

**"NC"**  
**Marked for Identification**

---

**CONSTITUTION**

**OF**

**AUSTRALIAN AUTOMOTIVE TERMINAL PTY LIMITED**  
**(ACN 098 458 229)**

---

**CONSTITUTION  
OF  
AUSTRALIAN AUTOMOTIVE TERMINAL PTY LIMITED  
(ACN 098 458 229)**

**TABLE OF CONTENTS**

<b>PART 1: PRELIMINARY .....</b>	<b>1</b>
1. DEFINITIONS AND INTERPRETATION .....	1
2. APPLICATION TO THE CORPORATIONS ACT .....	2
3. EXERCISE OF POWERS .....	3
4. REPLACEABLE RULES NOT TO APPLY .....	3
5. SHAREHOLDERS' AGREEMENT .....	3
<b>PART 2: SHARES .....</b>	<b>3</b>
6. SHARES .....	3
7. PROPRIETARY COMPANY .....	3
8. OWNERSHIP OF SHARES .....	4
9. JOINT HOLDERS OF SHARES .....	4
10. EQUITABLE AND OTHER CLAIMS .....	4
11. PREFERENCE SHARES .....	4
12. VARIATION OF CLASS RIGHTS .....	5
13. POWER TO BUY BACK SHARES .....	5
14. POWER TO CONVERT SHARES INTO LARGER AND SMALLER AMOUNTS .....	6
15. POWER TO REDUCE THE NUMBER OF ISSUED SHARES .....	6
<b>PART 3: CALLS, FORFEITURE, INDEMNITIES AND LIEN .....</b>	<b>6</b>
16. DIRECTORS' POWER TO MAKE CALLS .....	6
17. WHEN A CALL IS MADE AND PAYMENT BY INSTALMENTS .....	6
18. COSTS ON UNPAID AMOUNTS .....	6
19. FIXED SUMS TAKEN TO BE CALLED .....	6
20. PAYMENTS IN ADVANCE OF CALLS .....	7
21. LIABILITY TO FORFEITURE .....	7
22. POWER TO FORFEIT .....	7
23. NOTICE OF FORFEITURE .....	8
24. CONSEQUENCES OF FORFEITURE .....	8
25. EVIDENCE OF FORFEITURE .....	8
26. LIEN ON SHARES .....	8
27. EXERCISE OF LIEN .....	9
28. DEALING WITH FORFEITED SHARES AND SALE OF SHARES ON WHICH THE COMPANY HAS A LIEN .....	9
29. REMEDIES LIMITED TO DAMAGES .....	9

30.	APPLICATION OF PROCEEDS OF SALE.....	9
<b>PART 4: TRANSFER OF SHARES .....</b>		<b>10</b>
31.	TRANSFER OF SHARES .....	10
32.	REGISTRATION OF TRANSFER .....	10
33.	WHERE REGISTRATION MAY BE DECLINED.....	10
34.	NOTICE OF NON-REGISTRATION.....	10
<b>PART 5: TRANSMISSION OF SHARES.....</b>		<b>10</b>
35.	ENTITLEMENT TO SHARES ON DEATH .....	10
36.	REGISTRATION OF PERSONS ENTITLED .....	11
37.	ENTITLEMENT TO SHARES ON MENTAL INCAPACITY.....	11
38.	DIVIDENDS AND OTHER RIGHTS .....	11
39.	OMISSION TO GIVE NOTICE .....	12
<b>PART 6: SHARE CERTIFICATES.....</b>		<b>12</b>
40.	SHARE CERTIFICATES.....	12
41.	LOST OR DAMAGED SHARE CERTIFICATES .....	12
<b>PART 7: GENERAL MEETINGS .....</b>		<b>12</b>
42.	CONVENING OF GENERAL MEETINGS.....	12
43.	BUSINESS OF ANNUAL GENERAL MEETING .....	12
44.	NOTICE OF GENERAL MEETINGS .....	13
45.	TECHNOLOGY .....	14
46.	QUORUM AT GENERAL MEETINGS .....	14
47.	CHAIRMAN OF GENERAL MEETINGS.....	14
48.	ADJOURNMENT OF GENERAL MEETINGS.....	15
49.	CHAIRMAN HOLDS NO CASTING VOTE.....	15
50.	VOTING AT GENERAL MEETINGS .....	15
51.	PROCEDURE FOR POLLS .....	16
52.	MEMBERS' VOTING RIGHTS .....	16
53.	VOTING RIGHTS OF PROXIES .....	16
54.	VOTING RIGHTS OF BODY CORPORATE REPRESENTATIVES .....	17
55.	VOTES OF JOINT HOLDERS .....	17
56.	VOTES OF CERTAIN MEMBERS .....	17
57.	RESTRICTIONS ON VOTING RIGHTS .....	18
58.	OBJECTIONS TO QUALIFICATION TO VOTE.....	18
59.	REPRESENTATION AT GENERAL MEETINGS.....	18
60.	CIRCULAR RESOLUTION .....	18
<b>PART 8: PROXIES.....</b>		<b>19</b>
61.	POWER TO APPOINT PROXIES.....	19
62.	APPOINTMENT OF PROXIES .....	19

63.	FORM OF PROXY .....	20
64.	LODGMET OF PROXY .....	20
65.	VALIDITY OF PROXIES .....	20
<b>PART 9: APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS .....</b>		<b>21</b>
66.	NUMBER AND APPOINTMENT OF DIRECTORS.....	21
67.	SHARE QUALIFICATION .....	21
68.	VACATION OF OFFICE .....	21
69.	REMUNERATION OF DIRECTORS.....	21
70.	INTERESTED DIRECTORS.....	22
71.	ALTERNATE DIRECTORS.....	23
72.	POWERS AND DUTIES OF DIRECTORS.....	24
73.	WHOLLY OWNED SUBSIDIARIES – DIRECTORS .....	24
74.	NEGOTIABLE INSTRUMENTS .....	24
75.	APPOINTMENT OF OFFICERS, AGENTS OR ATTORNEYS.....	24
76.	PROCEEDINGS OF DIRECTORS .....	24
77.	CONVENING OF MEETINGS OF DIRECTORS .....	25
78.	NOTICE OF MEETINGS OF DIRECTORS .....	25
79.	QUORUM AT MEETINGS OF DIRECTORS .....	26
80.	CHAIRMAN OF THE BOARD .....	26
81.	DECISIONS OF DIRECTORS.....	26
82.	CIRCULAR RESOLUTIONS .....	27
83.	COMMITTEES OF DIRECTORS .....	27
84.	VALIDITY OF ACTS .....	27
<b>PART 10: EXECUTIVE OFFICERS.....</b>		<b>28</b>
85.	GENERAL MANAGER .....	28
86.	REMUNERATION OF GENERAL MANAGER .....	28
87.	SECRETARIES.....	28
88.	PROVISIONS APPLICABLE TO ALL EXECUTIVE OFFICERS.....	28
<b>PART 11: SEAL.....</b>		<b>29</b>
89.	SAFE CUSTODY OF SEAL .....	29
90.	EXECUTION OF DOCUMENTS WITHOUT SEAL.....	29
91.	USE OF COMMON SEAL.....	29
92.	OFFICIAL SEAL .....	29
93.	SEALING BY OFFICIAL SEAL.....	29
<b>PART 12: DISTRIBUTION OF PROFITS .....</b>		<b>30</b>
94.	DIVIDENDS .....	30
95.	CAPITALISATION OF PROFITS .....	31
96.	ANCILLARY POWERS.....	32

97.	RESERVES.....	32
98.	CARRY FORWARD OF PROFITS.....	32
PART 13: WINDING UP .....		32
99.	DEFICIENCY.....	32
100.	DISTRIBUTION OF SURPLUS.....	33
101.	DIVISION OF PROPERTY .....	33
PART 14: MINUTES AND RECORDS.....		33
102.	MINUTES .....	33
103.	INSPECTION OF RECORDS .....	33
PART 15: PROTECTION OF CERTAIN OFFICERS .....		34
104.	OFFICERS TO WHOM THIS PART APPLIES .....	34
105.	INDEMNITY .....	34
106.	RELIEF FROM LIABILITY .....	35
107.	COMPANY'S POWERS .....	35
108.	BREACH OF DUTY .....	35
109.	SECURITY.....	35
110.	INSURANCE.....	36
PART 16: NOTICES .....		36
111.	NOTICES BY THE COMPANY TO MEMBERS.....	36
112.	NOTICES BY MEMBER OR DIRECTORS TO THE COMPANY,.....	37
113.	NOTICES POSTED TO AN ADDRESS OUTSIDE THE COMMONWEALTH .....	37
114.	TIME OF SERVICE .....	37
115.	NOTICES IN WRITING .....	37

Corporations Act 2001  
A Company Limited by Shares

CONSTITUTION  
OF  
AUSTRALIAN AUTOMOTIVE TERMINAL PTY LIMITED  
(ACN 098 458 229)

PART 1: PRELIMINARY

1. Definitions and Interpretation

1.1 In this Constitution:

**ASIC** means the Australian Securities and Investments Commission and includes any successor;

**Associate** has the same meaning given to that term in the Corporations Act;

**ASX** means the Australian Stock Exchange;

**Business Day** means a day on which trading banks are open for business in Sydney;

**Call** includes an instalment of a call and any sum that becomes payable on allotment or at a fixed date in respect of a Share;

**Chairman of the Board** means the chairman of the Board appointed under clause 80;

**Commonwealth** means the Commonwealth of Australia and its external territories;

**Company** means the company referred to by name at the commencement of this Constitution;

**Constitution** means this constitution as amended from time to time;

**Corporations Act** means the *Corporations Act 2001* (Cth) as amended from time to time;

**Directors or Board** means the whole or any number of Directors comprising a meeting held in any manner (including by electronic means, by resolutions signed by the Directors or any other means permitted by law) authorised by this Constitution;

**Dividend** includes a bonus or interim dividend;

**Listed** describes the Company at any time at which the Company is included in the Official List;

**Member** means a person for the time being entered in the Register as a Member of the Company;

**Official List** means the official list of ASX;

**Register** means the register of Members to be kept pursuant to the Corporations Act and includes both the principal register and every branch register;

**Representative**, in relation to a body corporate, means a representative of the body corporate authorised under the Corporations Act or a corresponding previous law;

**Seal** means any common seal of the Company and includes any official seal, share seal or certificate seal of the Company;

**Secretary** means a person appointed by the Directors to perform the duties of a secretary of the Company;

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

**Shareholders' Agreement** means the agreement entered into between the Company, P&O Wharf Management Pty Limited (ACN 100 737 264) and Plizen Pty Limited (ACN 065 905 571) dated [ ];

**Subscriber Share** means the preference Share, named as such, if issued on the registration of the Company;

**Transmission Event** means:

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

1.2 Headings do not affect the interpretation of this Constitution.

1.3 Words importing any gender include the other genders.

1.4 A reference in any clause to any statute, regulation or other law includes all statutes, regulations or other laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute, unless the contrary intention appears in this Constitution.

1.5 A reference to a person includes to a corporation, trust, partnership, unincorporated body or other entity.

## 2. Application to the Corporations Act

Unless the contrary intention appears in this Constitution:

- (a) Part 1.2 Division 8 of the Corporations Act applies, so far as it can with such

changes as are necessary, to this Constitution as if this Constitution was a provision of the Corporations Act; and

- (b) an expression in a clause that deals with a matter dealt with by a provision of the Corporations Act has the same meaning as in that provision of the Corporations Act.

### **3. Exercise of Powers**

The Company may exercise, by resolution or special resolution as the Corporations Act requires, any power which under the Corporations Act a company limited by shares may exercise if authorised by its constitution.

### **4. Replaceable Rules not to Apply**

Each of the provisions of the sections or sub-sections of the Corporations Act which would but for this clause apply to the Company as a replaceable rule are displaced and do not apply to the Company.

### **5. Shareholders' Agreement**

This Constitution must in all respects reflect and be consistent with the provisions of the Shareholders' Agreement. If there is any inconsistency between the provisions of the Shareholders' Agreement and this Constitution, the provisions of the Shareholders' Agreement will prevail, and the Members must act promptly to eliminate any such inconsistency by amending this Constitution.

## **PART 2: SHARES**

### **6. Shares**

Without prejudice to any special rights previously conferred on the holders of existing Shares but subject to the Corporations Act, Shares may be issued by the Directors and any such Share may be issued with such preferred, deferred or other special rights or such restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the Directors may from time to time by resolution determine.

### **7. Proprietary Company**

The Company is a proprietary company and therefore:

- (a) the number of Members for the time being of the Company (exclusive of persons who are in the employment of the Company or of any subsidiary of the Company and of persons who having been formerly in the employment of the Company or of any subsidiary of the Company were while in that employment and have continued after that employment to be Members of the Company) is not to exceed 50 but where 2 or more persons hold one or more Shares in the Company jointly they shall for the purposes of this Constitution be treated as a single Member;
- (b) any invitation to the public to subscribe for, and any offer to the public to accept subscriptions for, any Shares in, or debentures or debenture stock of, the Company is prohibited; and
- (c) any invitations to the public to deposit money with, and any offer to the public to accept deposits of money with, the Company for fixed periods or payable at call, whether bearing or not bearing interest is prohibited.



## 8. Ownership of Shares

A Member shall be taken to own a Share if, and only if, that Member has a relevant interest in the Share for the purposes of Part 6.1 of the Corporations Act.

## 9. Joint Holders of Shares

Where two or more persons are registered as the holders of a Share, they hold it as joint tenants with rights of survivorship subject to the following provisions:

- (a) they and their respective legal personal representatives are liable severally as well as jointly for all payments, including Calls, which have been made or ought to be made in respect of the Share;
- (b) on the death of any one of them, the survivor is or survivors are, the only person or persons the Company will recognise as having any title to the Share;
- (c) it will be sufficient discharge of the Company's obligations to the joint holders in respect of any notice or payment or otherwise if the Company sends the notice or payment or otherwise discharges the obligation in relation to the joint holder first named in the Register but any one of them may give effectual receipts for any dividend, interest or other distribution or payment in respect of the Share; and
- (d) except in the case of persons jointly entitled to be registered as the holders of a Share, the Company is not bound to register more than 3 persons as joint holders of the Share.

## 10. Equitable and Other Claims

- 10.1 Except as required by law, the Company shall not recognise a person as holding a Share upon trust.
- 10.2 The Company is not bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any Share or (except as otherwise provided by this Constitution or by law) any other right in respect of a Share except an absolute right of ownership in the registered holder.

## 11. Preference Shares

- 11.1 A holder of preference Shares shall be entitled to the following:
  - (a) to a preference to capital in the event of a winding up of the Company;
  - (b) to cumulative or non-cumulative dividends as determined by the Directors at the time of issue of such Shares; and
  - (c) to participate in the surplus assets and profits of the Company.
- 11.2 A preference Share entitles its holder to vote at any general meeting of the Company in the following circumstances:
  - (a) on a proposal:
    - (i) to reduce the share capital of the Company;

- (ii) that directly affects rights and privileges attached to the Share;
  - (iii) to wind up the Company; or
  - (iv) for the disposal of the whole of the Company's property, business and undertaking;
- (b) during a period during which a dividend or part of a dividend on the Share is in arrears;
- (c) on a resolution to approve the terms of a buy-back agreement;
- 
- (d) during the winding up of the Company; and
- 
- (e) in any additional circumstances specified in the terms of issue of such preference Shares by the Company relating to the Share upon its allotment and issue.

11.3 A preference shareholder is entitled to receive notice of and to attend all general meetings of the Company and to receive copies of all financial reports, Directors' reports, auditors' reports together with all other notices, reports and circulars provided to Members.

11.4 Subject to the Corporations Act, any preference Share may be issued on the terms that it is, or at the option of the Company is liable, to be redeemed.

## 12. Variation of Class Rights

Unless otherwise provided by the terms of issue of a class of Shares:

- (a) all or any of the rights or privileges attached to the class may be varied or abrogated, whether or not the Company is being wound up, only with the consent in writing of the holders of three-quarters of the issued Shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the issued Shares of that class;
- (b) the provisions of this Constitution relating to general meetings apply, so far as they can and with such changes as are necessary, to each separate meeting of the holders of the issued Shares of that class; and
- (c) the rights conferred upon the holders of the Shares of the class are to be taken as having been varied by the creation or issue of further Shares ranking equally with them.

## 13. Power to Buy Back Shares

The Company may buy back its own Shares on the terms and at the time determined by the Directors provided that:

- (a) the buy-back does not materially prejudice the Company's ability to pay its creditors; and
- (b) the Company follows the procedures laid down in the Corporations Act.

**14. Power to Convert Shares into Larger and Smaller Amounts**

The Company may by special resolution passed in a general meeting convert all or any of its Shares into a larger or smaller number of Shares.

**15. Power to Reduce the Number of Issued Shares**

The Company may reduce the number of issued Shares in any manner permitted by the Corporations Act provided that such reduction:

- (a) is fair and reasonable to the Company's Members as a whole;
- (b) does not materially prejudice the Company's ability to pay its creditors; and
- (c) is approved by the Members in accordance with the Corporations Act.

**PART 3: CALLS, FORFEITURE, INDEMNITIES AND LIEN****16. Directors' Power to make Calls**

- 16.1 Subject to this Constitution and the terms upon which any Shares may be issued, the Directors may make Calls upon the Members in respect of any money unpaid on their Shares which is not by the terms of issue of those Shares made payable at fixed times.
- 16.2 Upon receiving at least 10 Business Days notice specifying the time and place of payment each Member must pay to the Company by the time and at the place so specified the amount called on the Member's Shares.

**17. When a Call is made and Payment by Instalments**

- 17.1 A Call is to be taken as having been made when the resolution of the Directors authorising the Call was passed.
- 17.2 A Call may be required by the Directors to be paid by installments.
- 17.3 The Directors may revoke or postpone a Call or extend the time for payment.

**18. Costs on Unpaid Amounts**

If a sum called in respect of a Share is not paid in full by the day appointed for payment of the sum, the person from whom the sum is due must pay:

- (a) interest on so much of the sum as is unpaid from time to time, from the date appointed for payment of the sum to the date of actual payment, at a rate determined under clause 20.3; and
- (b) any costs or expenses incurred by the Company in relation to the non-payment or late payment of the sum.

**19. Fixed Sums Taken to be Called**

Any sum unpaid on a Share that, but for the terms of issue of the Share, becomes payable on allotment or at a fixed date:

- (a) is to be treated for the purposes of this Constitution as if that sum was payable

pursuant to a Call duly made and notified; and

- (b) must be paid on the date on which it is payable under the terms of issue of the Share.

## **20. Payments in Advance of Calls**

- 20.1 The Directors may accept from a Member the whole or a part of the amount unpaid on a Share although no part of that amount has been called. A payment under this clause does not confer a right to participate in profits in respect of such payment.
- 20.2 The Directors may authorise payment by the Company of interest upon the whole or any part of an amount accepted under clause 20.1, until the amount becomes payable, at a ~~rate, not exceeding the prescribed rate, agreed between the Directors and the Member~~ paying the amount.
- 20.3 For the purposes of clause 20.2, the prescribed rate of interest is:
  - (a) if the Directors have fixed a rate, the rate so fixed; or
  - (b) in any other case, ten percent (10%) per annum.
- 20.4 The Directors may repay to a Member all or any of the amount accepted under clause 20.1.

## **21. Liability to Forfeiture**

If a Member fails to pay the whole of a Call or instalment of a Call by the day appointed for payment of the Call or instalment, the Directors may serve a notice on that Member:

- (a) requiring payment of so much of the Call or instalment as is unpaid, together with any interest that has accrued and all costs or expenses that may have been incurred by the Company by reason of the non-payment or late payment of the Call or instalment;
- (b) naming a further day (not earlier than the end of 14 days from the date of service of the notice) by which, and a place at which, the amount payable under clause 21(a) is to be paid; and
- (c) stating that, in the event of non-payment of the whole of the amount payable under clause 21(a) by the time and at the place named, the Shares in respect of which the Call was made will be liable to be forfeited.

## **22. Power to Forfeit**

- 22.1 If the requirements of a notice served under clause 21 are not complied with, the Directors may by resolution forfeit any Share in respect of which the notice was given at any time after the day named in the notice and before the payment required by the notice is made.
- 22.2 A forfeiture under clause 22.1 will include all dividends, interest and other money payable by the Company in respect of the forfeited Share and not actually paid before the forfeiture.

**23. Notice of Forfeiture****23.1** Where a Share has been forfeited:

- (a) notice of the resolution must be given to the Member in whose name the Share stood immediately before the forfeiture; and
- (b) an entry of the forfeiture, with the date, must be made in the Register.

**23.2** Failure to give the notice or to make the entry required under clause 23.1 does not invalidate the forfeiture.

**23.3** A forfeited Share becomes the property of the Company and:

- (a) the Directors may sell or re-allot the Share in such manner as they think fit and, in the case of re-allotment, with or without any money paid on the Share by any former holder being credited as paid up; or
- (b) the Share may be cancelled in accordance with its terms of issue, by a resolution at a general meeting of Members.

**24. Consequences of Forfeiture**

**24.1** A person whose Shares have been forfeited ceases to be a Member in respect of the forfeited Shares, but remains liable to pay, and must immediately pay, to the Company:

- (a) all Calls, instalments, interest, costs and expenses owing in respect of the Shares at the time of the forfeiture; and
- (b) interest on so much of the amount payable under this clause as is unpaid from time to time, from the date of the forfeiture to the date of actual payment, at a rate determined under clause 20.3.

**24.2** Except as otherwise provided by this Constitution, the forfeiture of a Share extinguishes all interest in, and all claims and demands against the Company in respect of, the forfeited Share and all other rights incidental to the Share.

**25. Evidence of Forfeiture**

**25.1** A statement in writing declaring that the person making the statement is a Director or a Secretary and that a Share has been duly forfeited on a date stated in the statement is conclusive evidence of the facts stated in the statement as against all persons claiming to be entitled to the Share.

**25.2** The Directors may:

- (a) exempt a Share from all or any part of this clause; and
- (b) before a forfeited Share has been sold, re-allotted or cancelled by the Members by a resolution at a general meeting, annul the forfeiture upon such conditions as they think fit.

**26. Lien on Shares**

**26.1** The Company has a first and paramount lien on each partly paid Share for:

- (a) all instalments and Calls due and unpaid in respect of that Share; and
- (b) any amount which the Company may be called upon by law to pay in respect of such Share (including where the Share is of a deceased former holder).

26.2 The Company's lien on a Share extends to all dividends and bonuses payable in respect of the Share and to the proceeds of sale of the Share and includes any reasonable interest and expenses incurred because the amount is not paid.

26.3 The Directors may:

- (a) exempt a Share from all or any part of this clause; and
- (b) waive all or any part of any payment due to the Company under this clause.

## **27. Exercise of Lien**

27.1 The Directors may sell any Share on which the Company has a lien in such manner as they think fit where:

- (a) an amount in respect of which a lien exists under this clause is presently payable; and
- (b) the Company has, not less than 14 days before the date of the sale, given to the registered holder of the Share a notice in writing setting out, and demanding payment of, such amount in respect of which the lien exists as is presently payable.

27.2 Registration by the Company of a transfer of Shares on which the Company has a lien without giving to the transferee notice of its claim releases the Company's lien in so far as it relates to sums owing by the transferor or any predecessor in title.

## **28. Dealing with Forfeited Shares and Sale of Shares on which the Company has a Lien**

28.1 The Directors may appoint a person to execute an instrument of transfer or allotment of the Shares for the purpose of giving effect to any sale or re-allotment.

28.2 The Company shall register the purchaser or allottee as the holder of the Shares sold or re-allotted and that person is not bound to see to the application of the purchase money.

28.3 The title of the purchaser or allottee to the Shares is not affected by any irregularity or invalidity in the proceedings.

28.4 The Company may, by resolution passed by the Members at a general meeting, cancel Shares that have been forfeited under the terms on which the Shares are on issue.

## **29. Remedies Limited to Damages**

The remedy of any person aggrieved by a sale, re-allotment or cancellation under clause 23.3 or a sale under clause 27 or cancellation under clause 28.4 is limited to damages only and is against the Company exclusively.

## **30. Application of Proceeds of Sale**

The proceeds of a sale or re-allotment under clause 23.3 or a sale under clause 27 must be applied in the payment of the expenses of the sale or re-allotment, all money presently payable by the former holder whose Shares have been sold or reallocated, and the balance

(if any) must be paid (subject to any lien that exists under clause 26 in respect of money not presently payable) to the former holder on the former holder delivering to the Company the certificate for the Shares that have been sold or reallocated.

#### **PART 4: TRANSFER OF SHARES**

##### **31. Transfer of Shares**

31.1 Subject to this Constitution, the Shareholders' Agreement and the Corporations Act, a Member may transfer all or any of the Member's Shares by transfer documents in any usual or common form or in any other form that the Directors approve. No fee shall be charged on the transfer of any Shares.

~~31.2 A transfer referred to in clause 31.1 shall be executed by or on behalf of the transferor and shall be executed by or on behalf of the transferee or may be executed, effected or validated otherwise in accordance with the Corporations Act.~~

31.3 A transferor of Shares remains the holder of the Shares transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Shares.

##### **32. Registration of Transfer**

The instrument of transfer must be left for registration at the registered office of the Company or at the address where the Register is kept on which the Shares to which such transfer relates are registered, together with the certificate, if any, for the Shares to which it relates and such other information as the Directors properly require to show the right of the transferor to make the transfer, and the Company shall, subject to the powers vested in the Directors by this Constitution, register the transferee as a Member.

##### **33. Where Registration may be Declined**

Where permitted to do so by the Corporations Act the Company may decline to register any transfer of Shares.

##### **34. Notice of Non-Registration**

If the Company refuses to register any transfer of Shares, it shall give to the transferee written notice within 5 Business Days after the transfer was lodged with the Company, stating that the Company has so refused and the reason for the refusal.

#### **PART 5: TRANSMISSION OF SHARES**

##### **35. Entitlement to Shares on Death**

In the case of the death of a Member, the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where the deceased was a sole holder, shall be the only persons recognised by the Company as having any title to the deceased holder's interest in the Shares, but this clause does not release the estate of a deceased joint holder from any liability in respect of a Share that had been jointly held by the deceased with any person.

### **36. Registration of Persons Entitled**

- 36.1 Subject to the *Bankruptcy Act 1966* (Cth) a person becoming entitled to a Share in consequence of the death or bankruptcy of a Member may, upon such information being produced as is properly required by the Directors, elect either to be registered as holder of the Share or to nominate some other person to be registered as the transferee of the Share.
- 36.2 A person becoming so entitled who elects to be registered shall deliver or send to the Company a notice in writing signed by that person advising of the election.
- 36.3 A person who elects to have another person registered, shall execute or effect a transfer of the Share to that other person.
- ~~36.4 All the limitations, restrictions and provisions of this Constitution relating to the right to transfer, and the registration of a transfer of, Shares are applicable to any such notice or transfer as if the death or bankruptcy of the Member had not occurred and the notice or transfer were a transfer signed by that Member.~~

### **37. Entitlement to Shares on Mental Incapacity**

- 37.1 If a person entitled to a Share because of the mental incapacity of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the Share:
- (a) the person may:
- (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the Share; or
- (ii) by giving a completed transfer form to the Company, transfer the Share to another person; and
- (b) the person is entitled, whether or not registered as the holder of the Share, to the same rights as the Member.
- 37.2 On receiving an election under clause 37.1(a)(i), the Company must register the person as the holder of the Share.
- 37.3 A transfer under clause 37.1(a)(ii) is subject to the same rules as apply to transfers generally.

### **38. Dividends and Other Rights**

- 38.1 Where a Member dies or becomes bankrupt, the Member's personal representative or the trustee of his estate, as the case may be, is, upon the production of such information as is properly required by the Directors, entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the Company, or to voting or otherwise), as the Member would have been entitled to if the Member had not died or become bankrupt.
- 38.2 Where 2 or more persons are jointly entitled to any Share in consequence of the death of a Member, they shall, for the purpose of this Constitution, be taken to be joint holders of the Share.



**39. Omission to Give Notice**

The omission to give notice to a person entitled to be registered as a Member under this Part shall not affect the validity of a notice given to the deceased Member in respect of a Share owned by the deceased Member.

**PART 6: SHARE CERTIFICATES****40. Share Certificates**

40.1 The Directors may determine the number of Shares to be issued in any one certificate.

40.2 Every certificate for Shares must be issued in accordance with the Corporations Act.

40.3 Where the Company is required by the Corporations Act to issue share certificates, a Member is entitled without payment to receive a certificate in respect of the Shares registered in the Member's name but, in respect of a Share or Shares held jointly by several persons, the Company is not bound to issue more than one certificate. Likewise, the Company must issue certificates to the holders of options.

40.4 Delivery of a certificate for a Share to one of several joint holders is sufficient delivery to all of them.

**41. Lost or Damaged Share Certificates**

41.1 Where a certificate is stolen, lost or destroyed, upon application to the Company by the holder of the Shares to which the certificate relates, the Directors may issue a replacement certificate on payment of any fee the Directors may require. The procedure for issuing replacement certificates and the amount of the fee must be in accordance with the Corporations Act.

41.2 Where a certificate for Shares previously issued has been worn out or defaced and has been surrendered to the Company for cancellation, and such fee as the Directors require has been paid, the Company must cancel the certificate and issue a replacement certificate.

**PART 7: GENERAL MEETINGS****42. Convening of General Meetings**

42.1 The Directors may, whenever they think fit, convene a general meeting.

42.2 Subject to the Corporations Act, the Directors must call, and arrange to hold, a general meeting on the request of:

- (a) Members with at least 5% of the votes that may be cast at a general meeting; or
- (b) at least 100 Members who are entitled to vote at the general meeting,

21 days after the request is given to the Company, provided that the Members' request is made in accordance with the Corporations Act.

**43. Business of Annual General Meeting**

The business of an annual general meeting may include any of the following, even if not

referred to in the notice of meeting:

- (a) the consideration of the annual financial report, Directors' reports and auditors' reports;
- (b) the election of Directors;
- (c) if required, to consider and if thought fit, to appoint auditors;
- (d) if required, to consider and if thought fit, to fix the auditors' remuneration; and
- (e) the transaction of any other business which ought to be transacted at an annual general meeting.

#### **44. Notice of General Meetings**

**44.1** A notice of a general meeting must:

- (a) set out the place, date and time of 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;
- (c) if a special resolution is to be proposed at the meeting - set out an intention to propose the special resolution and state the resolution;
- (d) contain a statement setting out the following information:
  - (i) that the Member has a right to appoint a proxy;
  - (ii) that the proxy may, but need not be a Member;
  - (iii) that a Member who is entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise; and
- (e) include in the notice for the purposes of receipt of proxy appointments an address and a facsimile number. The notice may also specify an electronic address.

**44.2** Notice must be given to:

- (a) a Member;
- (b) any person entitled to be registered as the holder of, or to transfer, any Shares and who has satisfied the Directors of his right to be registered as the holder of, or to transfer, the Shares;
- (c) a Director; and
- (d) an auditor of the Company.

**44.3** Subject to the Corporations Act, no other person is entitled to receive notice of general meetings.

**44.4** Subject to the Corporations Act, unless the Members of the Company consent to shorter notice, 21 days written notice must be given of a meeting of the Company's Members.

Shorter notice is not allowed if the business of the meeting is to:

- (a) remove a Director;
- (b) remove an auditor;
- (c) appoint a Director in place of a removed Director; or
- (d) appoint or reappoint as a Director a person who has attained the age of 72 years.

**44.5** The Directors may call a meeting on shorter notice:

- (a) in the case of an annual general meeting, if all the Members entitled to attend and vote at the annual general meeting agree by notice in writing to the Company prior to the meeting; or
- (b) in the case of any other general meeting, if Members with at least 95% of the votes that may be cast at the general meeting agree by notice in writing to the Company prior to the meeting.

**44.6** Accidental failure to give notice of a general meeting or a proxy form to any person entitled to receive notice of a general meeting under this clause does not invalidate any act, matter or thing done or resolution passed at the general meeting.

#### **45. Technology**

The Company may hold a meeting of its Members at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

#### **46. Quorum at General Meetings**

**46.1** No business may be transacted at any general meeting, except the election of a chairman and the adjournment of the meeting, unless a quorum of Members is present when the meeting proceeds to business.

**46.2** A quorum consists of two Members entitled to vote and be present at the meeting.

**46.3** If within half an hour after the time appointed for the holding of a meeting of Members, a quorum is not present, the meeting shall be adjourned to the same time and at the same place 21 days later and each of the Members shall be notified immediately by facsimile message of such adjournment. If at such adjourned meeting a quorum is not present within half an hour of its commencement any Member present at such meeting shall constitute a quorum for purposes of the transaction of business.

#### **47. Chairman of General Meetings**

**47.1** The Chairman the Board must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairman at each general meeting.

**47.2** If at a general meeting:

- (a) there is no Chairman of the Board;
- (b) the Chairman of the Board is not present within 15 minutes after the time appointed for the meeting; or

- (c) the Chairman of the Board is present within that time but is not willing to act as chairman of the meeting,

the Members present must elect as chairman of the meeting:

- (d) another Director who is present and willing to act; or
- (e) if no other Director willing to act is present at the meeting, a Member who is present and willing to act.

47.3 Any questions arising at a meeting relating to the order, business, procedure or conduct of the meeting shall be referred to the chairman of the meeting, whose decision is final.

#### **48. Adjournment of General Meetings**

48.1 The chairman of a general meeting may with the consent of the meeting, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

48.2 Notice of an adjourned meeting shall be given in accordance with clause 46.3.

#### **49. Chairman holds no Casting Vote**

In the case of an equality of votes upon any proposed resolution:

- (a) the chairman of the meeting will not have a second or casting vote; and
- (b) the proposed resolution is to be taken as having been lost.

#### **50. Voting at General Meetings**

50.1 A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded:

- (a) before a vote is taken;
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

50.2 A poll may be demanded by:

- (a) the chairman of the meeting;
- (b) not less than 5 Members having the right to vote at the meeting; or
- (c) a Member or Members representing not less than five percent (5%) of the votes that may be cast on the resolution on a poll.

50.3 A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll has been demanded.

50.4 Unless a poll is duly demanded, a declaration by the chairman of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of

the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

50.5 The demand for a poll may be withdrawn.

## 51. Procedure for Polls

51.1 A poll may be demanded on any resolution.

51.2 If a poll is duly demanded at a general meeting, it will be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman of the meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.

51.3 A poll demanded at a general meeting on the election of a chairman of the meeting or on a question of adjournment must be taken immediately.

## 52. Members' Voting Rights

Subject to this Constitution and to any rights or restrictions attached to any Shares or class of Shares, at a general meeting a holder of Shares shall be entitled to be present (whether personally, by proxy, attorney or Representative) and to vote in respect of any Share or Shares upon which all Calls due to the Company have been paid:

- (a) on a show of hands every Member present and entitled to vote has one vote;
- (b) on a poll every Member present has one vote for each fully paid Share held by the Member;
- (c) on a poll every Member holding a partly-paid Share has, if the Member is entitled to vote on such Share, that fraction of a vote for each such Share as equals the fraction generated by dividing the total amount paid (not credited) on the Share by the total amounts paid and payable (excluding amounts credited);
- (d) on a poll every Member voting who is entitled to 2 or more votes:
  - (i) need not cast all their votes;
  - (ii) may cast their votes in different ways.

## 53. Voting Rights of Proxies

53.1 A proxy appointed to attend and vote for a Member has the same rights as the Member:

- (a) to speak at the meeting;
- (b) to vote (but only to the extent allowed by the appointment); and
- (c) to join in a demand for a poll.

53.2 Where a Member appoints two proxies to vote in respect of Shares held by the Member and both are in attendance:

- (a) on a show of hands, if the appointments specify different ways to vote on a resolution, the proxies must not vote;

- (b) on a poll:
- (i) each proxy may exercise votes in respect of those Shares for which the proxy has been validly appointed; or
  - (ii) if the appointments do not specify the proportion or number of the Member's votes each proxy may exercise, then each proxy may exercise half of the votes,

any fractions of votes resulting from the application of paragraphs (i) or (ii) shall be disregarded.

#### **54. Voting Rights of Body Corporate Representatives**

- 54.1 A Representative appointed to attend and vote for a Member who is a body corporate has the same rights as the Member.
- 54.2 Unless otherwise specified in the appointment, the Representative may exercise, on the body corporate's behalf, all of the powers that the body corporate could exercise at a meeting or in voting on a resolution.
- 54.3 A body corporate may appoint more than one Representative but only one Representative may exercise the body corporate's powers at any one time.

#### **55. Votes of Joint Holders**

In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, attorney or Representative, must be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority is to be determined by the order in which the names stand in the Register (the Member whose name appears first in the Register being taken to be the senior to the other or others of them).

#### **56. Votes of Certain Members**

- 56.1 The parent or guardian of an infant Member may vote at any general meeting upon such evidence being produced of the relationship or of the appointment of the guardian as the Directors may require and any vote tendered by a parent or guardian of an infant Member in accordance with this clause must be accepted to the exclusion of the vote of the infant Member.
- 56.2 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 the law relating to mental health, the committee or trustee or such other person as properly has the management of the Member's estate may exercise any rights of the Member in relation to a general meeting as if the committee, trustee or other person were the Member.
- 56.3 A person entitled to be registered as the holder of, or to transfer, any Shares may vote at any general meeting in respect of those Shares in the same manner as if that person were the registered holder of those Shares if, before the meeting, the Directors have:
- (a) admitted that person's right to vote at that meeting in respect of those Shares; or
  - (b) been satisfied of that person's right to be registered as the holder of, or to transfer, those Shares,

and any vote tendered by such a person in accordance with this clause must be accepted

to the exclusion of the vote of the registered holder of those Shares.

#### **57. Restrictions on Voting Rights**

A Member is not entitled to vote at a general meeting in respect of Shares in the Company unless all Calls and other sums presently payable by that Member in respect of those Shares in the Company have been paid.

#### **58. Objections to Qualification to Vote**

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

- (a) must be raised before or at the meeting at which the vote objected to is given or tendered; and
- (b) must be referred:
  - (i) if it is raised before the meeting, to the Directors; or
  - (ii) if it is raised at the meeting, to the chairman of the meeting,

whose decision is final.

58.2 A vote not disallowed by the Directors or the chairman of a meeting under clause 58.1 is valid for all purposes.

#### **59. Representation at General Meetings**

Subject to this Constitution, each Member entitled to vote at a meeting of Members may vote:

- (a) in person;
- (b) by not more than 2 proxies;
- (c) by not more than 2 attorneys; or
- (d) where the Member is a body corporate, by its Representative.

#### **60. Circular Resolution**

60.1 If a document containing a statement that the signatories to it are in favour of a resolution in the terms set out or otherwise identified in the document has been signed by all the Members entitled to receive notice of and attend and vote at general meetings, a resolution in those terms shall be taken to have been passed at a meeting of the Members held on the day on which and at the time at which the last Member signs the document.

60.2 Identical copies of the document and accompanying information may be distributed for signing by different Members. The resolution is passed when the last Member signs the document. The passage of the resolution satisfies any requirement of the Corporations Act that the resolution be passed when the last Member signs the document. The passage of the resolution satisfies any requirement of the Corporations Act that the resolution be passed at a general meeting.

60.3 Notwithstanding clauses 60.1 and 60.2, if the Company has only one Member and the Member records and signs the Member's decision to a particular effect, the recording and

signing of that decision counts as the passing by the Member of a resolution to that effect and has effect as minutes of the passing of the resolution.

## **PART 8: PROXIES**

### **61. Power to Appoint Proxies**

61.1 A Member who is entitled to attend and cast a vote at a meeting of the Company's Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.

61.2 The appointment may specify the proportion or number of votes that the proxy may exercise.

61.3 Each Member may appoint a proxy. If the Member is entitled to cast two or more votes at the meeting, they may appoint a maximum of two proxies.

### **62. Appointment of Proxies**

62.1 An appointment of a proxy is valid if it is signed by the Member making the appointment.

62.2 No instrument appointing a proxy shall be treated as invalid merely because it does not:

- (a) contain the name or address of the Member;
- (b) contain the name of the Company;
- (c) contain the name or position of the proxy; or
- (d) specify the meetings at which the appointment may be used.

In these cases, the proxy shall be deemed to have been validly given.

62.3 An undated appointment is taken to have been dated on the day it is given to the Company.

62.4 Where the instrument appointing the proxy does not contain the name of a proxy it shall be deemed to be given in favour of the person nominated by the Company as proxy on the proxy form.

62.5 An appointment may specify the way the proxy is to vote on a particular resolution. If it does:

- (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
- (b) if the proxy has two or more appointments that specify different ways to vote on the resolution - the proxy must not vote on a show of hands;
- (c) if the proxy is the chair - the proxy must vote on a poll, and must vote that way; and
- (d) if the proxy is not the chair - the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

62.6 If a proxy is also a Member, this subsection does not affect the way that the person can cast any votes they hold as a Member.



**62.7** An appointment does not have to be witnessed.

**62.8** A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

**63. Form of Proxy**

An instrument appointing a proxy may be in any usual form or any other form that the Directors approve.

**64. Lodgment of Proxy**

**64.1** An instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a copy of that power or authority, is or are deposited, not less than 48 hours (or such lesser period as the Directors may permit) before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and, in the case of a poll, not less than 48 hours (or such lesser period as the Directors may permit) before the time appointed for the taking of the poll, at the registered office of the Company or at such other place within Australia as is specified for that purpose in the notice convening the meeting.

**64.2** A legible facsimile copy of an instrument, power of attorney or other authority may be provided in substitution for the original and a facsimile copy shall be taken to be deposited at that place at the time when the facsimile is received upon the machine.

**64.3** A notice of meeting may specify an electronic mail address for the deposit of the instrument of proxy. An intelligible message appointing a proxy shall be taken to be deposited at that place at that time which the message is received upon the machine specified in the notice of meeting.

**65. Validity of Proxies**

**65.1** A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite:

- (a) the previous death, lunacy or bankruptcy of the Member making the appointment; or
- (b) the revocation of the instrument or of the authority under which the instrument was executed.

if no notice in writing of the death, lunacy, bankruptcy or revocation has been received by the Company by the time and at one of the places at which the instrument appointing the proxy or attorney is required to be deposited, tabled or produced under clause 64.

**65.2** A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite the transfer of the Share in respect of which the instrument was given if the transfer is not registered by the time at which the instrument appointing the proxy or attorney is required to be deposited, tabled or produced under clause 64.

**65.3** The appointment of a proxy or attorney is not revoked by the Member attending and taking part in the general meeting but, if the Member votes on any resolution, the person or persons acting as proxy or attorney for the Member are not entitled to vote, and must not vote, as the Member's proxy or attorney on the resolution.

**PART 9: APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS****66. Number and Appointment of Directors**

- 66.1 (a) Each Member is entitled to appoint two (2) Directors to the Board of the Company.
- (b) The Board will comprise a maximum of four (4) Directors.
- (c) The initial Directors will be:
- (i) William Hara;
  - (ii) Robert Gregory Mills;
  - (iii) Arthur David Owen; and
  - (iv) Andrew Gibson.
- (d) Other Directors may only be appointed with the consent of the Members.

**66.2 Removal of Directors**

Each Member (but only that Member) may remove any Director appointed by it and appoint another Director in place of the Director so removed. The appointor must indemnify the Company in respect of any claim for compensation for loss of office which may be brought against the Company by the Director so removed. If a vacancy arises in the office of any Director, the Member who appointed that person may appoint another person to fill the vacancy.

**67. Share Qualification**

Neither a Director nor an alternate Director is required to hold any Share qualification.

**68. Vacation of Office**

The office of a Director becomes vacant:

- (a) in the circumstances prescribed by the Corporations Act;
- (b) if the Director dies or becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; or
- (c) If the Director resigns by notice in writing to the Company.

**69. Remuneration of Directors**

- 69.1 The Directors are entitled to be paid such remuneration as is determined by the Company in general meeting.
- 69.2 The Directors are entitled to be paid all travelling, accommodation and other expenses properly incurred by them in connection with the affairs of the Company, including attending and returning from general meetings of the Company or meetings of the Directors or of committees of the Directors.
- 69.3 If a Director renders or is called upon to perform extra services or to make any special

exertions in connection with the affairs of the Company, the Directors may arrange for a special remuneration to be paid to that Director, either in addition to or in substitution for that Director's remuneration.

- 69.4 If a Director is also an officer of the Company or of a related body corporate in a capacity other than Director, any remuneration that Director may receive for acting as that officer may be either in addition to or in substitution for that Director's remuneration.
- 69.5 The Member who appoints an alternate Director will be solely responsible for any remuneration agreed between them to be paid to the alternate Director. An alternate Director will be entitled to receive payments by the Company or any related body corporate in any of the circumstances described in clauses 69.3 and 69.4.

---

## **70. Interested Directors**

- 70.1 A Director may hold any other office or place of profit in the Company (other than auditor) in conjunction with his Directorship and may be appointed to that office or place upon such terms as to remuneration, tenure of office and otherwise as the Directors think fit.
- 70.2 A Director of the Company may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.
- 70.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.
- 70.4 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a Director or of the fiduciary obligations arising out of that office.
- 70.5 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a Director or of the fiduciary obligations arising out of that office.
- 70.6 A Director who is in any way interested in any contract or arrangement or proposed contract or arrangement may, subject to the Corporations Act, despite that interest:
- (a) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
  - (b) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement; and
  - (c) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement.
- 70.7 For the purposes of this clause, a Director does not have any direct or indirect material interest in a contract or arrangement or proposed contract or arrangement where the contract or arrangement or the proposed contract or arrangement is:
- (a) with another corporation in which the Director's only interest is as a director or other

officer of that other corporation;

- (b) with another corporation in which the Director holds shares, where the corporation is listed on ASX or on a public stock exchange of another country or the Director holds shares acquired as an employee of the corporation or a related body corporate;
- (c) with another corporation which is the trustee or manager of a unit trust in which the Director holds units where the trust is constituted under an approved deed and is listed on ASX or on a public stock exchange of another country;
- (d) a transfer or allotment of Shares; or
- (e) subject to the approval of a resolution of the Company in general meeting on which Directors or their Associates cast no votes.

**70.8** Nothing in this clause affects the duty of a Director:

- (a) who has a direct or indirect interest in a contract or arrangement or proposed contract or arrangement with the Company to declare the nature of the Director's interest at a meeting of the Directors; or
- (b) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Director's duties or interests as Director, to declare at a meeting of the Directors the fact and the nature, character and extent of the conflict,

but a general notice to the Directors that a Director is an officer or member of a corporation or a member of a firm and is to be regarded as interested in any contract or arrangement with that firm or corporation and stating the nature and extent of the Director's interest in the corporation or firm will be sufficient disclosure under this clause.

**70.9** The provisions of this clause apply to alternate Directors, but an alternate Director does not have a material interest in a contract or arrangement or a proposed contract or arrangement by reason only that the Director for whom he is an alternate has such an interest.

## **71. Alternate Directors**

**71.1** Each of the Members may from time to time appoint a person to be an alternate for the Director they appoint to the Board to sit in that Director's place on the Board for a period determined by the Member and at their discretion may remove the alternate Director.

**71.2** An alternate Director is entitled to notice of and to attend all meetings of Directors and (in the absence of the Director) to vote at such a meeting, to sign resolutions effecting decisions of the Directors (instead of the Director) and to exercise all powers authorities and discretions vested in or exercisable by the Director.

**71.3** Where any alternate Director is also a Director in his/her own right, that Director will have a separate vote on behalf of the Director he/she is representing in addition to his/her own vote.

**71.4** An alternate Director is liable for his own acts or defaults in performing the duties and responsibilities of an alternate Director and is not for any purpose to be taken to be the agent of, or required to act in accordance with the instructions of, the Director for whom the alternate Director acts as alternate.

- 71.5 The office of an alternate Director is vacated if the appointment is terminated at any time by the appointing Member even though the period of the appointment of the alternate Director has not expired or if the Director for whom the alternate Director acts as an alternate, ceases to be a Director.
- 71.6 An appointment, or the termination of an appointment, of an alternate Director by the appointing Member must be in writing signed by the appointing Member and does not take effect unless and until the Company has received notice in writing of the appointment or termination.

## **72. Powers and Duties of Directors**

The Directors are responsible for managing the business of the Company and may exercise, to the exclusion of the Company in general meeting, all the powers of the Company which are not required, by the Corporations Act, the Shareholders' Agreement or by this Constitution, to be exercised by the Company in general meeting.

## **73. Wholly Owned Subsidiaries – Directors**

- 73.1 This clause only applies in the case where the Company is a wholly owned subsidiary of a body corporate.
- 73.2 This clause expressly authorises a Director of the Company to be taken to act in the best interests of the Company if:
- (a) the Director acts in good faith in the best interests of the holding company of the Company;
  - (b) the Company is not insolvent at the time the Director acts and does not become insolvent because of the Director's act; and
  - (c) the Director complies with any other requirements prescribed by the Corporations Act.

## **74. Negotiable Instruments**

Directors may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the Company.

## **75. Appointment of Officers, Agents or Attorneys**

- 75.1 The Directors may appoint or employ any person to be an officer, agent or attorney of the Company for such purposes with such powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the Directors), for such period and upon such conditions as they think fit.
- 75.2 Subject to any agreement entered into with the relevant officer, agent or attorney, the Directors may remove or dismiss any officer, agent or attorney of the Company at any time with or without cause.

## **76. Proceedings of Directors**

- 76.1 The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit, subject to the requirements imposed by the

Protocol for Board Governance contained in Annexure C of the Shareholders' Agreement.

- 76.2** The contemporaneous linking together by telephone or other method of audio or audio visual communication of a number of the Directors sufficient to constitute a quorum, constitutes a meeting of the Directors and all the provisions in this Constitution relating to meetings of the Directors apply, so far as they can and with such changes as are necessary, to meetings of the Directors by telephone or audio or audio visual communication and for the avoidance of doubt, a resolution passed by such a meeting shall be deemed to have been passed at a meeting of Directors held on the day on which and at the time at which the meeting was held and at the place where the chairman of the meeting was located during the course of that meeting.
- 76.3** A Director will be taken to leave a meeting by telephone or audio or audio visual communication if the Director's telephone or audio or audio visual communication device is disconnected in such a manner that all Directors participating are, or should be, aware that the Director has ceased to participate in the meeting. Unless the Directors participating in the meeting become aware that communications have been disrupted, it will be conclusively presumed that all Directors known to have been participating in the meeting at its commencement have been present and to have formed part of the quorum at all times during the meeting.
- 76.4** The disruption of communications during a meeting by telephone, audio or audio visual communication will not invalidate proceedings at that meeting.

**77. Convening of Meetings of Directors**

A Director may, whenever the Director thinks fit, and a Secretary shall, on the requisition of a Director, convene a meeting of the Directors. Without limiting the foregoing, the Directors shall meet at least six (6) times each financial year at bi-monthly intervals and otherwise as may be mutually agreed from time to time.

**78. Notice of Meetings of Directors**

- 78.1** Subject to this Constitution, notice of a meeting of Directors must be given to each person who is at the time of giving the notice:
- (a) a Director; or
  - (b) an alternate Director appointed under this Constitution.
- 78.2** A notice of a meeting of Directors:
- (a) must specify the time and place of the meeting;
  - (b) need not state the nature of the business to be transacted at the meeting;
  - (c) must be given at least 5 days (or such shorter period as all the Directors from time to time may agree) before the proposed meeting; and
  - (d) may be given in person or by post, facsimile transmission, telephone or other method of written, audio or audio visual communication.
- 78.3** A Director or alternate Director may waive notice of any meeting of Directors by notifying the Company to that effect in person, by post, facsimile transmission, telephone or other method of written, audio or audio visual communication.

78.4 Failure to give notice of a meeting of Directors to a Director or an alternate Director does not invalidate any act, matter or thing done or resolution passed at the meeting.

## 79. Quorum at Meetings of Directors

79.1 No business may be transacted at a meeting of Directors unless a quorum of Directors is present at the time the meeting proceeds to business.

79.2 A quorum consists of two (2) Directors (or their alternates) and must include at least one (1) Director appointed by each Member present at the meeting of Directors.

79.3 If within half an hour after the time appointed for the holding of a meeting of the Board, a quorum is not present, the meeting shall be adjourned to the same time and place 14 days later. ~~Each Director shall be notified immediately by facsimile message of such adjournment.~~ If at the adjourned meeting a quorum is not present within half an hour of its commencement, any two (2) Directors present shall constitute a quorum for purposes of the transaction of the business of that meeting.

## 80. Chairman of the Board

### 80.1 Appointment of Chairman

The chairmanship of the Board shall rotate on an annual basis. A Director shall be appointed as the Chairman of the Board for a period of one year. The first Chairman will be Andrew Gibson, appointed by P&O Wharf Management Pty Limited. Thereafter, each Member (commencing with Plizen Pty Limited) shall appoint the Chairman on an annual basis.

80.2 The Chairman of the Board must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as chairman at each meeting of Directors.

80.3 If at a meeting of Directors:

- (a) there is no Chairman of the Board;
- (b) the Chairman of the Board is not present within 10 minutes after the time appointed for the holding of the meeting; or
- (c) the Chairman of the Board is present within that time but is not willing to act as chairman of the meeting,

the Directors present must elect one of themselves to be chairman of the meeting.

## 81. Decisions of Directors

81.1 Questions arising at a meeting of Directors are to be decided by a majority of votes cast by the Directors present and any such decision is for all purposes a determination of the Directors.

81.2 In the case of an equality of votes upon any proposed resolution:

- (a) the chairman of the meeting will not have a second or casting vote; and
- (b) the proposed resolution is to be taken as having been lost.

## **82. Circular Resolutions**

82.1 If a document containing a statement that the signatories to it are in favour of a resolution in the terms set out or otherwise identified in the document has been signed by all the Directors (excluding each Director, if any, who would not be entitled to vote on that resolution at a meeting of the Directors) a resolution in those terms shall be taken to have been passed at a meeting of the Directors held on the day on which and at the time at which the document was last signed by a Director. For the purposes of this clause two or more separate documents containing statements in identical terms, each of which is signed by one or more Directors, shall together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

82.2 For the purpose of clause 82.1:

- (a) two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be taken to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents;
- (b) a reference to all the Directors does not include a reference to an alternate Director whose Appointor has signed the document, but an alternate Director may sign the document in the place of his Appointor; and
- (c) a facsimile message which is received by the Company and is expressed to have been sent by a Director or alternate Director shall be taken to be signed by that Director or alternate Director at the time of receipt of the facsimile message by the Company.

82.3 Where a committee consists of one Director only, a document signed by that Director and recording a determination of that committee shall be treated as valid and effectual as a determination made under clause 83.3 at a meeting of that committee and that document shall constitute, for the purpose of clause 83.3, a minute of that determination.

## **83. Committees of Directors**

83.1 The Directors may delegate any of their powers to a committee or committees consisting of such number of Directors as they think fit.

83.2 A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the Directors.

83.3 The provisions of this Constitution applying to meetings of Directors apply, so far as they can and with such changes as are necessary, to meetings of a committee of Directors.

## **84. Validity of Acts**

84.1 All acts done by any person acting as a Director are, even if it is discovered afterwards that there was a defect in the person's appointment as a Director or that the person was disqualified from being a Director, as valid as if the person had been duly appointed as, and was qualified to be, a Director.

84.2 All acts done by a meeting of Directors or a committee of Directors are, even if it is discovered afterwards that there was a defect in the appointment of a person as a Director or that a person appointed as a Director was disqualified from being a Director, as valid as if the person had been duly appointed as, and was qualified to be, a Director.



**PART 10: EXECUTIVE OFFICERS****85. General Manager**

The Directors may appoint at any time or from time to time a General Manager. The appointment may be either for a fixed term or without fixing a term.

**86. Remuneration of General Manager**

Subject to the remuneration provisions of this Constitution, a General Manager shall, subject to the terms of any agreement entered into in a particular case, receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the Directors determine.

**87. Secretaries**

87.1 The Directors may appoint a Secretary, and may appoint additional secretaries.

87.2 The Secretary must record in the minutes of a Director's Meeting any declaration of interest by a Director.

**88. Provisions Applicable to all Executive Officers**

88.1 A reference in this clause to an executive officer is a reference to a General Manager or Secretary appointed under this Part.

88.2 The appointment of an executive officer may be for such period at such remuneration and upon such conditions as the Directors think fit.

88.3 Subject to the terms of any agreement entered into between the Company and the relevant executive officer, any executive officer of the Company may be removed or dismissed by the Directors at any time, with or without cause.

88.4 The Directors may:

- (a) confer on an executive officer such powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the Directors) as they think fit;
- (b) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
- (c) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on the executive officer.

88.5 An executive officer is not required to hold any Shares to qualify for appointment.

88.6 All acts done by any person acting as an executive officer are, even if it is discovered afterwards that there was a defect in the person's appointment as an executive officer or that the person was disqualified from being an executive officer, as valid as if the person had been duly appointed as, and was qualified to be, an executive officer.

**PART 11: SEAL****89. Safe Custody of Seal**

The Directors must provide for obtaining and safe custody of the Seal, if any.

**90. Execution of Documents Without Seal**

The Company may execute a document without using a common Seal if the document is signed by:

- (a) 2 Directors;
- (b) a Director and a Secretary; or
- (c) a sole Director who is also the sole Secretary.

**91. Use of Common Seal**

91.1 The common Seal must be used only by the authority of the Directors or of a committee of the Directors authorised by the Directors to authorise the use of the common Seal.

91.2 The authority to use the common Seal may be given before or after the Seal is used.

91.3 Every document to which the common 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 in which that document is included, or by a sole Director where the Company has only one Director who is also the sole Secretary.

**92. Official Seal**

92.1 The Company may have for use in place of its common Seal outside the jurisdiction where its common Seal is kept one or more official Seals, each of which must be a facsimile of the common Seal of the Company with the addition on its face of the name of the place where it is to be used.

92.2 A document sealed with an official Seal is to be taken as having been sealed with the common Seal of the Company.

**93. Sealing by Official Seal**

93.1 Any official Seal must be used only in the manner prescribed by this clause in relation to the common Seal or in accordance with any regulations which the Directors may from time to time by resolution prescribe and those regulations may:

- (a) specify the person or persons who may affix and attest the affixing of the Seal; and
- (b) provide that any impression of any Seal or the signature(s) attesting the affixing of it may be a facsimile impression or signature which is printed by some mechanical means.

- 93.2 A certificate signed by any Director or by a Secretary which sets out the terms of any regulation prescribed by the Directors under this clause will be, as against the Company, conclusive evidence of that regulation.
- 93.3 Any official Seal will be deemed duly affixed if it is affixed and attested by any of the manners referred to in this clause.

## **PART 12: DISTRIBUTION OF PROFITS**

### **94. Dividends**

- 94.1 Subject to the Corporations Act and to any rights or restrictions attached to any Shares or class of Shares:
- (a) the Directors may:
- (i) recommend such final dividends as, in their judgment, the financial position of the Company justifies;
  - (ii) declare a final dividend which, in their judgment, the financial position of the Company justifies; and
  - (iii) pay such interim dividends as, in their judgment, the financial position of the Company justifies;
- (b) all dividends must be declared and paid in the proportion to which the amounts paid on the Shares (not credited) are a proportion of the total amounts paid and payable (excluding amounts credited) during the period in respect of which the dividend is paid except in the case of contributing Shares where it is a term of the issue of such Shares that each such Share shall be entitled to participate in dividends on the same basis as fully paid Shares and such contributing Shares were issued to Members on a pro rata basis;
- (c) for the purposes of this clause, an amount credited as paid on a Share in advance of a Call is to be taken as not having been credited as paid on the Share; and
- (d) interest is not payable by the Company in respect of any dividend.
- 94.2 A transfer of Shares does not pass the right to any dividend declared on the Shares unless the transfer is registered or left with the Company for registration on or before the day fixed by the Directors as the closing date in respect of that dividend.
- 94.3 Any dividend declared by the Company in general meeting under this clause may, if the resolution of the Directors or the Company by which the dividend is, respectively, recommended and declared so directs, and any interim dividend authorised by the Directors may, if the Directors so direct:
- (a) be paid wholly or partly by the distribution of specific assets, including paid-up Shares or other securities of the Company or of another body corporate; and
  - (b) be paid to particular Members wholly or partly out of any particular fund or reserve or out of profits derived from any particular source and to the remaining Members wholly or partly out of any other particular fund or reserve or out of profits derived from any other particular source or generally.

- 94.4 The Directors may deduct from any dividend payable to a Member in respect of Shares, all sums of money (if any) presently payable by the Member to the Company in relation to those Shares, whether on account of Calls or otherwise.
- 94.5 Where a person is entitled to be registered as the holder of, or to transfer, Shares, the Directors may, but are not obliged to, retain any dividends payable in respect of those Shares until that person becomes registered as the holder of those Shares or transfers them.
- 94.6 Without prejudice to any other method of payment the Directors may adopt, any dividend, interest or other money payable in cash in respect of Shares may be paid by cheque sent by post directed to:
- (a) the address of the holder as shown in the Register, or in the case of joint holders, to the address shown in the Register as the address of the joint holder first named in that Register; or
  - (b) such other address as the holder or joint holders in writing directs or direct.
- 94.7 A cheque sent under clause 94.6 may be made payable to bearer or to the order of the Member to whom it is sent or such person as the Member may direct.

#### 95. Capitalisation of Profits

- 95.1 Subject to any rights or restrictions attached to any Shares or class of Shares, the Directors, or if the resolution has been recommended by Directors, the Company in general meeting, may resolve to capitalise and distribute such sums among such of the Members as would be entitled to receive dividends in accordance with clause 95.2.
- 95.2 A sum may be applied:
- (a) for the benefit of Members under this clause:
    - (i) in paying up in full any Shares in or other securities of the Company;
    - (ii) in paying up any amounts unpaid on Shares held by the Members;
    - (iii) partly as specified in paragraphs (i) and (ii) above, or
    - (iv) by issuing Shares to Members,

and such an application must be accepted by the Members entitled to Share in the distribution in full satisfaction of their interests in the capitalised amount; or
  - (b) for any other purpose approved by the Company in a general meeting.
- 95.3 Clause 94 applies, so far as it can and with such changes as are necessary, to a capitalisation of an amount under this clause as if references in clause 94 to a dividend and to the date a dividend is declared was a reference to a capitalisation of an amount and to the date the Directors or the Company in general meeting resolve to capitalise the amount under this clause respectively.

**96. Ancillary Powers**

For the purposes of giving effect to any resolution for the satisfaction of a dividend by the distribution of specific assets or the capitalisation of any amount, the Directors may:

- (a) fix the value for distribution of any specific assets;
- (b) pay cash or issue debentures to any Members in order to adjust the rights of all parties;
- (c) vest any such specific assets or cash or debentures in trustees upon such trusts for the persons entitled to the dividend or capitalised amount as may seem expedient to the Directors; and
- d) ~~authorise any person to make, on behalf of all the Members entitled to any further Shares or other securities as a result of the distribution or capitalisation, an agreement with the Company or another body corporate providing, as appropriate:~~
  - (i) for the issue to them of such further Shares or other securities; or
  - (ii) for the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing Shares by the application of their respective proportions of the sum resolved to be capitalised.

**97. Reserves**

97.1 The Directors may set aside out of the profits of the Company such reserves or provisions for such purposes as they think fit.

97.2 The Directors may appropriate to the profits of the Company any amount previously set aside as a reserve or provision.

97.3 The setting aside of any amount as a reserve or provision does not require the Directors to keep the amount separate from the other assets of the Company or prevent the amount being used in the business of the Company.

**98. Carry Forward of Profits**

The Directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends or capitalised without transferring those profits to a reserve or provision.

**PART 13: WINDING UP****99. Deficiency**

If the Company is wound up and the assets of the Company are not sufficient to meet the claims of the creditors and other liabilities of the Company in the winding up, the deficiency (or that part of it for which a Member may be liable at all) shall be borne by the holders of Shares in proportion to the capital paid up or which ought to have been paid up at the commencement of the winding up on the Shares held by them respectively.