.
- (i) Unless otherwise provided in the Corporations Act or in the appointment, a proxy or attorney may:
  - (i) agree to a meeting of Members being called by shorter notice than is required by the Corporations Act or this Constitution;
  - (ii) agree to a resolution being either proposed or passed (or both) at a meeting of Members which is called by shorter notice than is required by the Corporations Act or this Constitution;
  - (iii) speak on any resolution at a meeting of Members on which the proxy or attorney may vote;
  - (iv) vote at a meeting of Members (but only to the extent allowed by the appointment);
  - (v) demand, or join in demanding, a poll on any resolution at a meeting of Members on which the proxy or attorney may vote; and
  - (vi) attend and vote at any meeting of Members which is rescheduled or adjourned.
- (j) Unless otherwise provided in the Corporations Act or in the appointment, a proxy or attorney may vote on:
  - (i) any amendment to a resolution on which the proxy or attorney may vote;
  - (ii) any motion not to put that resolution or any similar motion; and
  - (iii) any procedural motion relating to that resolution, even if the appointment directs the proxy or attorney how to vote on that resolution.
- (k) If the name of the proxy or the name of the office of the proxy in a proxy form of a Member is not filled in, the proxy of that Member shall be:
  - (i) the person specified by the Company in the form of proxy in the case the Member does not choose; or
  - (ii) if no person is so specified, the chairperson of that meeting.
- (l) A Member may specify the manner in which a proxy or attorney votes on a particular resolution at a meeting of Members.

- (m) The appointment of a proxy or attorney by a Member may specify the proportion or number of the Member's votes that the proxy or attorney may exercise.
- (n) If a Member appoints 2 persons as proxy or attorney and the appointment does not specify the proportion or number of the Member's votes those persons may exercise, then those persons may exercise half of the votes of the Member.
- (o) If the total number of votes to which a proxy or attorney is entitled to exercise does not constitute a whole number, the Company must disregard the fractional part of that total.
- (p) An appointment of proxy or attorney for a meeting of Members is effective only if the Company receives the appointment (and any authority under which the appointment was signed or a certified copy of the authority) not less than 48 hours before the time scheduled for commencement of that meeting (or any adjournment of that meeting).
- (q) Unless the Company has received notice in writing of the matter not less than 48 hours before the time scheduled for the commencement of a meeting of Members, a vote cast at that meeting by a person appointed by a Member as a proxy, attorney or Representative shall, subject to this Constitution, be valid even if, before the person votes:
  - (i) there is a Transmission Event in respect of that Member;
  - (ii) that Member revokes the appointment of that person;
  - (iii) that Member revokes the authority under which the person was appointed by a third party; or
  - (iv) that Member transfers the Shares in respect of which the appointment is made.

## **7. DIRECTORS**

### **7.1 Number of Directors**

- (a) The Company must have at least 3, and not more than 10, Directors.
- (b) The Company in general meeting may, by ordinary resolution, alter the minimum or maximum number of Directors provided that the minimum is not less than 3.
- (c) Subject to this Rule 7.1, the Directors must determine the number of Directors provided that the Directors cannot reduce the number of Directors below the number in office at the time that determination takes effect.
- (d) If the number of Directors is below the minimum fixed by this Constitution, the Directors must not act except:

- (i) in emergencies;
- (ii) to appoint one or more Directors in order to make up a quorum for a meeting of Directors; or
- (iii) to call and arrange to hold a meeting of Members.

## **7.2 Appointment of Directors**

- (a) The first Directors are the persons specified as Directors in the application for registration of the Company required under the Corporations Act.
- (b) Subject to Rule 7.1, the Directors may appoint any person as a Director.
- (c) The Company in general meeting may, by ordinary resolution, appoint any person as a Director.
- (d) A Director need not be a Member.
- (e) The Company must hold an election of Directors each year.
- (f) The Company must accept nominations for the election of a Director at any time from the Business Day prior to the date of the relevant notice of meeting up to:
  - (i) in the case of a meeting called pursuant to Rule 6.2(b) or 6.2(c), 30 Business Days; and
  - (ii) in all other cases, 35 Business Days, prior to the date of the meeting of Members at which the Director may be elected.
- (g) A nomination of a person for Director (other than a Director retiring in accordance with this Constitution) must be a notice in writing signed by a Member entitled to attend and vote at the meeting of Members at which the election is proposed, and be accompanied by a notice in writing signed by the nominee consenting to the nomination.

## **7.3 Vacation of Office**

- (a) If the Company has 3 or more Directors, then subject to Rule 7.3(e) and Rule 7.3(g) one third of the Directors (rounded down to the nearest whole number) must retire at each AGM.
- (b) If the Company has less than 3 Directors, one Director must retire at each AGM.
- (c) The Directors to retire under Rules 7.3(a) and 7.3(b) shall be:
  - (i) those who have held their office as Director the longest period of time since their last appointment at that office; and

- (ii) if 2 or more Directors have held office for the same period of time since their last appointment, those Directors determined by the drawing of lots, unless those Directors agree otherwise.
- (d) A Director who retires under Rule 7.3(a) or 7.3(b) is eligible for re-election.
- (e) The managing director of the Company, or if more than one, the managing director of the Company determined by the Directors shall not retire by rotation under Rules 7.3(a) or 7.3(b) but will be included for the purposes of the determination of the number of Directors to retire by rotation under Rule 7.3(a).
- (f) A Director appointed under Rule 7.2(b) may retire at the next meeting of Members and is eligible for re-election at that meeting. Unless a Director appointed under Rule 7.2(b) has retired under this Rule 7.3(f), that Director must retire at the next AGM, and is eligible for re-election at that meeting.
- (g) A Director appointed under Rule 7.2(b) shall be excluded from the calculation under Rules 7.3(a) and 7.3(b) to determine the retirement of Directors by rotation.
- (h) Rules 7.3(f) and 7.3(g) do not apply to the managing director of the Company, or if more than one, the managing director of the Company determined by the Directors.
- (i) A Director may resign from office by giving a written notice of resignation to the Company at its registered office.
- (j) Subject to the Corporations Act, the Company in general meeting may, by ordinary resolution, remove any Director and, if thought fit, appoint another person in place of that Director.
- (k) A Director ceases to be a Director if:
  - (i) the Director becomes of unsound mind or a person whose property is liable to be dealt with under a law relating to mental health;
  - (ii) the Director is absent (without the consent of the Directors) from all meetings of the Directors held during a period of 6 months and the other Directors resolve that his or her office be vacated;
  - (iii) the Director resigns or is removed in accordance with this Constitution;
  - (iv) the Director is an Executive Director and ceases to be an employee of the Company or of a Related Corporation;
  - (v) the Director becomes an insolvent under administration; or
  - (vi) the Corporations Act so provides.

#### **7.4 Alternate Directors**

- (a) With the approval of a majority of the other Directors, a Director may appoint a person as an Alternate Director of that Director for any period.
- (b) An Alternate Director need not be a Member.
- (c) The appointing Director may terminate the appointment of his or her Alternate Director at any time.
- (d) A notice of appointment (or termination of appointment) of an Alternate Director is effective only if:
  - (i) the notice is in writing;
  - (ii) the notice is signed by the Director who appointed that Alternate Director; and
  - (iii) the Company is given a copy of the notice.
- (e) If the Director who appointed an Alternate Director is not present at a meeting of Directors, that Alternate Director may, subject to this Constitution and the Corporations Act:
  - (i) attend, count in the quorum of, speak at, and vote at that meeting in place of that appointing Director; and
  - (ii) exercise any other powers (except the power under Rule 7.4(a)) that the appointing Director may exercise.
- (f) An Alternate Director cannot exercise any powers of his or her appointing Director if that appointing Director ceases to be a Director.
- (g) A person does not cease to be a Director under Rule 7.4(f) if that person retires as a Director at a meeting of Members and is re-elected as a Director at that meeting.
- (h) Subject to the Rule 7.5(g), the Company is not required to pay any remuneration to an Alternate Director.

#### **7.5 Remuneration of Directors**

- (a) Subject to the Corporations Act and the Listing Rules, the Company may pay to the Non-executive Directors a maximum total amount of director's fees (excluding salaries or other employee benefits), determined by the Company in general meeting, or until so determined, as the Directors resolve.
- (b) The remuneration of the Non-executive Directors must not be set as a commission on, or percentage of, profits or operating revenue.
- (c) The Directors may determine the manner in which all or part of the amount in Rule 7.5(a) is divided between the Non-executive Directors, and until so

determined, the amount in Rule 7.5(a) must be divided between the Non-executive Directors equally.

- (d) The remuneration of the Non-executive Directors is taken to accrue from day to day.
- (e) The remuneration of the Executive Directors must:
  - (i) subject to the provisions of any contract between each of them and the Company, be fixed by the Directors; and
  - (ii) not be set as a commission on, or percentage of, operating revenue of the Company.
- (f) If a Director performs extra or special services, including being:
  - (i) a member on a committee of Directors; or
  - (ii) the chairperson of Directors or deputy chairperson of Directors, the Company may, subject to the Corporations Act and this Rule 7.5, pay such additional remuneration or provide such benefits to that Director as the Directors resolve.
- (g) The Company must pay all reasonable travelling, accommodation and other expenses properly incurred by a Director or Alternate Director:
  - (i) in attending meetings of Directors or any meetings of committees of Directors;
  - (ii) in attending any meetings of Members; and
  - (iii) in connection with the business of the Company.
- (h) Subject to the Corporations Act and the Listing Rules, any Director may participate in any fund, trust or scheme for the benefit of:
  - (i) past or present Directors or employees of the Company or a Related Corporation; or
  - (ii) the dependants of, or persons connected with, any person referred to in Rule 7.5(h)(i).
- (i) Subject to the Corporations Act and the Listing Rules, the Company may give, or agree to give, a person a benefit in connection with that person's, or someone else's, retirement from a board or managerial office in the Company or a Related Corporation.

## **7.6 Interests of Directors**

- (a) A Director may:



- (i) hold an office or place of profit (except as auditor) in the Company, on any terms as the Directors resolve;
  - (ii) hold an office, or otherwise be interested in, any Related Corporation or other body corporate in which the Company is interested or;
  - (iii) act, or the Director's firm may act, in any professional capacity for the Company (except as auditor) or any Related Corporation or other body corporate in which the Company is interested, and retain the benefits of doing so if the Director discloses (in accordance with the Corporations Act and the Listing Rules) the interest giving rise to those benefits.
- (b) If a Director discloses any interest giving rise to a benefit to the Director in accordance with Rule 7.6(a):
- (i) the Director may contract or make an arrangement with the Company, a Related Corporation or a body corporate in which the Company is interested, in any matter and in any capacity;
  - (ii) the Director may, subject to the Corporations Act, be counted in a quorum for a meeting of Directors considering that contract or arrangement;
  - (iii) the Director may, subject to the Corporations Act, vote on whether the Company enters into the contract or arrangement, and on any matter that relates to the contract, arrangement or interest;
  - (iv) the Director may sign on behalf of the Company, or witness the affixing of the Seal to, any document in respect of the contract or arrangement;
  - (v) the Director may retain the benefits under the contract or arrangement; and
  - (vi) the Company cannot avoid the contract or arrangement merely because of the existence of the Director's interest.
- (c) The failure of a Director to: —
- (i) disclose an interest;
  - (ii) not be present while a matter in which the Director is interested is being considered at a meeting of Directors; or
  - (iii) not vote on a matter, in accordance with the Corporations Act,
- does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

### **7.7 No Share Qualification**

A Director is not required to hold any Shares.

## **8. OFFICERS**

### **8.1 Managing Director**

- (a) The Directors may appoint one or more of their number as a managing director, for any period and on any terms (including as to remuneration) as the Directors resolve.
- (b) Subject to any agreement between the Company and a managing director, the Directors may remove or dismiss a managing director at any time, with or without cause.
- (c) The Directors may delegate any of their powers (including the power to delegate) to a managing director.
- (d) The Directors may revoke or vary:
  - (i) the appointment of a managing director; or
  - (ii) any power delegated to a managing director.
- (e) A managing director must exercise the powers delegated to him or her in accordance with any directions of the Directors.
- (f) The exercise of a power by a managing director is as effective as if the Directors exercised the power.
- (g) A person ceases to be a managing director if the person ceases to be a Director.

### **8.2 Secretary**

- (a) The first Secretary is the person specified as Secretary in the application for registration of the Company required under the Corporations Act.
- (b) The Directors may appoint one or more Secretaries for any period, and on any terms (including as to remuneration), as the Directors resolve.
- (c) Subject to any agreement between the Company and a Secretary, the Directors may remove or dismiss a Secretary at any time with or without cause.
- (d) The Directors may revoke or vary the appointment of a Secretary.
- (e) An act by a person as a Secretary is effective even if the appointment of that person, or the continuance of that appointment, is invalid because the Company or that person did not comply with this Constitution or any provision of the Corporations Act.
- (f) Rule 8.2(e) does not deal with the question whether an effective act by a person:
  - (i) binds the Company in its dealings with other people; or