

Constitution of Mining and Automotive
Skills Alliance Limited
ACN 653 919 227

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CONSTITUTION FOR MINING AND AUTOMOTIVE SKILLS ALLIANCE LIMITED ACN 653 919 227

1. PRELIMINARY

1.1 Company limited by guarantee

The Company is limited by guarantee and the liability of members is limited as provided at rule 3.4 of this Constitution.

1.2 Application of the Corporations Act and replaceable rules

To the extent permitted by law, the replaceable rules referred to in section 141 of the Corporations Act do not apply to the Company and are replaced by the rules set out in this Constitution.

1.3 Definitions

The following definitions apply in this Constitution:

Annual General Meeting means the annual general meeting of the Company, held as required by section 250N of the Corporations Act.

Applicable Not-for-Profit Laws means any law relating to the regulation of not for profit entities applicable to the Company, including the Tax Act, section 150 of the Corporations Act and any rulings or requirements of any commissioner or body under any such law, having application to the Company.

Associate Member means a Member in the membership category set out in rule 3.1(c).

Australian Resources Sectors Peak Bodies means any membership-based organisation which is representative of a particular sub-sector or interest group within these sectors.

Australian Resources Sectors Stakeholders means any stakeholders who have an interest in the VET qualifications process for the Australian resources sectors, including Australian Resources Sectors Peak Bodies, employers, unions, students and Commonwealth, State and Territory governments.

Board means the Directors acting collectively under this Constitution.

Business Day means any day that is not a Saturday, Sunday or a national public holiday, where a 'national public holiday' is a public service holiday throughout Australia promulgated in the Australian Government Gazette.

By-Laws means any rules or procedures made by the Board for the purpose of giving effect to this Constitution.

Chair means the chair of a meeting, being either a meeting of the Board or the Members as the context provides.

Chief Executive Officer means the chief executive officer of the Company appointed under rule 7.1.

Company means the company, being the Mining and Automotive Skills Alliance Limited, whatever its name is for the time being.

Competition and Consumer Act means the *Competition and Consumer Act 2010* (Cth).

Constitution means this constitution for the Company.

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

Director means a person who is, for the time being, a director of the Company.

Employee Ordinary Member means a Member in the membership category set out in rule 3.1(a).

Employer Ordinary Member means a Member in the membership category set out in rule 3.1(b).

Government Agency means a:

- (a) government or government department or other body;
- (b) governmental, semi-governmental or judicial person; or
- (c) person (whether autonomous or not) who is charged with the administration of the law.

Independent Director means a:

- (a) person who is free of any interest, position or relationship that could significantly influence, or be perceived as significantly influencing, their ability to:
 - (i) exercise independent judgement on issues before the Board; and
 - (ii) act in the best interests of the Company as a whole rather than the interests of individuals or a limited group of members or stakeholders; and
- (b) person other than someone who is
 - in an executive position or are employed within or contracted by the Company.

Independent Director Nominee means a person who has been nominated by either an Employee Ordinary Member or Employer Ordinary Member in accordance with rule 4.4(a) who meets the eligibility criteria of an Independent Director.

Initial Members means the initial Members named in the application for the Company's registration.

Liability has the meaning provided at rule 11.1(b).

Member means a member of the Company whose name is entered in the Register.

Nominee means a person who has been nominated by either an Employee Ordinary Member or Employer Ordinary Member in accordance with rule 4.4(a) to fill a Director vacancy on the Board.

Ordinary Member means both Employee Ordinary Members and Employer Ordinary Members but does not include an Associate Member.

Ordinary Membership category means one of the categories of Ordinary Members being either Employee Ordinary Members or Employer Ordinary Members.

Ordinary Member Director Vacancy means a vacancy on the Board that is not an Ordinary Member Independent Director Vacancy, to be filled by a Nominee as appointed by the respective Ordinary Membership category in accordance with rules 4.3 and 4.4.

Ordinary Member Independent Director Vacancy means, a vacancy on the Board that must be filled by an Independent Director as appointed by the respective Ordinary Membership category in accordance with rules 4.3 and 4.4.

Ordinary Resolution means a resolution passed at a meeting of Members by a majority of the votes cast by the Members entitled to vote on the resolution.

Register means the register of Members kept as required by sections 168 and 169 of the Corporations Act.

Representative means a person appointed by a Member to act as its representative under rule 3.7(a) or under section 250D of the Corporations Act.

Secretary means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this Constitution.

Special Resolution has the meaning given by section 9 of the Corporations Act.

Tax Act means the *Income Tax Assessment Act 1997* (Cth) as modified or amended from time to time and includes any regulations made under that Act and any rulings or requirements of the Commissioner of Taxation of the Commonwealth of Australia having application to the Company.

VET means vocational education and training.

1.4 **Working Group means any group formed by the Board for the purpose of addressing a particular problem or issue.** Interpretation

The following rules apply in interpreting this Constitution, except where the context makes it clear that a rule is not intended to apply:

- (a) headings and marginal notes are for convenience only and do not affect interpretation;
- (b) a reference to:
 - (i) any legislation is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (iv) anything (including a right, obligation or concept) includes each part of it;
- (c) a singular word includes the plural, and vice versa;

- (d) a word that suggests one gender includes the other genders;
- (e) the word **includes** in any form is not a word of limitation;
- (f) if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning. The meaning of general words is not limited by specific examples;
- (g) the word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing;
- (h) a power to do something includes a power, exercisable in the like circumstances, to revoke or undo it;
- (i) a reference to a power is also a reference to authority or discretion;
- (j) a reference to "\$" means the Australian dollar;
- (k) a reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form; and
- (l) a word (other than a word defined in rule 1.3) which is defined by the Corporations Act has the same meaning in this Constitution where it relates to the same matters as the matters for which it is defined in the Corporations Act.

2. **OBJECTS AND POWERS**

2.1 **Objects of the Company**

- (a) The object of the Company is ensuring that Australia's resources sectors will be equipped with a diverse, skilled and adaptable workforce that meets their needs both now and into the future.
- (b) The Company will achieve its objects in the manner determined by the Board from time to time, which may include:
 - (i) collaborating and facilitating relationships with current and future stakeholders within Australia's resources sectors responsible for different elements of the national training system;
 - (ii) rapidly testing and delivering new pilot approaches to VET in Australia's resources sectors, which contribute improved approaches to identifying and meeting the training and skills needs of these sectors;
 - (iii) identifying skills needs in the Australian resources sectors and providing input into, and undertaking, qualifications development and training package development relating to those skills; and
 - (iv) otherwise supporting VET reform as it relates to skills and training in resources sectors.
- (c) For the purposes of this rule 2.1 the Board may issue guidance as to what constitutes Australia's resources sectors.
- (d) The Company may do all things that are necessary, convenient or incidental to carrying out, or for the attainment of, its objects.

2.2 **Limitation of powers**

The objects in rule 2.1 do not limit the powers of the Company under the Corporations Act or otherwise.

2.3 **Application of income and property**

- (a) Subject to rules 2.4 and 10.1, the Company must only apply its income and assets solely towards promoting the objects of the Company as set out in rule 2.1 and the Company will not be carried on for the profit or gain of the Members, neither while it is operating nor on a winding up.
- (b) Subject to rule 2.4, no part of the Company's income or assets (whether in money, property or other benefits) may be paid, distributed or transferred directly or indirectly by way of dividend, bonus or otherwise to Members.

2.4 **Certain payments allowed**

Rule 2.3 does not prevent the Company from paying to a Member, provided these payments are made in good faith:

- (a) reasonable remuneration to any officer or employee of the Company, or to any Member or other person, in return for services rendered to the Company;
- (b) interest on money lent by the Member to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
- (c) reimbursement for reasonable expenses incurred on behalf of the Company;
- (d) reasonable remuneration for goods supplied by the Member in the ordinary course of business or reasonable rent for any premises leased by the Member; or
- (e) such other payments, distributions or transfers as may be permitted by the Applicable Not-for-Profit Laws.

2.5 **By-Laws**

- (a) The Board may pass a resolution to make any By-Laws considered necessary or convenient.
- (b) Subject to rule 2.5(c), Members and Directors must comply with By-Laws as if they were part of this Constitution.
- (c) If there is any inconsistency between the Constitution and any By-Laws created, the terms of the Constitution will prevail to the extent of the inconsistency.

3. **MEMBERSHIP**

3.1 **Categories of membership**

The Company shall have three categories of membership. These categories of membership, and the eligibility criteria to be considered by the Board to be admitted to the category of membership pursuant to rule 3.3, are:

- (a) **Employee Ordinary Members**

Employee Ordinary Members who must:

- (i) be bodies corporate (large, medium and small) that represent employees such as unions or employee associations (excluding training organisations);
- (ii) have industry specific expertise; and
- (iii) have a deep connection to the mining and/or automotive industry.

(b) **Employer Ordinary Members**

Employer Ordinary Members who must:

- (i) be bodies corporate that employ people in the automotive and/or mining sectors (excluding training organisations) or are representative of such employers such as peak bodies and industry associations;
- (ii) have industry specific expertise; and
- (iii) have a deep connection to the mining and/or automotive industry.

(c) **Associate Members**

Associate Members who must:

- (i) not be eligible to be Employee Ordinary Members under rule 3.1(a);
- (ii) not be eligible to be Employer Ordinary Members under rule 3.1(b); and
- (iii) be engaged with, or have an interest in the automotive and/or mining sector in a business capacity.

- (d) The Board may determine any additional eligibility criteria which are to apply to the admission to each membership category and the rights attached to each membership category.

3.2 **Membership**

- (a) Subject to rules 3.5 and 3.6 the Members are:

- (i) the Initial Members; and
- (ii) persons admitted to membership as Ordinary Members and Associate Members if resolved by the Board pursuant to rule 3.3.

3.3 **Eligibility and admission of new Members**

- (a) A person may apply to become a Member by writing to the Company stating:

- (i) that they consent to becoming a Member;
- (ii) the category of membership being applied for;
- (iii) how they comply with the eligibility criteria established under rule 3.1 with respect to the particular membership category that they are applying for; and
- (iv) that they agree to comply with the Constitution, including paying the guarantee under rule 3.4(a) if required.

- (b) If the Directors approve an application for membership, the Secretary must as soon as possible:
 - (i) enter the applicant on the Register and specify the category of membership on the Register; and
 - (ii) write to the applicant to tell them that their application was approved, and the date that their membership started (which will be the date the applicant was entered on the Register).
- (c) If the Directors reject an application for membership, the Secretary must write to the applicant as soon as reasonably practicable to tell them that their application has been rejected but does not have to give reasons.
- (d) To be eligible to be a Member the person must comply with the eligibility requirements in rule 3.1.

3.4 **Limited liability of Members**

- (a) If the Company is wound up, each Member undertakes to contribute to the assets of the Company up to an amount not exceeding \$10 for payment of the debts and liabilities of the Company, including the costs of the winding up.
- (b) The undertaking in rule 3.4(a) continues for one year after a person ceases to be a Member.

3.5 **Ceasing to be a Member**

- (a) A Member's membership of the Company will cease:
 - (i) if the Member gives the Board written notice of resignation, from the date of receipt of that notice by the Board;
 - (ii) in the case of a Member who is a natural person, if the Member:
 - (A) dies;
 - (B) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
 - (C) is convicted of an indictable offence;
 - (iii) if a Member is expelled under rule 3.6; or
 - (iv) upon the Member no longer satisfying the eligibility criteria for its respective category of Membership as set out in rule 3.1.

3.6 **Expelling a Member**

- (a) The Board may, by resolution, expel from the Company any Member:
 - (i) who does not comply with this Constitution, the By-Laws or any other rules or regulations of the Company; or
 - (ii) whose conduct in the opinion of the Board is prejudicial to the interests of the Company,and remove that Member's name from the Register.

- (b) At least 21 days before the Board holds a meeting to expel a Member, the Board must give a written notice to the Member which states:
 - (i) the allegations against the Member;
 - (ii) the proposed resolution for the Member's expulsion;
 - (iii) that the Member has an opportunity at the meeting to address the allegations either orally or in writing; and
 - (iv) that, if the Member notifies the Secretary in writing at least 48 hours before the meeting, the Member may elect to have the question of that Member's expulsion dealt with by the Company in general meeting.
- (c) The Company must expel a Member and remove the Member's name from the Register where:
 - (i) a general meeting is held to expel a Member; and
 - (ii) a Special Resolution is passed by those present at the meeting and voting for the Member to be expelled. The vote must be taken by ballot.
- (d) A Member expelled from the Company does not have any claim on the Company, its funds or its property.

3.7 **Representatives of bodies corporate**

- (a) Any Member, or Member's proxy appointed under section 249X(1) of the Corporations Act, that is a corporation may appoint an individual as its representative as provided by the Corporations Act. If a Member corporation does so:
 - (i) its representative may exercise at the relevant general meeting all the powers which the Member corporation could exercise if it were a natural person; and
 - (ii) when its representative is present at a meeting, the Member corporation is considered to be personally present at the meeting.
- (b) The chairperson of a general meeting may permit a person claiming to be a Representative to exercise his or her powers even if he or she has not produced a certificate evidencing his or her appointment, or may allow the Representative to vote on the condition that he or she subsequently establishes to the satisfaction of the chairperson of the general meeting his or her status as a Representative within a period prescribed by the chairperson of the general meeting.
- (c) The appointment of a Representative may set out restrictions on the Representative's powers.

4. **DIRECTORS**

4.1 **Number of Directors**

The Company must have at least three Directors and, until otherwise decided by Ordinary Resolution, not more than nine Directors.

4.2 **Eligibility of Directors**

- (a) A Director need not be a Member.

- (b) A person is not eligible to serve as a Director unless they are capable of demonstrating:
 - (i) industry experience in, or a connection to an Australian resources sector, including the minerals, resources and/or automotive sectors;
 - (ii) experience or expertise in one or more of the following fields: accounting, finance, marketing, law, corporate governance, VET or technology; or
 - (iii) that they meet any other eligibility criteria that the Board determines are necessary to ensure the Board has a broad skillset and provides for a diverse range of backgrounds.
- (c) For the purposes of rule 4.2(b)(i) the Board may issue guidance on what constitutes industry experience in the Australian resources sector.
- (d) Neither the auditor of the Company nor any partner, director or employee of the auditor is eligible to act as a Director.

4.3 **Composition of the Board**

- (a) Subject to rule 4.1, the Board is to comprise of:
 - (i) the Chair, elected in accordance with rule 12.5;
 - (ii) a maximum of 4 Directors appointed by Employee Ordinary Members, including a minimum of two Independent Directors, elected by:
 - (A) Employee Ordinary Members in accordance with rule 4.4; or
 - (B) the remaining Directors to fill a casual vacancy in accordance with rule 4.6; and
 - (iii) a maximum of 4 Directors appointed by Employer Ordinary Members, including a minimum of two Independent Directors, elected by:
 - (A) Employer Ordinary Members in accordance with rule 4.4; or
 - (B) the remaining Directors to fill a casual vacancy in accordance with rule 4.6.
- (b) During periods of casual vacancies, in which clause 4.6 applies the Board may not consist of a majority of Independent Directors and can continue to act despite the majority of Directors not being Independent Directors, or there being less than two Independent Directors in an Ordinary Membership category.

4.4 **Election of Directors**

- (a) Prior to 31 July each year from 2024, or such other date as determined by the Board, Employee Ordinary Members and Employer Ordinary Members may respectively nominate a person(s) who meets the eligibility criteria in rule 4.2 and consents to act as a Director, to be considered as a candidate for Director vacancies in their respective Ordinary Membership category.
- (b) In respect of each Ordinary Membership category:

- (i) if the number of Independent Director Nominee(s) nominated by that Ordinary Membership category under rule 4.4(a) is less than or equal to the number of Ordinary Member Independent Director Vacancies in respect of that Ordinary Membership category, then:
 - (A) those Independent Director Nominees are automatically elected to the Board to fill the corresponding Ordinary Member Independent Director Vacancies with effect from the close of the Annual General Meeting; and
 - (B) any Ordinary Member Independent Director Vacancies remaining will be deemed to be casual vacancies to be filled by the Directors as soon as reasonably practicable after close of the Annual General Meeting in accordance with rule 4.6;
- (ii) if there remains Ordinary Member Director Vacancies to be filled following the election of Independent Directors pursuant to rule 4.4(b)(i) (not including the Ordinary Member Independent Director Vacancies to be filled by the Directors as casual vacancies under clause 4.6) in relation to that Ordinary Membership category and the number of remaining Nominee(s) nominated by that Ordinary Membership category under rule 4.4(a) is:
 - (A) less than or equal to the number of Ordinary Member Director Vacancies in respect of that Ordinary Membership category that remain, then:
 - (aa) those Nominees are automatically elected to the Board to fill the corresponding Ordinary Member Director Vacancies with effect from the close of the Annual General Meeting; and
 - (bb) any Ordinary Member Director Vacancies remaining will be deemed to be casual vacancies to be filled by the Directors as soon as reasonably practicable after close of the Annual General Meeting in accordance with rule 4.6; or
 - (B) more than the number of Ordinary Member Director Vacancies in respect of that Ordinary Membership category that remain, then the Company shall, as soon as practicable, conduct an electronic ballot of the applicable Ordinary Members category in accordance with rule 4.4(c) (excluding rule 4.4(c)(iii)).
- (c) In respect of each Ordinary Membership category:
 - (i) if the number of Independent Director Nominee(s) nominated by that Ordinary Membership category under rule 4.4(a) is more than the number of Ordinary Member Independent Director Vacancies in respect of that Ordinary Membership category, then the Company shall, as soon as practicable, conduct an electronic ballot of the Ordinary Members in that Ordinary Membership category to elect Directors to be appointed to the Board with effect from close of the Annual General Meeting in accordance with rules 4.4(c)(ii) to 4.4(c)(v) below;
 - (ii) the Board may determine the terms of the electronic ballot process to be applied;
 - (iii) the Independent Director Nominee(s) who receive the highest number of votes in the electronic ballot conducted by the Company in accordance with rule 4.4(c)(ii) will be elected to the Board to fill the corresponding Ordinary

Member Independent Director Vacancies with effect from the close of the Annual General Meeting in order of the number of votes received from highest to lowest;

- (iv) if there remains Ordinary Member Director Vacancies to be filled following the election of Independent Directors to fill the Ordinary Member Independent Director Vacancies pursuant to rule 4.4(c)(iii) in relation to that Ordinary Membership category, then the Nominees (irrespective of whether or not the Nominee is an Independent Director Nominee) who receive the highest number of votes in the electronic ballot conducted by the Company in accordance with rule 4.4(c)(ii) will be elected to the Board to fill the corresponding Ordinary Member Director Vacancies with effect from the close of the Annual General Meeting in order of the number of votes received from highest to lowest; and
 - (v) in the event of a tie in the number of votes received by two or more Nominees who received the highest number of votes in the electronic ballot conducted by the Company in accordance with rule 4.4(c)(ii), the successful Nominee will be determined by lot.
- (d) Notwithstanding rule 4.4 from the end of the 2023 Annual General Meeting the two initial Directors named in the application for the Company's registration who are Directors as at 24 October 2023 other than the Chair, shall fill two of the Employer Ordinary Member Director positions on the Board until the end of the Annual General Meeting in 2025.
- (e) Any Director appointments made pursuant to rules 4.5(a) to 4.5(d) of the immediately previous version of this Constitution prior to the 2023 Annual General Meeting do not take effect until the end of the 2023 Annual General Meeting.

4.5 **Term of elected Directors**

- (a) Subject to rule 4.6(c), an elected Director's term of office:
 - (i) starts at the end of the Annual General Meeting, following their election or at which they were elected; and
 - (ii) ceases at the end of the third Annual General Meeting after the Director was first elected, at which time they must retire. A Director who is required to retire under rule 4.5(a) may seek re-election for a further term.
- (b) A Director must retire from office at the end of the sixth consecutive Annual General Meeting after the Director was first elected, and is prohibited from seeking further re-election.
- (c) A Director who is required to retire and barred from re-election under rule 4.5(b) is not prohibited from seeking re-election at future Annual General Meetings.

4.6 **Appointment of Directors to fill a casual vacancy**

- (a) Subject to rules 4.2, 4.6(b) and 4.6(c), if a casual vacancy arises in respect of a Director (including if a Director ceases to be a Director during their term or the number of Nominee(s) is less than the number of Ordinary Member Director Vacancies or Ordinary Member Independent Director Vacancies on the Board) the position may be filled by the Board.
- (b) The Board must not appoint a person as a Director unless and until it has obtained a consent to act as a Director signed by the relevant person.

- (c) If a casual vacancy arises in respect of a Director who was an Independent Director, any individual appointed to fill this casual vacancy must also be an Independent Director.
- (d) Any Director appointed under rule 4.6(a) automatically retires at the end of the next Annual General Meeting after their appointment but may be reappointed to the Board in accordance with rule 4.6(a).

4.7 **Cessation of Director's appointment**

A person automatically ceases to be a Director if the person:

- (a) is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a director of a company;
- (b) becomes disqualified from managing companies under Part 2D.6 of the Corporations Act and is not given permission or leave to manage the Company under either sections 206GAB or 206G of the Corporations Act;
- (c) is deceased, or becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to personally attend three consecutive Board meetings (not including meetings of a committee of the Board) without leave of absence from the Board;
- (e) resigns by notice in writing to the Company;
- (f) is removed from office under rule 4.8; or
- (g) ceases to be eligible as a Director under rule 4.2.

4.8 **Removal from office**

Whether or not a Director's appointment was expressed to be for a specified period, the Company may by Ordinary Resolution, and subject to section 203D of the Corporations Act, remove a Director from office.

4.9 **Too few Directors**

- (a) If the number of Directors is reduced below the minimum required by rule 4.1, the continuing Directors may act as the Board only:
 - (i) to appoint Directors up to that minimum number;
 - (ii) to convene a meeting of the Members; and
 - (iii) in emergencies.

5. **POWERS OF THE BOARD**

5.1 **Powers generally**

Except as otherwise required by the Corporations Act, any other applicable law or this Constitution, the Board:

- (a) has power to manage the business of the Company;

- (b) may engage and determine the remuneration and entitlements of the employees of the Company; and
- (c) may exercise every right, power or capacity of the Company to the exclusion of the Company in general meeting and the Members.

5.2 **Exercise of powers**

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 12; or
- (b) in accordance with a delegation of the power under rules 7 or 8.

6. **EXECUTING NEGOTIABLE INSTRUMENTS**

6.1 **Requirements for execution of negotiable instruments**

Negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company by being signed by two Directors, or a Director and Secretary, or in such other manner (including the use of facsimile signatures if thought appropriate) as the Board may decide.

7. **CHIEF EXECUTIVE OFFICER**

7.1 **Appointment of Chief Executive Officer**

- (a) The Board may:
 - (i) appoint a person to be the Chief Executive Officer, either for a specified term (but not for life) or without specifying a term; and
 - (ii) determine the remuneration and entitlements for the Chief Executive Officer.
- (b) The Chief Executive Officer is not to be a Director.

7.2 **Delegation to the Chief Executive Officer**

- (a) The Board may delegate any of the powers and functions of the Board (other than those powers and functions required by law to be dealt with by the Directors as a Board) to the Chief Executive Officer:
 - (i) on the terms and subject to any restrictions the Board decides; and
 - (ii) so as to be concurrent with, or to the exclusion of, the powers of the Board, and may revoke the delegation at any time.
- (b) This rule 7.2 does not limit rule 8.

7.3 **Termination of appointment of Chief Executive Officer**

Subject to any agreement between the Company and the Chief Executive Officer, the Board may at any time remove or dismiss the Chief Executive Officer from employment of the Company, whether or not the appointment was expressed to be for a specified term.

8. **DELEGATION OF BOARD POWERS AND FUNCTIONS**

8.1 **Power to delegate**

The Board may delegate any of its powers and functions (other than those powers and functions required by law to be dealt with by the Directors as a Board) as permitted by section 198D of the Corporations Act.

8.2 **Power to revoke delegation**

The Board may revoke a delegation previously made, whether or not the delegation is expressed to be for a specified period.

8.3 **Terms of delegation**

- (a) A delegation of powers under rule 8.1 may be made:
 - (i) for a specified period or without specifying a period; and
 - (ii) on the terms (including power to further delegate) and subject to any restrictions the Board decides.
- (b) A document of delegation may contain any provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

8.4 **Committees and Working Groups**

- (a) The Board may establish any committee (which may be constituted as a Working Group) it thinks fit and may develop terms of reference to govern each committee's operations.
- (b) The Board may determine any fees, remuneration and entitlements that are to be paid by the Company to the members of any committee formed in accordance with rule 8.4(a), in connection with the performance of their role as a member of the committee.
- (c) The Board may delegate any of its powers and functions, other than powers and functions required by law to be dealt with by the Directors as a Board, to a committee and may authorise the committee to further delegate any or all of the powers and functions delegated to it.
- (d) If the Board delegates any of its powers and functions to a committee under rule 8.4(c):
 - (i) the Board may impose any restrictions or duties on the exercise of those delegated powers and functions; and
 - (ii) the relevant committee (and any further delegate of the committee) must comply with any restrictions or duties imposed in accordance with rule 8.4(d)(i).
- (e) Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this Constitution which regulate the meetings and proceedings of the Board.
- (f) Subject to the terms by which a committee is established, a member of a committee is not required to be a Member or Director of the Company.

- (g) Without limitation, the Board may permit representatives from within the Australian Resources Sector Stakeholders, and/or other individuals with desirable experience, skills or attributes as determined by the Board, to participate in or be members of a committee established by the Board.
- (h) The Board may, at any time and at its discretion, either:
 - (i) amend the terms of reference of; or
 - (ii) otherwise abolish,
any committee previously established.

9. **DIRECTORS' DUTIES AND INTERESTS**

9.1 **Compliance with duties under the Corporations Act and general law**

Each Director must comply with their respective duties under the Corporations Act and under the general law.

9.2 **Director can hold other offices**

A Director may:

- (a) hold any office or place of profit or employment other than that of the Company's auditor or any director or employee of the auditor;
- (b) be a member of any corporation (including the Company) or partnership, other than the Company's auditor;
- (c) be a creditor of any corporation (including the Company) or partnership; or
- (d) enter into any agreement with the Company.

9.3 **Disclosure of interests**

Each Director must comply with the general law in respect of disclosure of conflicts of interest or duty, and with section 191 of the Corporations Act in respect of disclosure of material personal interests.

9.4 **Director interested in a matter**

- (a) Each Director must comply with section 195 of the Corporations Act in relation to being present and voting at a Board meeting that considers a matter in which the Director has a material personal interest.
- (b) Subject to section 195 of the Corporations Act:
 - (i) a Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter in relation to which that Director has a conflict of interest or duty;
 - (ii) the Company may proceed with any transaction in relation to which a Director has an interest or conflict of duty and the Director may participate in the execution of any relevant document by or on behalf of the Company;
 - (iii) the Director may retain any benefits accruing to the Director under the transaction; and

- (iv) the Company cannot avoid the transaction merely because of the existence of the Director's interest or conflict of duty.
- (c) If the interest is required to be disclosed under section 191 of the Corporations Act, rule 9.4(b)(iii) applies only if it is disclosed before the transaction is entered into.

9.5 **Agreements with third parties**

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of a conflict of interest or duty; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement.

9.6 **Obligation of secrecy**

- (a) Every Director and Secretary must keep the transactions and affairs of the Company and the state of its financial reports confidential unless required to disclose them:
 - (i) in the course of their duties as an officer of the Company;
 - (ii) by the Board or the Company in general meeting; or
 - (iii) by law.
- (b) The Company may require a Director, Secretary, auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Company.

10. **DIRECTORS' REMUNERATION**

10.1 **Directors' remuneration**

The Directors may be reasonably remunerated for their services as Directors. The fee payable will be for the amount and in the manner determined by the Board.

10.2 **Payments to Directors with Board approval**

With the approval of the Board, the Company may pay to a Director:

- (a) reasonable expenses (including travel and accommodation) incurred in carrying out duties as a Director;
- (b) reasonable remuneration for any service rendered to the Company by the Director in a professional or technical capacity where the amount payable is approved by the Board and is on reasonable commercial terms;
- (c) reasonable remuneration where the Director is an employee of the Company and the terms of employment have been approved by the Board;
- (d) interest on money lent by the Director to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts; and
- (e) reasonable remuneration for goods supplied by the Director to the Company in the ordinary course of business or reasonable rent for premises leased by the Director to the Company.

11. INDEMNITY AND INSURANCE

11.1 Indemnity

- (a) Subject to and so far as permitted by the Corporations Act, the Competition and Consumer Act and any other applicable law:
- (i) the Company must indemnify every officer of the Company against any Liability incurred as such an officer, unless the Liability arises out of conduct involving a lack of good faith; and
 - (ii) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer in defending an action for a Liability incurred as such an officer or in resisting or responding to actions taken by a Government Agency or a liquidator.
- (b) In this rule 11:
- (i) **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a Government Agency or a liquidator; and
 - (ii) **officer** means:
 - (A) a Director; or
 - (B) a Secretary.

11.2 Insurance

Subject to the Corporations Act and any other applicable law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

11.3 Former officers

The indemnity in favour of officers under rule 11.1 is a continuing indemnity. The indemnity applies in respect of all acts done by a person while an officer of the Company even though the person may not be an officer of the Company at the time the claim is made.

11.4 Director's Access, Indemnity and Insurance Deed

Subject to the Corporations Act, the Competition and Consumer Act and any other applicable law, the Company may, without limiting a person's rights under this rule 11:

- (a) enter into an agreement with; or
- (b) execute a deed in favour of,

a person who is or has been an officer of the Company to give effect to the rights of the person under this rule 11 on any terms and conditions that the Board thinks fit.

12. BOARD MEETINGS

12.1 Convening Board meetings

A Director may at any time, and a Secretary must on request from a Director, convene a Board meeting.

12.2 **Minimum number of Board meetings**

The Board must convene, as a minimum, at least four times per annum.

12.3 **Notice of Board meeting**

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director who is in Australia; and
- (b) may give that notice orally (including by telephone) or in writing,

but accidental failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

12.4 **Use of technology**

- (a) A Board meeting may be held using any means of audio or audio-visual communication through which each Director participating can hear and be heard by each other Director participating, or in any other way permitted by section 248D of the Corporations Act.
- (b) A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of two or more places, at the place where the Chair of the meeting is located.

12.5 **Chairing Board meetings**

- (a) Subject to rule 12.5(e), the Board may elect a person who has been nominated by two Directors and who meets the requirements of an Independent Director in rule 1.3, to chair its meetings, decide the period for which that Director holds that office and remove the Director from that office.
- (b) If the person elected as a Chair under rule 12.5(a) is an existing Director, this will create a casual vacancy on the Board which may be filled pursuant to rule 4.6.
- (c) The Board may elect a Director as deputy chairperson to act as chairperson in the chairperson's absence (or if the chair elected under rule 12.5(a) is unable or unwilling to act as chair for the whole or any part of the meeting), decide the period for which the Director holds that office and remove the Director from that office.
- (d) If there is no Chair of Directors or the Chair is not present within 15 minutes after the time for which a Board meeting is called or is unable or unwilling to act, the Directors present must elect a Director present to chair the meeting.
- (e) The Directors elected in rules 12.5(a) and 12.5(c):
 - (i) must not hold their respective office for a period longer than one year; and
 - (ii) may nominate for re-election in the following year.

12.6 **Quorum of Board meetings**

- (a) Unless the Board decides otherwise, the quorum for a Board meeting is a majority of current Directors, and a quorum must be present for the whole meeting.

- (b) A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending.
- (c) If a meeting is held in another way permitted by section 248D of the Corporations Act, the Board must resolve the basis on which Directors are to be treated as present.

12.7 **Majority decisions of the Board**

- (a) A resolution of the Board is passed if a majority of the votes cast by Directors entitled to vote on the resolution are in favour of it.
- (b) The Chair of a Board meeting does not have a casting vote.
- (c) If an equal number of votes is cast for and against a resolution of the Board, the matter is decided in the negative.

12.8 **Procedural rules**

- (a) The Board may adjourn and, subject to this Constitution, otherwise regulate its meetings as it decides (including through procedures detailed in any By-Laws).
- (b) The procedural rules of the Board may, amongst other things, detail the circumstance in which observers and advisers are permitted to attend and speak at meetings of the Board.

12.9 **Written resolutions of the Board**

- (a) The Directors may pass a resolution without a directors' meeting being held if a majority of the Directors entitled to receive notice of a Board meeting and 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) A resolution made in accordance with rule 12.9(a) is taken to be passed when the last Director signs the resolution.

12.10 **Additional provisions concerning written resolutions**

For the purpose of rule 12.9:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document; and
- (b) a facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

12.11 **Valid proceedings of the Board**

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

12.12 **Observers**

- (a) The Board may, at its discretion, permit observers (such as representatives from Australian Resources Sectors Stakeholders) to attend and speak at meetings of the Board.
- (b) In no circumstance will an observer be counted in constituting a quorum or be permitted to vote on any decision of the Board.
- (c) The Board may revoke its permission granted under rule 12.12(a) at any time.

13. **MEETINGS OF MEMBERS**

13.1 **Annual General Meeting**

The Company must hold an Annual General Meeting in accordance with the requirements of section 250N of the Corporations Act.

13.2 **Calling meetings of Members**

A meeting of Members:

- (a) may be convened at any time by the Board or a Director; and
- (b) must be convened by the Board when required by section 249D or 250N of the Corporations Act or by order made under section 249G of the Corporations Act.

13.3 **Notice of meeting**

- (a) Subject to rule 13.4, at least 21 days' written notice of a meeting of Members must be given individually to:
 - (i) each Member (whether or not the Member is entitled to vote at the meeting);
 - (ii) each Director; and
 - (iii) to the auditor.
- (b) Subject to any regulation made under section 249LA of the Corporations Act, the notice of meeting must comply with section 249L of the Corporations Act and may be given in any manner permitted by section 249J(3) of the Corporations Act.

13.4 **Short notice**

Subject to sections 249H(3) and (4) of the Corporations Act:

- (a) if the Company has elected to convene a meeting of Members as the Annual General Meeting, and if all the Members entitled to attend and vote agree; or
- (b) otherwise, if Members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

13.5 **Postponement or cancellation**

Subject to sections 249D(5) and 250N of the Corporations Act, the Board may:

- (a) postpone a meeting of Members;
- (b) cancel a meeting of Members; or
- (c) change the place for a general meeting,

by written notice given individually to each person entitled to be given notice of the meeting.

13.6 **Fresh notice**

If a meeting of Members is postponed or adjourned for one month or more, the Company must give new notice of the resumed meeting.

13.7 **Technology**

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

13.8 **Accidental omission**

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of Members.

14. **PROCEEDINGS AT MEETINGS OF MEMBERS**

14.1 **Member present at meeting**

If a Member has appointed a proxy, Representative or attorney to act at a meeting of Members, that Member is taken to be present at a meeting at which the proxy, Representative or attorney is present.

14.2 **Quorum of Members meetings**

- (a) The quorum for a meeting of Members is equal to or greater than 25% of current Ordinary Members with at least one Employee Ordinary Member and one Employer Ordinary Member.
- (b) Each individual present at a meeting of Members may only be counted once toward a quorum.
- (c) If a Member has appointed more than one proxy or attorney only one of them may be counted towards a quorum.

14.3 **Quorum not present**

If a quorum is not present within 15 minutes after the time for which a meeting of Members is called:

- (a) if called as a result of a request of Members under section 249D of the Corporations Act, the meeting is dissolved; and

- (b) in any other case:
 - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to Members, or if no decision is notified before then, to the same time on the same day in the next week at the same place;
 - (ii) if a quorum is not present within 15 minutes after the time for which a meeting of Members is adjourned, the meeting is adjourned a second time to the day, time and place that the Board decides and notifies to Members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
 - (iii) if a quorum is not present within 30 minutes after the time for which a meeting of Members is adjourned for a second time, the meeting will proceed regardless of a quorum not being present.

14.4 Chairing meetings of Members

- (a) If the Board has elected a Director to chair Board meetings, that Director may also chair meetings of the Members.
- (b) If the Board has elected a Director to be a deputy chairperson under rule 12.5(c) and the Director elected as chairperson under rule 12.5(a) is unwilling or unable to act as chair for the whole or any part of a meeting of members, the deputy chairperson can act as chairperson of the whole or part of the meeting of Members.
- (c) If:
 - (i) there is no Director who the Board has elected to chair Board meetings for the time being under rules 12.5(a) or 12.5(c); or
 - (ii) a Director elected to chair Board meetings is not present at the time for which a meeting of the Members is called or is unwilling or unable to chair the meeting,

the Members present must elect a Member or Director present to chair the meeting.

14.5 Attendance and participation at general meetings

- (a) Every Member has the right to attend all meetings of Members.
- (b) Every Director has the right to attend and speak at all meetings of Members.
- (c) The auditor has the right to attend any meeting of the Members and to speak on any part of the business of the meeting which concerns the auditor in their capacity as an auditor.

14.6 Adjournment

Subject to rule 13.6, the Chair of a meeting of Members at which a quorum is present:

- (a) may; and
- (b) must, if directed by Ordinary Resolution of the meeting, adjourn it to another time and place.

14.7 **Business at adjourned meetings**

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

14.8 **Written resolution of Members**

If a majority of the Members entitled to receive notice of a meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a resolution in those terms is passed at the time when the last Member signs.

14.9 **Additional provisions concerning written resolutions of Members**

For the purpose of rule 14.8:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Members, are treated as one document;
- (b) signature of a document by the Member who appointed a proxy or attorney is not required if that proxy or attorney has signed the document in that capacity; and
- (c) a facsimile or electronic message containing the text of the document expressed to have been signed by a Member that is sent to the Company is a document signed by that Member at the time of its receipt by the Company.

15. **PROXIES AND ATTORNEYS**

15.1 **Appointment of proxies**

- (a) Each Member may appoint a proxy to attend and act for the Member at a meeting of the Members.
- (b) An appointment of a proxy must be made by written notice to the Company that:
 - (i) complies with section 250A(1) of the Corporations Act; or
 - (ii) is in a form and mode, and is signed or otherwise authenticated by the Member, in a manner satisfactory to the Board.

15.2 **Member's attorney**

- (a) A Member may appoint an attorney to act, or appoint a proxy to act, at a meeting of Members.
- (b) If the appointor is an individual, the power of attorney must be signed in the presence of at least one witness.

15.3 **Deposit of proxy appointment forms, authorities and powers of attorney**

An appointment of a proxy or an attorney is not effective for a particular meeting of the Members unless:

- (a) in the case of a proxy, the proxy appointment form and, if it is executed or otherwise authenticated in a manner prescribed by a regulation made for the purposes of section 250A(1) of the Corporations Act by an attorney, the relevant power of attorney or other authority under which the appointment was authenticated or a certified copy of it; and

(b) in the case of an attorney, the power of attorney or a certified copy of it,

are received by the Company in accordance with section 250B(3) of the Corporations Act at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the resumption of the meeting.

15.4 **Appointment for particular meeting, standing appointment and revocation**

(a) A Member may appoint a proxy, Representative or attorney to act at a particular meeting of Members or make a standing appointment and may revoke any appointment.

(b) A proxy, Representative or attorney may, but need not, be a Member.

15.5 **Position of proxy or attorney if Member present**

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 a resolution, the proxy or attorney is not entitled to vote, and must not vote, as the Member's proxy or attorney on the resolution.

15.6 **Priority of conflicting appointments of attorney**

If more than one attorney appointed by a Member is present at a meeting of Members and the Company has not received notice of revocation of any of the appointments:

(a) an attorney appointed to act at that particular meeting may act to the exclusion of an attorney appointed under a standing appointment; and

(b) subject to rule 15.6(a), an attorney appointed under a more recent appointment may act to the exclusion of an attorney appointed earlier in time.

15.7 **More than one current proxy appointments**

An appointment of proxy by a Member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that Member which would result in there being more than one proxy of that Member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

15.8 **Continuing authority**

An act done at a meeting of Members by a proxy, Representative or attorney is valid even if, before the act is done, the appointing Member:

(a) dies or becomes mentally incapacitated;

(b) becomes bankrupt or an insolvent under administration or is wound up; or

- (c) revokes the appointment or revokes the authority under which the appointment was made by a third party,

unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

16. ENTITLEMENT TO VOTE

16.1 Number of votes

- (a) Subject to sections 250BB(1) and 250BC of the Corporations Act:
 - (i) each Member (other than Associate Members) has one vote on a show of hands or a poll; and
 - (ii) a Member who is present and entitled to vote and is also a proxy or attorney of another Member has one vote on a show of hands;
- (b) Only Ordinary Members have the right to vote at a meeting of Members.
- (c) Associate Members have no right to vote.

16.2 Casting vote of Chair

- (a) The Chair of a meeting of Members does not have a second or casting vote.
- (b) If an equal number of votes is cast for and against a resolution at a meeting of Members, the matter is decided in the negative.

16.3 Voting restrictions

- (a) If:
 - (i) the Corporations Act requires that some Members are not to vote on a resolution, or that votes cast by some Members be disregarded, in order for the resolution to have an intended effect; and
 - (ii) the notice of the meeting at which the resolution is proposed states that fact, those Members have no right to vote on that resolution and the Company must not count any votes purported to be cast by those Members.
- (b) If a proxy purports to vote in a way or in circumstances that contravene section 250BB(1) of the Corporations Act, on a show of hands, the vote is invalid and the Company must not count it and on a poll rule 17.3(c) applies.

16.4 Decision on right to vote

- (a) A Member (other than an Associate Member) or Director may challenge a person's right to vote at a meeting of Members.
- (b) A challenge under rule 16.4(a) may only be made at the meeting of Members.
- (c) A challenge, or any other doubt as to the validity of a vote, must be decided by the Chair, whose decision is final.

17. **HOW VOTING IS CARRIED OUT**

17.1 **Method of voting**

- (a) A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded under rule 17.2 either before or on declaration of the result of the vote on a show of hands.
- (b) Unless a poll is demanded, the Chair's declaration of a decision on a show of hands is final.

17.2 **Demand for a poll**

A poll may be demanded on any resolution (except a resolution concerning the election of the Chair of a meeting) by:

- (a) at least two Members entitled to vote on the resolution; or
- (b) the Chair.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

17.3 **When and how polls must be taken**

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to rule 17.3(c), in the manner that the Chair of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to rule 17.3(c), in the manner that the Chair of the meeting directs;
- (c) votes which sections 250BB(1) or 250BC of the Corporations Act require to be cast in a given way must be treated as cast in that way;
- (d) a person voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and
- (e) the result of the poll is the resolution of the meeting at which the poll was demanded.

18. **SECRETARY**

18.1 **Appointment of Secretary**

The Board:

- (a) must appoint at least one individual who ordinarily resides in Australia; and
- (b) may appoint more than one individual,

to be the Secretary, either for a specified term or without specifying a term.

18.2 **Terms and conditions of office**

- (a) A Secretary holds office on the terms (including as to remuneration and entitlements) that the Board decides.

- (b) The Board may vary any decision previously made by it in respect of a Secretary.

18.3 **Cessation of Secretary's appointment**

The person automatically ceases to be a Secretary if the person:

- (a) is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a secretary of a company;
- (b) becomes disqualified from managing corporations under Part 2D.6 of the Corporations Act and is not given permission or leave to manage the Company under sections 206GAB or 206G of the Corporations Act;
- (c) is deceased, or becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under rule 18.4.

18.4 **Removal from office**

Subject to any agreement between the Company and the Secretary, the Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

19. **MINUTES**

19.1 **Minutes must be kept**

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Members;
- (b) the names of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 8);
- (d) resolutions passed by Directors without a meeting; and
- (e) disclosures and notices of Directors' interests,

to be kept in accordance with sections 191, 192 and 251A of the Corporations Act.

19.2 **Minutes as evidence**

A minute recorded and signed in accordance with section 251A of the Corporations Act is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

19.3 **Inspection of minute books**

The Company must allow Members to inspect, and provide copies of, the minute books for the meetings of Members in accordance with section 251B of the Corporations Act.

20. **COMPANY SEALS**

20.1 **Common seal**

The Board:

- (a) may decide whether or not the Company has a common seal; and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2) of the Corporations Act.

20.2 **Use of seals**

- (a) The common seal and duplicate seal (if any) may only be used with the authority of the Board.
- (b) The Board must not authorise the use of a seal that does not comply with section 123 of the Corporations Act.

20.3 **Fixing seals to documents**

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) by two Directors;
- (b) by one Director and one Secretary; or
- (c) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

21. **FINANCIAL REPORTS, AUDIT AND REGISTERS**

21.1 **Company must keep financial records**

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and, if required by Part 2M.3 of the Corporations Act, audited,

and must allow a Director and, where the financial statements are required by Part 2M.3 of the Corporations Act to be audited or reviewed, the auditor to inspect those records at all reasonable times.

21.2 **Financial reporting**

If required by Part 2M.3 of the Corporations Act, the Board must cause the Company to prepare a:

- (a) financial report; and
- (b) directors' report,

that comply with that part and must report to Members in accordance with section 316A of the Corporations Act.

21.3 **Audit or review**

If required by Part 2M.3 of the Corporations Act, the Board must cause the Company's financial report for each financial year to be audited or reviewed, and obtain an auditor's report.

21.4 **Inspection of financial records and books**

Subject to rule 19.3 and section 247A of the Corporations Act, a Member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by ordinary resolution.

21.5 **Register of Members**

- (a) The Company must establish and maintain the Register.
- (b) In accordance with section 169 of the Corporations Act, the Register must contain the following information:
 - (i) the name and address of each Member;
 - (ii) the date on which the entry of the Member's name in the Register is made;
 - (iii) the name and details of each person who stopped being a Member within the last seven years;
 - (iv) the date on which the person stopped being a Member; and
 - (v) an index of Members' names if the Company has more than 50 Members and the Register itself is not kept in a form that operates effectively as an index.

22. **NOTICES**

22.1 **Notices by Company**

A notice is properly given by the Company to a Member if it is:

- (a) in writing and signed on behalf of the Company (by original or printed signature);
- (b) addressed to the Member to whom it is to be given; and
- (c) either:
 - (i) delivered personally;
 - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that Member's address;
 - (iii) sent by fax to the fax number (if any) nominated by that Member; or
 - (iv) sent by electronic message to the electronic address (if any) nominated by that Member.

22.2 **Overseas Members**

A Member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

22.3 **When notice is given**

- (a) A notice to a Member by the Company is regarded as given and received:
 - (i) if it is delivered personally:
 - (A) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (B) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day;
 - (ii) if it is sent by fax or electronic message or given under section 249J(3)(cb) of the Corporations Act:
 - (A) by 5.00 pm (local time in the place from which it is sent or given) on a Business Day - on that day; or
 - (B) after 5.00 pm (local time in the place from which it is sent or given) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and
 - (iii) if it is sent by mail:
 - (A) within Australia - one Business Day after posting; or
 - (B) to a place outside Australia - three Business Days after posting.
- (b) A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

22.4 **Counting days**

If a specified period must pass after a notice is given before an action may be taken, neither:

- (a) the day on which the notice is given; nor
- (b) the day on which the action is to be taken,

may be counted in determining whether the required period has passed.

22.5 **Notices to "lost" Members**

- (a) If:
 - (i) on two or more consecutive occasions a notice (served on a Member in accordance with this rule 22) is returned unclaimed or with an indication that the Member is not known at the address to which it was sent; or
 - (ii) the Board believes on other reasonable grounds that a Member is not at the address shown in the Register or notified to the Company under rule 22.2,

the Company may give effective notice to that Member by exhibiting the notice at the Company's registered office for at least 48 hours.
- (b) This rule 22.5 ceases to apply if the Member gives the Company notice of a new address.

23. WINDING UP

23.1 No distribution of surplus assets to Members

In the event of the winding up of the Company, any surplus property remaining after satisfaction of all the Company's debts and liabilities must not be paid to, or distributed amongst, the Members.

23.2 Distribution of surplus assets

- (a) Any surplus property remaining after satisfaction of all the Company's debts and liabilities must be paid or transferred to an entity in Australia, the constituent documents of which:
 - (i) require the entity to pursue objects similar to those of the Company and to apply its income solely towards promoting those objects; and
 - (ii) prohibit the entity from making distributions to its members, to at least the same extent of such prohibitions under this Constitution.
- (b) The entity selected for the purposes of rule 23.2(a) is to be determined by the Board or, if no such determination is made, by the liquidator of the Company.

24. AMENDING CONSTITUTION

24.1 Amendment procedure

The Members may amend this Constitution in accordance with section 136(2) of the Corporations Act but only if more than 50% of each of the Employee Ordinary Members and Employer Ordinary Members present and voting at a general meeting are in favour of the amendments.

25. APPLICABLE NOT-FOR-PROFIT LAWS

25.1 Applicable Not-for-Profit Laws

The Company will at all times comply with the Applicable Not-for-Profit Laws.