

Constitution of
APEX MINERALS NL
ACN 098 612 974)
(a no liability company)

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	Signed:	58
	SCHEDULE 5	60
	Dated:	60

CONSTITUTION OF APEX MINERALS NL (ACN 098 612 974)
(A NO LIABILITY COMPANY)

1. PRELIMINARY

1.1 Definitions

In this constitution, unless the context calls for another meaning:

"**Alternate Director**" means a person appointed as an alternate director under rule 17;

"**AGM**" means a general meeting held as required by section 250N;

"**Appointor**" means, in respect of an Alternate Director, the Director who appoints that Alternate Director under rule 17;

"**Associate Director**" means a person appointed as an associate director under rule 21;

"**ASTC Regulated Transfer**" has the meaning given by the ASTC Settlement Rules;

"**ASTC Settlement Rules**" means the settlement rules of the ASX Settlement and Transfer Corporation Pty Ltd (ABN 49 008 504 532) as varied or amended from time to time;

"**Auditor**" means the auditor of the Company from time to time;

"**Board**" means the Directors acting collectively under this constitution;

"**Business Day**" means:

- (a) where the Company is Listed — a day that is a "business day" for the purposes of the Listing Rules; and
- (b) otherwise — a day on which banking corporations in the State or Territory in which the Company's registered office is located are open for general banking business;

"**Certificate Seal**" means the duplicate common seal referred to in rule 23.6;

"**Chairman**" means the person appointed as chairman of the Board under rule 20.5 from time to time;

"**Common Seal**" means the common seal of the Company;

"**Company**" means the company named above, whatever its name may be at the relevant time;

"**Deputy Chairman**" means the person appointed as deputy chairman of the Board under rule 20.5 from time to time;

"Director" means a person appointed as a director for the time being of the Company (including an Alternate Director but not an Associate Director);

"Dividend" means any distribution to Members in relation to Shares as a dividend of any property (including, without limitation, money and paid up shares or other marketable securities of the Company or of any other body corporate) and includes a bonus;

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

"Executive Director" means the Managing Director and any other Director who is an employee of the Company or a related body corporate of the Company;

"Law" means the Corporations Act 2001 as it applies to the Company for the time being;

"Listed": see rule 1.5;

"Listing Rules" means the Official Listing Rules of the Exchange as in force in relation to the Company at the relevant time;

"Managing Director" means the person (if any) appointed as the managing director of the Company under rule 18.4;

"Market Transfer" means an ASTC Regulated Transfer;

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

"Member's Liability" means, in respect of a Member, all money due and payable by the Member to the Company in respect of which the Company has the lien described in rule 7.1;

"Money Called" means, where payment in respect of a call is not made on the day specified for its payment, the amount of money payable in respect of that call plus, subject to rule 5:

- (a) interest on that amount at the Prescribed Rate from that day until the earlier of payment being made or the proceeds of the re-allotment, sale or disposal of the Share under rule 6.1 being received by the Company; and
- (b) all costs and expenses incurred by the Company because payment was not made on that day;

"Ordinary Resolution" means a resolution of a general meeting of Members other than a Special Resolution;

"Prescribed Rate", for a particular period, means:

- (a) the rate prescribed by the Board for the period for the rule in which the expression appears; or

- (b) if no rate is so prescribed — 10% a year;

"Register" means the register of members kept pursuant to the Law (including any computerised or electronic sub-register established and administered under the ASTC Settlement Rules);

"Secretary" means a person appointed as a secretary of the Company from time to time (including any person appointed to perform the duties of a secretary temporarily);

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

"Specified Time" means, in relation to a general meeting, the time determined by the Board (either generally or for a particular meeting) which is permitted by the ASTC Settlement Rules or the Law and is not more than 48 hours before the meeting, or if the Board has not done so for the meeting, the earliest such time which the Board might have determined;

"Unmarketable Parcel" means a number of Shares which is less than that required from time to time to constitute a marketable parcel of the Shares (as defined by the Listing Rules);

"Voting Member" means a Member:

- (a) who is entitled to be present at a general meeting;
- (b) present at the meeting in any of the ways set out in rule 12.1; and
- (c) in respect of whom there is at least one item of business to be considered at the meeting on which the Member is not disqualified from voting; and

"Writing" includes any mode of representing or reproducing words, figures or symbols in visible form.

1.2 Corporations Act definitions and section etc

In this constitution, unless the context calls for another meaning:

- (a) words and expressions not defined in rule 1.1 mean what they mean in a similar context in the Law; and
- (b) a reference to a particular Chapter, Part, Division or section, without more, is a reference to that Chapter, Part, Division or section of the Law.

1.3 General interpretation

In this constitution, unless the context calls for another meaning:

- (a) a reference at a particular time to a particular statute or subordinate legislation, or to particular provisions of a statute or subordinate legislation (a **"written law"**):

- (i) is to the written law as in force at that time; and
 - (ii) if the written law has been replaced by another written law — is to the written law that replaces it; and
 - (iii) is also a reference to subordinate legislation, and the provisions of subordinate legislation, made or issued under or for the purposes of the written law;
- (b) a reference at a particular time to a particular deed, document, rules or arrangement, or to any of its provisions:
 - (i) is a reference to it as in operation at that time; and
 - (ii) if the contract, document, rules or arrangement has been re-made or novated - is also a reference to it as re-made or novated;
- (c) the singular includes the plural and vice versa;
- (d) a reference to an individual is also a reference to any kind of legally recognised body or entity whether incorporated or not, and vice versa;
- (e) a reference to a person is also a reference to the person's legal personal representative;
- (f) a reference to one gender is also a reference to the other genders;
- (g) a reference to a particular rule or schedule is to that rule of, or schedule to, this constitution;
- (h) the schedules are all provisions of this constitution;
- (i) other parts of speech or grammatical forms of an expression defined in or for the purposes of this constitution have corresponding meanings;
- (j) a power to do something includes a power, exercisable in the like circumstances, to revoke or undo it;
- (k) a reference to power is also a reference to authority and discretion;
- (l) a reference in relation to a Share to an amount paid, unpaid or payable is to an amount in respect of both the nominal value of that Share and premium in respect of that Share and a reference to a Share being fully paid is to there being no amount unpaid in respect of that Share;
- (m) a reference to currency is to Australian currency;
- (n) a reference to bankruptcy or winding up is also to:
 - (i) bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration, the appointment of an

administrator and anything else that has a substantially similar effect to any of these under the law of a relevant jurisdiction; and

- (ii) the procedures, circumstances and events that constitute or relate to bankruptcy or winding up as so defined.

1.4 Headings etc

Headings (including those in brackets) and notes in this constitution are not part of this constitution. They are for convenience only and do not affect interpretation.

1.5 Listing

The Company is "**Listed**" while, and only while, it is admitted to an official list of the Exchange.

Schedule 1 applies while, and only while, the Company is Listed.

In this constitution, a reference to the Listing Rules or the ASTC Settlement Rules has effect if, and only if, at the relevant time, the Company is Listed and is otherwise to be disregarded.

1.6 Displacement of Replaceable Rules

The replaceable rules contained in the Law which would otherwise apply to the Company are displaced entirely by the rules set out in this document, which is the constitution of the Company.

1.7 Voting entitlements and the specified time

To determine, for the purposes of a particular general meeting, the persons who are Members and the numbers of Shares held by each Member, the Company must have regard only to the position disclosed by the Register at the Specified Time for the meeting.

1.8 Objects of the Company

The sole objects of the Company are mining purposes.

2. SHARES

2.1 Control of Board

The unissued Shares are under the control of the Board which may, subject to the Listing Rules, on behalf of the Company, allot, issue, grant options over or otherwise dispose of them to the persons, on the terms and conditions, with the rights and privileges, and at the times that the Board determines.

2.2 Preference and redeemable preference Shares

The Company may issue any Shares as preference shares including (without limitation):

- (a) preference shares that are, or at the option of the Company are to be, liable to be redeemed; and
- (b) preference shares including, without limitation preference shares of the kind described in paragraph (a) in accordance with the terms of schedule 2.

Schedule 2 applies.

The rights attached to preference shares are:

- (c) those set out in schedule 2; or
- (d) those approved by special resolution as applicable to those Shares.

2.3 Applications for Shares

Where the Company receives an application for Shares signed, or otherwise given to the Company in accordance with the Company's instructions, by or on behalf of the applicant and the Company allots Shares to the applicant as a consequence, the application is to be treated as:

- (a) an agreement by the applicant to accept those Shares;
- (b) a request by the applicant for the Company to enter the applicant's name in the Register in respect of those Shares; and
- (c) an agreement by the applicant that this constitution bind the applicant.

3. CERTIFICATES

3.1 Certificates of title

The Company must:

- (a) issue certificates of title to marketable securities of the Company; and
- (b) ensure that those certificates are,

in accordance with the Law and the Listing Rules.

3.2 Entitlement of Member to certificate

Except as provided by rules 3.3 and 3.4, a Member is entitled without charge to one certificate for the marketable securities of the Company of each class registered in the Member's sole name or to several certificates each for a reasonable part of those marketable securities.

3.3 Certificate not required

Notwithstanding any other provision of this constitution:

- (a) the Company need not issue a certificate, and may cancel any certificate without issuing a certificate in substitution, in respect of any marketable security of the Company in any circumstances where the Law and, if the Company is Listed, the Listing Rules and the ASTC Settlement Rules, permits the Company not to issue that certificate; and
- (b) where paragraph (a) applies, any reference to a certificate in this constitution is to be disregarded in relation to that marketable security.

3.4 Certificate for joint holders

Where two or more persons hold any marketable securities of the Company, the Company is only required to issue the same number of certificates as if those marketable securities were held by one person and delivery of a certificate so issued to any of those persons is sufficient delivery to all of them.

4. REGISTER

4.1 Joint holders

If two or more persons are the holders of a Share, the person whose name first appears in the Register in respect of that Share is to be treated as the sole owner of the Share in relation to all matters concerning the Company (including the giving of notice) except in relation to the transfer of the Share, right to vote, receipt of Dividends and delivery of certificates.

4.2 Recognition of trusts

Except as required by law or by this constitution, the Company must treat the person whose name appears in the Register in respect of a Share as the absolute owner of that Share and, accordingly, the Company must not recognise (whether or not it has notice):

- (a) that a person holds any Share on trust; or
- (b) any equitable, contingent, future or partial interest in, or unit of, any Share.

4.3 Closure of Register

Subject to the Law, the Listing Rules and the ASTC Settlement Rules, the Board may close the Register and the transfer books at any time and for any period that the Board determines.

5. CALLS ON SHARES

5.1 Calls made by Board

Subject to the Law, the Listing Rules and the terms of issue of a Share, the Board may make calls on a Member in respect of any or all of the amount unpaid on the Share held by that Member unless and to the extent that the terms of issue of the Share make that amount payable at fixed times.

5.2 Terms of call

The Board may do either or both of the following, except where the Listing Rules do not permit that thing to be done:

- (a) make a call payable by instalments; and
- (b) revoke or postpone any call.

5.3 Time of call

Each call is treated as having been made at the time the Board resolves to make the call.

5.4 Notice of call

The notice of a call must not fix a time for payment earlier than 5 Business Days after the date for payment of a previous call made in respect of the Share).

5.5 Unpaid call

The Company has no contractual right to recover calls made on its Shares from a member who fails to pay them.

5.6 No rights where call unpaid

In addition to all other remedies of the Company, if the time for payment of a call has passed and until the call in relation to a Share is paid or the Share in respect of which the call is made is forfeited, the Member, in respect of that Share, has no right to be present at, be counted among the quorum for, or vote, whether in person or by proxy, attorney or representative, at a general meeting of the Company.

5.7 Differences in terms of issue

The Board may, on the issue of Shares, make different arrangements with the holders of those Shares as to the amount, and times for payment of, calls in respect of those Shares.

5.8 Fixed payments

If the terms of issue of a Share provide for any amount (including, without limitation, any instalment) to be payable at a fixed time:

- (a) that amount is payable at that time as if a call had been duly made in respect of it specifying that time as the time for payment of a call for that amount;
- (b) the Member who holds that Share acknowledges that the amount is so payable as a call without the Company giving any further notice to that Member;
- (c) the Company may give a notice drawing that Member's attention to the time at which that payment should be made; and
- (d) all the other provisions of this constitution in respect of calls apply (modified as necessary) on that basis and "call" in this constitution is to be interpreted accordingly.

5.9 Amount of call unpaid

If an amount payable in respect of a call is not paid on or before the time specified for its payment, the amount of the call becomes the amount of the Money Called in respect of that call.

5.10 Waiver of interest or expenses

The Board may waive the payment of all or any part of the Money Called in respect of a call which relates to interest and other costs and expenses.

5.11 Prepayment of calls

The Board may:

- (a) accept from a Member a sum representing all or a part of any amount unpaid in respect of a Share although no part of that amount is then the subject of a call;
- (b) authorise the payment by the Company of interest on any sum so accepted, until that sum becomes payable, at any rate not exceeding the Prescribed Rate agreed between the Board and the Member; and
- (c) except where otherwise agreed between the Member and the Company, repay the sum or any part of it.

6. FORFEITURE OF SHARES

6.1 Sale by the Company

The Board may:

- (a) determine that, at a sale of a forfeited Share under section 254Q (including, without limitation, a Share held by or in trust for the Company under that section), that Share may be credited as paid up to the sum of the amount paid up on the Share at the time of forfeiture, the amount of

the call and the amount of any other calls becoming payable on or before the day of the sale; and

- (b) re-issue, sell or otherwise dispose of a forfeited Share held by the Directors in trust for the Company to the person, at the time, in the manner, on the conditions and for the consideration, that the Board (subject, if the Company is Listed, to the Listing Rules) determines.

6.2 Forfeiture includes undistributed Dividends

Forfeiture of a Share under section 254Q includes all Dividends declared in respect of the forfeited Share but not actually distributed before forfeiture.

6.3 Effect of forfeiture

Subject to the Law, a person who held a Share which has been forfeited under section 245Q ceases to be a Member in respect of the forfeited Share.

6.4 Evidence of forfeiture

As against all persons claiming to be entitled to a Share, a written statement declaring that the person making the statement is a Director or Secretary and that the Share was forfeited under section 254Q on a date specified in the statement is sufficient evidence of the facts set out in the statement and of the right of the Company to dispose of the Share.

6.5 Transfer of forfeited Shares

The Company may execute a transfer in respect of a Share forfeited under section 254Q in favour of a person to whom it is sold, re-allotted or disposed of and receive the consideration provided for that Share and register the transferee as the holder of the Share.

6.6 Title of transferee

On execution of a transfer under rule 6.5, the title of the transferee is not affected by any irregularity or invalidity relating to the forfeiture or the sale, re-allotment or disposal of the Share and the remedy of any person is solely in damages and only against the Company.

6.7 Market Transfer following forfeiture

Where a transfer following sale of any Shares after forfeiture is effected by a Market Transfer, the Company may do all things necessary or desirable for it to do under the ASTC Settlement Rules in relation to that transfer.

7. LIEN

7.1 Lien for Member's debts

The Company has a first and paramount lien on each Share (except where the Company is Listed and the Share is fully paid up) registered in a Member's

name in respect of all money owed to the Company by the Member (including money payable under rule 7.2 to the extent that the Company has made a payment in respect of a liability or a requirement referred to in that rule) but not any Money Called once the Share has been forfeited under section 254Q.

7.2 Lien on payments required to be made by the Company

Where at any time the law of any jurisdiction imposes or purports to impose any immediate, future or possible liability on the Company, or empowers or purports to empower any person to require the Company to make any payment, on account of a Member or referable to a Share held by that Member (whether alone or jointly) or a Dividend declared in respect of a Share held by that Member, the Company:

- (a) is fully indemnified by that Member from that liability;
- (b) may recover as a debt due from the Member the amount of that liability together with interest at the Prescribed Rate from the date of payment by the Company (if the payment is made) to the date of repayment by the Member; and
- (c) if to do so is not contrary to the Law, the Listing Rules or the ASTC Settlement Rules, may refuse to register a transfer of any Share by that Member until the amount of that liability has been paid to the Company,

and nothing in this rule 7.2 in any way prejudices or affects any right or remedy which the Company may have (including, without limitation, any right of set-off) and, as between the Company and the Member, any such right or remedy is enforceable by the Company.

7.3 Extent of lien

The lien described in rule 7.1 extends to all Dividends (if any) payable in respect of the Share and, subject to the Law, to the proceeds of sale of the Share.

7.4 Waiver by Board

The Board may, at any time, exempt a Share from the provisions of rule 7.1 to the extent, and on any terms and conditions, that it determines.

7.5 Sale under lien

Subject to the Law, where:

- (a) the Company has a lien on a Share;
- (b) the sum in respect of which the lien exists is presently payable;
- (c) the Company has given notice to the Member registered in respect of the Share:

- (i) requiring payment of the amount which is presently payable in respect of which the lien exists; and
 - (ii) specifying a date (which is at least 10 Business Days after the date of the notice) by which and a place at which payment of the amount must be made; and
- (d) the requirements of the notice given under paragraph (c) are not fulfilled, the Company may sell the Share as if it had been forfeited under section 254Q and rule 6 applies as if the Member's Liability were the Money Called.

7.6 Protection of lien

The Company may do anything necessary or desirable for it to do under the ASTC Settlement Rules to protect any lien, charge or other right to which it is entitled under any law or under this constitution.

8. ALTERATION OF CAPITAL, SHARES AND RIGHTS

8.1 Alteration of capital

Subject to the Listing Rules, the Company may from time to time by Ordinary Resolution do any or all of the following:

- (a) increase its share capital by the creation of new Shares of such amount as it thinks expedient;
- (b) consolidate and divide all or any of its share capital into Shares of a larger amount than its existing Shares;
- (c) subdivide its Shares or any of them into Shares of smaller amount than is fixed by this constitution but so that, in the subdivision, the proportion between the amount paid and the amount (if any) unpaid on each Share of a smaller amount is the same as it was in the case of the Share from which the Share of a smaller amount is derived; and
- (d) cancel Shares that, at the date of passing the Ordinary Resolution to that effect, have not been taken or agreed to be taken by any person or that have been forfeited and reduce the amount of its share capital by the amount of the Shares so cancelled.

8.2 Additional rights

Where the Company passes an Ordinary Resolution under either rule 8.1(b) or rule 8.1(c), the Company may also by Special Resolution determine that, as between the Shares resulting from the consolidation, division or subdivision, one or more of those Shares has some preference or special advantage as regards Dividends, capital, voting or otherwise over or compared with one or more others.

8.3 Reduction of capital and Share buy-backs

There are no restrictions, other than those imposed by the Law, on:

- (a) reducing the Company's share capital; or
- (b) share buy-backs.

8.4 Variation of rights

If at any time the issued Shares are divided into different classes, the rights attached to any class of Shares (unless the terms of issue of that class otherwise provide) may only be varied or abrogated with either:

- (a) the consent in writing of the holders of 75% of the issued Shares of that class; or
- (b) the sanction of a Special Resolution passed at a separate meeting of the holders of Shares of that class,

and, for the purposes of this rule 8.4, the following provisions apply:

- (c) in relation to any separate meeting of the holders of Shares in a class, the provisions of this constitution which relate to general meetings apply as far as they are capable of application and modified as necessary, except that any holder of Shares of that class present in person or by proxy, attorney or representative may demand a poll; and
- (d) the rights attached to a class of Shares are not to be considered as varied if further Shares of that class are issued on identical terms except if the terms of issue of that class of Shares otherwise provide.

8.5 Adjustments

The Board may do anything which it considers desirable to give effect to any resolution or other action authorising or effecting the alteration of the share capital of the Company or the variation or abrogation of rights attaching to any class of Shares or to adjust the rights of all parties and, in particular, may (without limitation):

- (a) round or disregard any fraction of Shares or any fractional entitlement; and
- (b) determine that as between the holders of Shares or other entitlements one or more of them has a preference or special advantage as regards dividend, capital, voting or otherwise.

9. TRANSFER OF SHARES

9.1 Modes of transfer

Subject to this constitution, a Member may transfer all or any of the Member's Shares:

- (a) by a Market Transfer in accordance with any computerised or electronic system established or recognised by the Listing Rules or the Law for the purpose of facilitating transfers in shares (including a transfer that takes effect pursuant to the ASTC Settlement Rules or some other computerised or electronic transfer process); or
- (b) by instrument in writing which is:
 - (i) a proper instrument of transfer of marketable securities;
 - (ii) in a form approved by the Exchange;
 - (iii) in any other usual or common form; or
 - (iv) in any other form approved by the Board.

9.2 Market Transfer

Where a Member seeks to transfer all or any of the Member's Shares by a Market Transfer, the Company must comply with any obligations which are imposed on it by the Listing Rules or the ASTC Settlement Rules in connection with that transfer of Shares.

9.3 Transfer by instrument

Where a Member seeks to transfer all or any of the Member's Shares in accordance with rule 9.1(b), the Company may only register a transfer of Shares where an instrument satisfying rule 9.1(b) is delivered to the Company (including, for this purpose, a person authorised by the Company to receive instruments such as a share registrar of the Company) and the instrument:

- (a) is duly stamped, if necessary;
- (b) is executed by the transferor and (unless the Board otherwise determines in a particular case relating only to fully paid Shares) the transferee, except where a law provides that execution by either or both transferor and transferee is not required or is deemed to be present;
- (c) except where otherwise permitted by law, is accompanied by the certificate for the Shares the subject of the transfer together with such other evidence as the Board may require to prove the title of the transferor or the transferor's right to transfer the Shares; and
- (d) relates only to Shares of one class.

9.4 Free registration

Except as provided in rules 9.5 and 29.1 or in the terms of issue of a Share the subject of an instrument of transfer, the Board must register each transfer of Shares which complies with rules 9.1(b) and 9.3 and do so without charging a fee.

9.5 Restrictions on transfer

The Board may decline to register a transfer of Shares where to do so would not contravene the Listing Rules or the ASTC Settlement Rules and must do so when required by law, by the Listing Rules or by the ASTC Settlement Rules.

9.6 Notification of refusal to register

If the Company is Listed and the Listing Rules so require, if the Board declines to register a transfer, it must notify the lodging party of the refusal and the reasons for the refusal within five Business Days of the day on which the transfer was delivered to the Company as mentioned in rule 9.3.

9.7 Transferor remains Member

The transferor of a Share remains the Member in respect of that Share until:

- (a) in the case of a Market Transfer, the time the ASTC Settlement Rules provides that the transfer takes effect; and
- (b) otherwise, the transfer is registered and the name of the transferee is entered in the Register in respect of that Share.

9.8 Retention of instruments

On an instrument of transfer or a purported instrument of transfer being delivered to the Company, property to and title in that instrument (but not the Shares the subject of it) pass to the Company which is entitled as against all persons to the possession of the instrument.

9.9 Non-interference with Market Transfers

Notwithstanding any other provision of this constitution, the Board may not prevent, delay or interfere with, the registration of a Market Transfer or a valid transfer under rule 9.3 where to do so would be contrary to any provision of the Listing Rules or the ASTC Settlement Rules.

9.10 Powers of attorney

The Company is entitled to assume, as against a Member, that a power of attorney apparently granted by the Member authorising the attorney to transfer some or all of the Member's Shares and lodged with, or produced or exhibited to, the Company:

- (a) is a valid and effective grant of the power it purports to grant; and

- (b) continues in full force and effect and may be relied on by the Company until the Company receives express written notice at its registered office of:
 - (i) its revocation; or
 - (ii) the Member's death.

9.11 Unmarketable Parcels

If a Member holds an Unmarketable Parcel of Shares, the provisions of schedule 3 apply to those Shares.

9.12 SCH Authorisation

The Board may do anything permitted by the Law, the Listing Rules and the ASTC Settlement Rules it considers necessary or desirable in connection with the participation of the Company in any computerised or electronic system established or recognised by the Law, the Listing Rules or the ASTC Settlement Rules for the purpose of facilitating dealings in shares.

10. TRANSMISSION OF SHARES

10.1 Transmission generally

Except to the extent provided in rule 10.2, if a Member either dies or becomes bankrupt:

- (a) the only person that the Company may recognise as having any title to or interest in a Share held by that Member is the legal personal representative or assignee of the Member's estate in bankruptcy (in either case, the "**representative**");
- (b) if the representative produces the evidence required from time to time by the Board, the representative may elect to be, or to have a person nominated by the representative, registered as the holder of the Share;
- (c) if the representative elects to be registered as the holder of the Share, the representative must give to the Company a notice in writing signed by the representative stating that election;
- (d) if the representative elects to have a person nominated by the representative registered as the holder of the Share, the representative must indicate that election by executing and giving to the Company an instrument of transfer of the Share to that person;
- (e) the provisions of this constitution concerning the right to transfer a Share and the registration of the transfer of the Share apply to a Share the subject of a notice given under rule 10.1(c) and an instrument given under rule 10.1(d) as if the Member had not died or become bankrupt and the notice or instrument were an instrument of transfer complying with rule 9.1 signed by the Member; and

- (f) the representative is entitled to the same Dividends and other advantages and rights as the Member would have been entitled to if the Member had not died or become bankrupt.

10.2 Joint holders' transmission

If a Member who holds a Share jointly with another Member dies:

- (a) the only person that the Company may recognise as having any title to or interest in the Share is the surviving joint holder;
- (b) if the surviving joint holder produces the evidence required from time to time by the Board of the death of the Member, the Board must direct the Register to be altered accordingly; and
- (c) the surviving joint holder is entitled to the same Dividends and other advantages and rights as the deceased Member would have been entitled to if the deceased Member had not died.

10.3 Market Transfers not affected

In the case of a Market Transfer, the provisions of this rule 10 are subject to any obligation imposed on the Company, or the person entitled to the relevant Shares on the death or in the bankruptcy of the Member, by the Listing Rules, the ASTC Settlement Rules or any law.

11. GENERAL MEETINGS

11.1 Convening of general meeting

The Board may convene a general meeting of the Company at any time.

11.2 Notice of general meeting

The Company may give notice of a general meeting to a Member by leaving the notice, addressed to the Member, at the address for the Member in the Register, or at an alternative address the Member has nominated.

11.3 Omission to give notice

The accidental omission to give notice of a general meeting to, or the non-receipt of notice of a general meeting by, a person entitled to receive that notice does not invalidate any resolution passed at that general meeting.

11.4 Cancellation or postponement of meeting

The Board may, by notice to everyone entitled to notice of the meeting:

- (a) postpone an AGM, or a general meeting called by the Board as required by section 249D, but not so as to contravene the Law; and
- (b) postpone or cancel any other general meeting called by the Board.

11.5 Adjournment of meeting

The chairman of a general meeting at which a quorum is present:

- (a) may with the consent of the meeting by Ordinary Resolution; and
- (b) must, if so directed by the meeting by Ordinary Resolution, adjourn the meeting from time to time and from place to place.

11.6 Business at adjourned meeting

The only business which an adjourned general meeting may deal with is business which was left unfinished from the general meeting which was adjourned.

11.7 Notice of adjourned meeting

No notice need be given of an adjourned general meeting (or of the business to be transacted at it) except if a general meeting is adjourned for more than 15 Business Days, in which case, notice of the adjourned meeting must be given as if it were notice of the original meeting.

12. PROCEEDINGS AT GENERAL MEETINGS

12.1 Representation of Members

A Member may attend a general meeting at which the Member is entitled to be present in any of the following ways (if applicable to the Member):

- (a) in person;
- (b) by proxy;
- (c) by attorney; or
- (d) in the case of a Member which is a body corporate, by a representative appointed under section 250D.

12.2 Quorum

A general meeting may not deal with any business unless a quorum of three natural persons, each of whom is, or represents under rules 12.1(b), (c) or (d), a different Voting Member, is present for that business.

12.3 Failure of quorum

If a quorum is not present within 15 minutes of the time notified for a general meeting:

- (a) where the meeting was convened upon a requisition of Members - the meeting is dissolved; and

- (b) in any other case:
 - (i) the meeting stands adjourned to the day, time and place that the Board may determine and notify to the Members or, if no determination is made, the same day in the next week at the same time and place; and
 - (ii) at the adjourned meeting, if a quorum is not present within 15 minutes of the time notified for the meeting, two natural persons each of whom is, or represents under rules 12.1(b), (c) or (d), a different Voting Member, constitute a quorum and if no such quorum then is present the meeting is dissolved.

12.4 Chairman

The Chairman (if any) is or, if the Chairman is absent or unwilling or unable to be the chairman of the general meeting, the Deputy Chairman (if any) is, if willing and able, to be the chairman of any general meeting.

12.5 Chairman absent

Where a general meeting is held and either no person specified in rule 12.4 is present within 15 minutes after the time notified for the meeting or that person is present but is unwilling or unable to be the chairman of the general meeting:

- (a) the Directors present may elect one of their number to be the chairman of the general meeting; and
- (b) if there is no Director present or if no Director present at the meeting is able and willing to be the chairman of the general meeting, the Voting Members present must elect one of their number to be the chairman of the general meeting.

12.6 Chairman disqualified

If the chairman of a general meeting is unwilling or unable to be the chairman for any part of the business of the meeting:

- (a) the chairman may withdraw as chairman for that part of the business and may nominate any person who would be entitled under rule 12.4 or 12.5 to chair the meeting for that part of the business; and
- (b) after that part of the business is completed, the person so nominated must cease to chair the meeting and the chairman resumes as the chairman of the meeting.

12.7 Responsibilities of chairman

The chairman of a general meeting is responsible for the general conduct of the meeting and to ascertain the sense of the meeting concerning the business transacted at it and for these purposes may, without limitation:

- (a) prescribe procedures and make rulings, in each case finally and conclusively;
- (b) in addition to other powers to adjourn, adjourn the meeting or any item of business of the meeting without the concurrence of the meeting if the chairman determines it is desirable for the orderly conduct of the meeting or the conduct of a poll; and
- (c) determine conclusively any dispute concerning the admission, validity or rejection of a vote.

12.8 Method of voting

Every resolution put to a vote at a general meeting (except where there is an election of Directors by ballot) must be determined by a show of hands unless a poll is properly demanded either before or on the declaration of the result of the vote on a show of hands.

12.9 Demand for poll

A demand for a poll may be made by:

- (a) the chairman of the general meeting;
- (b) any three or more natural persons present each of whom is, or represents under rules 12.1(b), (c) or (d), a different Voting Member;
- (c) any number of natural persons present each of whom is, or represents under rules 12.1(b), (c) or (d), a different Voting Member where those Voting Members are together entitled to at least 5% of the total voting rights of all Members having the right to vote at the meeting; or
- (d) any number of natural persons present each of whom is, or represents under rules 12.1(b), (c) or (d), a different Voting Member where those Voting Members hold Shares which confer a right to vote at the meeting and on which an aggregate sum has been paid up equal to at least 5% of the total sum paid up on all Shares conferring that right.

12.10 No poll on election of chairman

A demand for a poll may not be made in respect of the election by the general meeting of the chairman of the meeting.

12.11 Effect and withdrawal of demand for poll

The demand for a poll does not prevent the continuance of a general meeting for the transaction of any business except in respect of the resolution for which the poll is demanded

12.12 Votes on show of hands

Where a resolution is determined by a show of hands:

- (a) a declaration by the chairman of the general meeting that the resolution has been carried, carried unanimously, carried without dissent, carried by a particular majority or lost is conclusive evidence of the fact so declared without proof of the number or proportion of votes cast for or against that resolution; and
- (b) an entry in the book containing the minutes of that general meeting recording that declaration is conclusive evidence of the fact that the declaration was made as so recorded.

12.13 Conduct of poll

If a poll is properly demanded for the voting on a resolution:

- (a) if the resolution is for the adjournment of the general meeting, the poll must be taken immediately at the place and in the manner that the chairman of the meeting determines and declares to the meeting;
- (b) in all other cases, the poll must be taken at the time and place and in the manner that the chairman of the general meeting determines and declares to the meeting;
- (c) the result of the poll, as disclosed by the chairman of the general meeting at which the result is declared, is a resolution of the general meeting at which the poll is demanded; and
- (d) an entry in the book containing the minutes of the general meeting at which the result is declared recording that declaration is conclusive evidence of the fact that the declaration was made as so recorded.

12.14 Resolutions determined by majority

Subject to rule 12.16, both on a show of hands and on a poll, an Ordinary Resolution is passed if more than one half of the total number of votes cast on the resolution are cast in favour of that resolution.

12.15 Casting vote of chairman

If on a resolution proposed as an Ordinary Resolution at a general meeting there is an equality of votes (whether on a show of hands or on a poll), the chairman of the meeting may exercise a casting vote in addition to all other votes which the chairman may have (unless the chairman is not entitled for some other reason to cast a vote on the resolution or if the chairman casts a vote where rule 12.16 requires that no account be taken of the vote, in either of which cases the resolution is not passed).

12.16 Voting restrictions

Where the Company is Listed and either:

- (a) in accordance with the requirements of the Listing Rules; or

- (b) to ensure that a resolution on which the Law requires that particular persons do not cast a vote so that the resolution has a specified effect under the Law,

the notice of a general meeting specifies that, in relation to particular business to be considered at that general meeting, votes cast by particular persons (whether specified by name or by description of particular classes of persons) are to be disregarded by the Company, the Company must take no account, in determining the votes cast on a resolution relating to that business (whether a special resolution or an Ordinary Resolution) or for any other purpose, of any vote cast or purported to be cast by or on behalf of any of those persons (whether on a show of hands or on a poll) in relation to that resolution.

13. ENTITLEMENTS TO ATTEND AND VOTE

13.1 Entitlement to notice and to attend

Subject to this constitution (including, without limitation, rule 5.6) and any terms of issue of any Share, each Member and each Director is entitled to notice of each general meeting and to be present and to speak at that general meeting.

13.2 Entitlement to vote

Subject to the Law, this constitution (including, without limitation, rule 5.6) and any terms of issue of any Share:

- (a) on a show of hands, each natural person present at a general meeting who is a Voting Member or a proxy (other than a person who is present only as one of two proxies appointed by the same Member), representative or attorney appointed by a Voting Member has one vote; and
- (b) on a poll, each natural person present at a general meeting has the number of votes calculated as the aggregate of the following:
- (i) the number of fully paid Shares held by the person;
 - (ii) the number of fully paid Shares in respect of which Voting Members holding those Shares have appointed the person as proxy, representative or attorney;
 - (iii) in respect of the partly paid Shares held by the person, the aggregate of the fractions determined, in respect of each of those Shares, by dividing the total amount paid (not credited) on the Share by the total of the amounts paid and payable (excluding amounts credited) on the Share; and
 - (iv) the aggregate of the fractions determined on the same basis as paragraph (iii) above in respect of each partly paid Share in respect of which the Voting Member holding that Share has appointed the person as proxy, representative or attorney.

13.3 Vote of transmittee

A person entitled to transmission of a Share under rule 10 who, at least 48 hours before the time notified for a general meeting (or an adjourned meeting), satisfies the Board of that person's right to that Share, may vote at that general meeting in respect of that Share as if the person were registered as the holder of the Share.

13.4 Vote of Member of unsound mind

If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under a law relating to mental health, that Member's committee or trustee or other person who properly has the management of the Member's estate may, if that person has at least 48 hours before the time notified for a general meeting (or an adjourned meeting) satisfied the Board of that person's relationship to the Member or the Member's estate, exercise the rights of the Member in respect of the general meeting as if the committee, trustee or other person were the Member.

13.5 Joint holders' votes

Where more than one person (including, for the purposes of this rule 13.5, the several legal personal representatives of a dead Member) holds a Share:

- (a) each of those persons may tender a vote in respect of the Share either in person or by proxy, representative or attorney, as if the person were the sole holder of the Share; but
- (b) if two or more of those persons tender a vote on any resolution, the only vote which is to be counted in respect of that Share is the vote tendered by the most senior of those persons (seniority being conclusively ascertained by the order of names in respect of that Share in the Register).

13.6 Appointment of proxy

The form of appointment of a proxy is the form in schedule 4, or another form acceptable to the Board.

13.7 Effect of incomplete proxy form

An instrument of proxy is not invalid or ineffective merely if any or all of the following applies:

- (a) it does not contain the address of the Member giving it;
- (b) it does not contain the address of the person appointed by it;
- (c) it is not dated; and
- (d) it does not contain a direction to the appointee as to how to vote on any or all items of business.

13.8 Effect of the appointment

An instrument of proxy which is valid and effective except that it does not specify an appointee in respect of any of the Shares of the relevant Member is to be treated as validly appointing the chairman of the general meeting to which it relates in respect of all of the Shares of that Member.

13.9 Attorneys - deposit of instruments

Any appointment of an attorney is effective in respect of a particular general meeting if, and only if, the power of attorney or an office copy or notarially certified copy of the power of attorney is actually received (which includes receipt of a copy of those instruments by legible fax) by the Company at its registered office (or another place notified by the Board) at least 48 hours before the time notified for that meeting.

13.10 Effect of death etc of member

The validity of anything done or omitted to be done by or in relation to a proxy, attorney or representative of a member (including the validity of a vote or a quorum) is not affected by any of the following:

- (a) the death of the member;
- (b) the mental incapacity of the member;
- (c) the revocation or modification of the appointment or the power of attorney;
- (d) the revocation or modification of the authority of the person appointing the proxy, attorney or representative to do so;
- (e) the transfer of a Share in respect of which the proxy, attorney or representative was appointed,

unless the Company has actual notice in writing of the matter before the act or omission.

13.11 Presence of Member

If a Member is present at a general meeting in either of the ways specified in rules 12.12(a) or 12.1(d), and a person appointed by that Member as proxy or attorney is also present at that meeting, that person may not exercise the rights conferred by the instrument of proxy or power of attorney while the Member is present.

13.12 Ruling on entitlements and votes

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

purported voter wishes to vote or the vote objected to is given or tendered and, in relation to that objection:

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

14. DIRECTORS

14.1 Number of Directors

The number of the Directors (excluding Alternate Directors) must be not less than three nor (subject to rule 14.7) more than ten.

14.2 Continuing Directors

The Directors holding office at the date of adoption of this constitution continue in office subject to this constitution.

14.3 Compulsory retirement

At each AGM, the following Directors (other than each Alternate Director and the Managing Director) automatically retire and are eligible for re-appointment (and if not re-appointed, that retirement takes effect at the conclusion of that AGM):

- (a) a Director appointed to fill a casual vacancy by the Board since the previous AGM;
- (b) one third (or if that is not a whole number, the next lowest whole number nearest to one third) of the Directors who are not:
 - (i) to retire under paragraph (a);
 - (ii) the Managing Director; or
 - (iii) an Alternate Director,
 - (iv) selected in accordance with rule 14.4; and
- (c) any Director who, if that Director did not retire at that AGM, would at the next AGM, have held that office for more than three years.

14.4 Selection of rotating Directors

The Directors who retire by reason of rule 14.3(b) are those of the Directors the subject of that rule who have been in office the longest and, as between Directors who have been in office for an identical period, those to retire are (unless they otherwise agree among themselves) to be selected by lot.

14.5 Qualification of Directors

A Director need not be a Member.

14.6 Casual vacancy

The Board may at any time (except during the period from the opening to the closing of a general meeting) appoint any person as a Director (but not as an Alternate Director) to fill a casual vacancy or as an addition to the Board but so that the number of those Directors does not at any time exceed the maximum number set under rule 14.1 and any Director so appointed automatically retires at the next AGM of the Company and, if otherwise qualified, is eligible for reappointment by that general meeting (and if not reappointed that retirement takes effect at the conclusion of that general meeting).

14.7 Number of Directors and additional Directors

The Company may from time to time by Ordinary Resolution do any or all of the following:

- (a) increase or reduce the maximum number of Directors (other than Alternate Directors) permitted under rule 14.1;
- (b) if there is a reduction or increase, determine the rotation by which the reduced or increased number are to retire; and
- (c) appoint any person to be an additional Director (otherwise than by appointing an Alternate Director).

14.8 Removal of Director

The Company may (in addition to any powers conferred by the Law) by Ordinary Resolution remove a Director (other than an Alternate Director) and by Ordinary Resolution appoint a person as a replacement Director but only where:

- (a) the Director the subject of the removal resolution has been given notice by the Company of the proposed resolution at least five Business Days before notice of the general meeting at which the resolution is to be considered is despatched; and
- (b) if the Director, in the period of three Business Days after the Director has been given notice under paragraph (a), gives to the Company a written statement of not more than 1,500 words containing no defamatory material relating to the proposed resolution, a copy of that statement is sent with the notice of the general meeting at which the removal resolution is to be considered.

14.9 Appointment at AGM

At an AGM at which a Director retires under rule 14.3, the Company may by Ordinary Resolution fill the office vacated by appointing a person as a Director.

14.10 Notice of nomination

Except in the case of a Director retiring under rule 14.3 or a person recommended for appointment by the Board, a person is only eligible to be

appointed as a Director by Ordinary Resolution where the Company receives both:

- (a) a nomination of the person by a Member; and
- (b) a consent to nomination signed by the person,

at its registered office at least 30 Business Days before the relevant general meeting.

14.11 Vacation of office

The office of a Director automatically becomes vacant if the Director:

- (a) becomes a bankrupt;
- (b) is not permitted by the Law (or an order made under the Law) to be a Director;
- (c) is made the subject of guardianship or administration order, or a similar order, under a law relating to the protection of the person or property of a person on the grounds of infirmity, age or disability;
- (d) either personally or by an Alternate Director fails to attend Board meetings for a continuous period of three months without leave of absence from the Board; or
- (e) resigns either by reason of this constitution or by notice in writing to the Company.

14.12 Less than minimum number of Directors

Where the office of a Director becomes vacant, the continuing Directors may continue to act except where the number of Directors falls below the minimum number set by rule 14.1, in which case the continuing Directors may act only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a general meeting; or
- (c) in emergencies.

15. DIRECTORS' REMUNERATION

15.1 Fees of Non-executive Directors

The fees of the Directors (excluding any Executive Directors):

- (a) may not in any period of 12 months starting at the end of a financial year of the Company (a "**year**") exceed in aggregate the amount last fixed before the end of that year for those fees by Ordinary Resolution (which,

if the Company is Listed and the Listing Rules so require, must be a fixed sum);

- (b) are to be allocated to those Directors as determined by the Board (including those Directors), or, if there is no such determination in any year, equally between them; and
- (c) accrue from day to day.

15.2 Additional remuneration for extra services

If a Director, having been requested to do so by the Board, either performs extra services or makes any special exertions for the Company (including, without limitation, going or living abroad), the Company may remunerate that Director by the payment of a fixed sum determined by the Board and that remuneration may be either in addition to or in substitution for any remuneration to which that Director may be entitled under rule 15.1.

15.3 Expenses of Directors

The Company must pay a Director (in addition to any other remuneration) all reasonable expenses including, without limitation, any travelling and accommodation expenses incurred by the Director:

- (a) in attending meetings of the Board or a committee of the Board;
- (b) on the business of the Company; or
- (c) in carrying out that Director's duties as a Director.

16. DIRECTORS' MATERIAL INTERESTS

16.1 Purpose of rule 16

The purpose of this rule 16 is:

- (a) to provide a means by which Directors may not be in breach of their general law duties to the Company by reason of conflict of interest or duty once they have made disclosure of the relevant matter and the Board has independently considered the matter;
- (b) to provide that to the extent that the Law or the Listing Rules contain requirements which relate to the same matter, compliance with those requirements will also have the effect of relieving the Directors of a breach of those general law duties; and

This rule 16 does not relieve the Directors of any obligations in relation to those matters which the Law or the Listing Rules may impose on them but only to make the requirements of this constitution consistent with those obligations.

16.2 Definition of Material Interest

For the purposes of this rule 16:

"Material Interest" means, in relation to a Director, subject to rule 16.12, any interest (other than an interest in relation to which the Law provides that a director is not, or is not to be taken to be, interested including, without limitation, an interest to which section 191(2) applies) which, whether or not it is a financial benefit for the purposes of section 208(1):

- (a) is a "material personal interest" of the Director for the purposes of section 195 and to which section 195(1) applies;
- (b) if the Company is Listed, is an interest as a result of which the Listing Rules require that the Director does not vote on a resolution of the Board; or
- (c) is an interest (whether direct or indirect, whether actual or potential and whether financial or not) or duty of that Director which gives rise to a real possibility that the interest or duty may conflict with the duties owed by the Director to the Company, but this paragraph (c) does not include an interest or duty which consists solely of, or arises solely from, the Director being:
 - (i) the holder of an office in or place of profit in respect of, the Company (other than as Auditor) or in, or in respect of, a related body corporate of the Company;
 - (ii) the holder of not more than five per cent of the issued securities of any class of any body corporate or unit trust quoted on the stock market of any stock exchange (whether in Australia or elsewhere); or
 - (iii) the holder of the office of director (other than managing director) in another body corporate where the Director has previously declared the holding of that office under rule 16.3, the Board has approved the Director acting in that capacity under rule 16.7, and that approval has not been rescinded.

16.3 Declaration of Director's Material Interest

A Director who has a Material Interest must:

- (a) make the declarations and disclosures to the Board required by the Law and, if the Company is Listed, by the Listing Rules;
- (b) in any case - declare to the Board the fact of the Material Interest and its nature, character and extent.

This must be done at the first meeting of the Board after:

- (c) the Director becomes a Director; or

- (d) the Director becomes aware of the facts which give rise to that Material Interest,

whichever is the later.

16.4 Manner of declarations

A Director may make a declaration required by rule 16.3 either orally or in writing and is treated as having made a declaration where the existence, nature, character and extent of the Material Interest appears on the face of a document tabled before the Board.

16.5 Recording of declarations

The terms of each declaration made under rule 16.3 must be included in a book of the Company maintained for the purpose and be available for examination by the Directors at every meeting of the Board.

16.6 Consequence of Material Interest

Where a Director who has a Material Interest acts as a Director in a matter involving that Material Interest and either:

- (a) the Director has not made the declarations and disclosures required by rule 16.3 in relation to that Material Interest; or
- (b) the Director has made those declarations and disclosures but the Board has not approved the Director acting in the matter in the manner described in rule 16.7,

the Director is in breach of duty to the Company.

16.7 Non-Material Interests and Board approval of Material Interests

Where:

- (a) a Director has any interest or duty which is not a Material Interest and acts as a Director in a matter involving that interest or duty; or
- (b) a Director has made the declarations and disclosures in relation to a Material Interest required by rule 16.3, and the Board, subject to the Law, the Listing Rules and rule 16.8, approves the Director acting as a Director in a matter involving that Material Interest (including, without limitation, by resolving that the Company enter into a contract or arrangement which relates to that Material Interest) in accordance with rule 16.9 and the Director complies with all the terms and conditions of that approval,

then:

- (c) the Director is not in breach of duty to the Company by reason only of so acting;

- (d) any or all of the validity, the enforceability and the performance of any agreement or arrangement which relates to the Director so acting is not in any way adversely affected by reason of that interest, duty or Material Interest; and
- (e) the Director does not hold any property that the Director receives as a consequence of acting in that matter on any trust (actual, resulting or constructive) for the Company by reason of that interest, duty or Material Interest, nor is the Director liable to account for any profit derived, nor to compensate the Company for any loss or damage suffered by it, by so acting.

16.8 Limit on Board approval

The Board may not give an approval to a Director for the purposes of this rule 16 that purports to entitle the Director to vote on, or be present at meetings of the Board which consider, resolutions which involve a Material Interest of the Director except where the Law and the Listing Rules would permit the Director to be present or to vote on that resolution (as the case may be), and if the Director purports to be present or to vote on that resolution where the Director is not entitled to do so, the Director's presence or that vote (as the case may be) is to be disregarded.

16.9 Voting restrictions

Where the Board is considering the approval (and the terms and conditions on which it may be given) under rule 16.7(b) of a Director's acting as a Director in a matter involving a Material Interest, the Director who has made the declarations and disclosures in relation to that Material Interest required by rule 16.3 may not cast any vote on that approval and if the Director does purport to vote on that approval, that vote must be disregarded, but the Director, if present, may continue to be counted in the quorum for the Board meeting considering that approval unless the Law or the Listing Rules require that the Director not be present.

16.10 Director may hold office of Company

The Company may appoint a Director:

- (a) to hold any office in, or place of profit in respect of, the Company (except that of Auditor) on terms determined by the Board but not so that the remuneration payable to any Director who is an employee of the Company or a related body corporate of the Company includes a commission on or percentage of operating revenue; or
- (b) alone or by a firm of which the Director is a member, to act in any professional capacity and the Director or that firm may be remunerated for so acting as if the Director were not a Director.

16.11 Execution of instruments

A Director may, despite a Material Interest and whether or not rules 16.3 and 16.7 have been complied with, participate in the execution of any instrument by or on behalf of the Company.

16.12 Application to Alternate Directors

Rules 16.3 to 16.11 (inclusive) apply to the Material Interests of an Alternate Director, but an Alternate Director does not have a Material Interest solely by reason of the fact that the Director who has appointed the Alternate Director has a Material Interest, and vice versa.

17. ALTERNATE DIRECTORS

17.1 Power to appoint Alternate Director

A Director (but not an Alternate Director) may from time to time in accordance with the procedures set out in rule 17.2 appoint any person eligible to be a Director to be the Alternate Director of the Appointor whether for a specified period or until the appointment is revoked.

17.2 Method of appointment

An Alternate Director is appointed as such where:

- (a) the Appointor gives notice in writing (including, without limitation, by fax) to the Company in the form of schedule 5 or in any other form that the Board prescribes or accepts; and
- (b) the Board (excluding the Appointor from voting) approves the person specified to be the Alternate Director of the Appointor.

17.3 Termination of appointment

The Appointor, at any time and whether or not the appointment is for a specified period, may revoke the appointment of a person as the Appointor's Alternate Director by notice in writing (including, without limitation, by facsimile transmission) to the Company to that effect and the appointment is automatically revoked if the Appointor ceases to be a Director (except where the Appointor retires as a Director at an AGM under rule 14.3 and is re-appointed as a Director at that AGM).

17.4 Entitlements of Alternate Director

An Alternate Director, by reason of being appointed as such:

- (a) is not entitled to receive notice of meetings of the Board unless the Appointor has by notice in writing (including, without limitation, by facsimile transmission) to the Company required it to do so;

- (b) if the Appointor is not present at a meeting of the Board, may attend and vote at that meeting in place of the Appointor;
- (c) if also a Director, may vote both as a Director and as an Alternate Director;
- (d) and when acting as such, is an officer of the Company and not an agent of the Appointor and, in those circumstances, is subject to all the duties and has all the powers and rights of the Appointor as a Director; and
- (e) may not be remunerated except out of the remuneration which would otherwise be available to be paid to the Appointor and, in respect of that remuneration, the Alternate Director's only rights (if any) are against the Appointor and not the Company.

18. MANAGING DIRECTOR AND OTHER EXECUTIVE DIRECTORS

18.1 Appointment of Managing Director and Executive Directors

The Directors may from time to time appoint one or more of their number to the office of Managing Director or Managing Directors of the Company or to the office of Executive Director or Executive Directors either for a fixed term not exceeding 5 years or at will.

18.2 Termination of appointment of Executive Director

The appointment of an Executive Director terminates if:

- (a) the Executive Director ceases for any reason to be a Director; or
- (b) the Board revokes the appointment (which this paragraph (b) empowers it to do).

18.3 Retirement and removal of Managing Director

The Managing Director is not, while holding that office:

- (a) subject to retirement by rotation under rule 14.3; nor
- (b) to be taken into account in determining the rotation of retirement of Directors or the number of Directors to retire.

18.4 Remuneration of Executive Directors

The Board may fix the remuneration of each Executive Director and that remuneration may comprise any or all of:

- (a) salary;
- (b) commission on profits or dividends; or
- (c) participation in profits,

but if the Company is Listed and the Listing Rules do not allow, must not include a commission on or percentage of operating revenue.

18.5 Powers of Executive Directors

The Board may, upon any terms and conditions and subject to any restrictions that it considers appropriate:

- (a) confer on an Executive Director any or all of the powers of the Board (which powers may be conferred so as to be concurrent with, or to the exclusion of, the powers of the Board); and
- (b) withdraw or alter any of those powers.

19. POWERS OF THE BOARD

19.1 Powers generally

Except as otherwise required by the Law or any other applicable law or another provision of this constitution:

- (a) the Board is to manage the business of the Company; and
- (b) the Board may exercise each right, power or capacity of the Company (including, without limitation, to authorise the presentation of a petition for the winding up of the Company by the Court),

to the exclusion of the Company in general meeting and the Members.

19.2 Appointment of attorney

The Board by power of attorney may appoint any person to be an attorney of the Company for the purposes, with the powers (being powers of the Board), for the period and subject to the conditions determined by it.

19.3 Contents of power of attorney

A power of attorney under rule 19.2 may, without limitation:

- (a) contain any provisions for the protection and convenience of persons dealing with the attorney as the Board determines; and
- (b) authorise the attorney to delegate any or all of the powers vested in the attorney.

20. PROCEEDINGS OF THE BOARD

20.1 Quorum

The Board may determine the quorum of Directors present at a meeting of the Board necessary for the transaction of business at the meeting which, until otherwise determined, is three, and for the purposes of this rule 20.1 and rules

20.3 and 20.9, a Director is treated as not being present at the meeting if that Director is not permitted to be present at it by the Law, the Listing Rules or rule 16.

20.2 Notice of meeting

Notice of each meeting of the Board:

- (a) must be given to each Director (and each Alternate Director in respect of whom the Appointor has given notice to the Company requiring notice to be given to that Alternate Director); and
- (b) may be given orally or by fax,

but the non-receipt of any notice of a Board meeting by a Director does not affect the validity of the convening of the meeting.

20.3 Period of notice

The Board may determine the period of notice (unless waived by a majority of the Directors to whom notice of a particular meeting is sent) for each meeting of the Board which, until otherwise determined, is 48 hours.

20.4 Convening Board meetings

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

20.5 Appointment of Chairman

The Board may elect one of the Directors to be Chairman and may elect another to be Deputy Chairman and may determine the period for which each of those Directors is to hold that office.

20.6 Chairman of Board meetings

A Board meeting is to be chaired by:

- (a) the Chairman; or
- (b) if there is no Chairman, or the Chairman is not present within 15 minutes after the time the meeting is to start or is unwilling or unable to chair the meeting — the Deputy Chairman; or
- (c) if paragraph (b) applies but the Deputy Chairman is not present within 15 minutes after the time the meeting is to start or is unwilling or unable to chair the meeting — a person appointed by the Directors present at the meeting.

This rule 20.6 applies to part of a meeting in the same way as it applies to the whole meeting.

20.7 Majority decisions

Except as provided by rule 20.12, a question or resolution dealt with at a meeting of the Board is to be decided by a majority of votes of the Directors who are entitled to be present and to vote and who vote on the question or resolution.

20.8 Votes of Directors

Subject to this constitution:

- (a) each Director (other than a person who is only a Director by reason of being an Alternate Director) present at a meeting of the Board has one vote on every question or resolution at that meeting;
- (b) each Alternate Director entitled to be present and to vote at the meeting has one vote for each Appointor in respect of which the Alternate Director is present which, in the case of an Alternate Director who is also a Director to whom paragraph (a) applies, is to be in addition to the vote conferred on that Director by paragraph (a);
- (c) subject to paragraph (d), if there is an equality of votes on any question or resolution, the chairman of the meeting, if entitled to vote on the question or resolution, may exercise a casting vote in addition to any other vote the chairman may have; and
- (d) if the Company is Listed and the Listing Rules so require, where the Board determines under rule 20.1 that the number of Directors who constitute a quorum is two, the chairman of the meeting at which only two Directors are present, or at which only two Directors are entitled to vote on a question or resolution put at that meeting, does not have a casting vote.

20.9 Exercise of powers by Board

A power of the Board, unless it has been conferred exclusively under rule 18.5 or delegated exclusively to a committee of the Board under rule 20.10, is exercisable only:

- (a) by resolution at a meeting of the Board at which a quorum is present; or
- (b) by a resolution of the Directors under rule 20.12.

20.10 Delegation to committee

The Board may delegate any of its powers (which powers may be delegated so as to be concurrent with, or to the exclusion of, the powers of the Board) to a committee consisting of at least one Director, and which may also include any other persons, determined by the Board.

20.11 Committee powers and meetings

Where the Board has appointed a committee under rule 20.10:

- (a) that committee must exercise the powers delegated to it under rule 20.10 in accordance with any directions of the Board;
- (b) a power so delegated when exercised by the committee in accordance with paragraph (a) is treated as exercised by the Board;
- (c) the members of the committee may elect a chairman from among the members;
- (d) where a committee holds a meeting and:
 - (i) has not elected a chairman under paragraph (c); or
 - (ii) the chairman so elected is not present at the meeting within 15 minutes after the time appointed for the holding of the meeting or is unwilling or unable to act,

the members of the committee present at the meeting may choose one of their number to be chairman of the meeting;

- (e) the committee may meet in person or by telephone or other instantaneous means of conferring for the dispatch of business (or by any combination of those means) and adjourn and otherwise regulate its meetings as it may determine; and
- (f) the committee meetings are otherwise governed to the greatest extent practicable by the provisions of this constitution which regulate the meetings and procedures of the Board.

20.12 Written resolution of Directors

If all the Directors entitled to receive notice of a meeting of the Board and to vote on a resolution sign a document to the effect that they support the resolution (the terms of which are set out in the document), a resolution in those terms is for all purposes treated as having been passed at a duly convened meeting of the Board held on the date and at the time when the last Director signed the document.

20.13 Several documents suffice

For the purpose of rule 20.12:

- (a) two or more separate documents in identical terms each of which is signed by one or more Directors are treated as one document;
- (b) the signature by an Alternate Director of a document is not required if the Appointor of that Alternate Director has signed the document;

- (c) the signature by the Appointor of an Alternate Director of a document is not required if that Alternate Director has signed the document; and
- (d) a telex, telegram or fax containing the text of the document expressed to have been signed by a Director and sent to the Company is a document signed by that Director at the time of its receipt by the Company.

20.14 Validity of acts of directors

Each resolution passed or act or thing performed or done by, or with the participation of, a person acting as a Director or member of a committee in respect of whom it is later discovered there was some defect in appointment to, or continuation in, office of that person or that the person was disqualified or not entitled to perform, vote on or do, the resolution, act or thing, is as valid and effective as if that Director or member of committee had been validly appointed, had validly continued in office, had not been disqualified and was entitled so to perform, vote or do.

21. ASSOCIATE DIRECTORS

21.1 Appointment of Associate Directors

The Board may:

- (a) appoint any person to be an Associate Director;
- (b) determine the term of appointment, powers, duties and remuneration of that person as an Associate Director;
- (c) vary any determination so made; and
- (d) terminate or suspend any appointment of a person as an Associate Director.

21.2 Powers of Associate Directors

No Associate Director, by virtue of appointment as such is:

- (a) a Director;
- (b) entitled to attend Board meetings without invitation;
- (c) to be counted in determining if a quorum is present at a Board meeting;
or
- (d) entitled to vote on any question at any Board meeting.

22. SECRETARY

22.1 Appointment of Secretary

The Board may:

- (a) appoint any person to be a Secretary of the Company;
- (b) determine the term of appointment, powers, duties and remuneration of that person as a Secretary;
- (c) vary any determination so made; and
- (d) terminate or suspend any appointment of a person as a Secretary.

23. COMPANY ADMINISTRATION

23.1 Minutes

As well as the matters the Law requires to be recorded in the Company's minute books, the Board must cause the following to be recorded:

- (a) the names of the Directors present at each Board meeting;
- (b) the names of the committee members present at each meeting of a Board committee.

23.2 Signature of minutes

Minutes of a meeting, if appearing on their face to be signed by the chairman of the meeting or the chairman of the next succeeding meeting of the relevant body, are sufficient but (except where this constitution otherwise provide) not conclusive evidence of the matters stated in them.

23.3 Custody of Common Seal

If the Company has a Common Seal, the Board must provide for its safe custody.

23.4 Use of Common Seal

A Common Seal may only be used with the authority of either:

- (a) the Board; or
- (b) a committee appointed under rule 20.10 empowered to authorise the use of the Common Seal.

23.5 Mode of execution by Common Seal

An instrument is validly executed under the Common Seal where the Common Seal is affixed to it in the presence of:

- (a) a Director; and
- (b) another person who is either a Director, a Secretary or a person appointed by the Board for the purpose,

and each of those persons signs the instrument to attest the affixing of the Common Seal.

23.6 Certificate Seal

The Company may have a duplicate seal (known as the Certificate Seal):

- (a) whose impression must be identical to that of the Common Seal but with the words "Certificate Seal" added; and
- (b) which may only be affixed to certificates issued by the Company in respect of marketable securities of the Company.

23.7 Affixing the Certificate Seal

The Board may determine the manner (which may be by a mechanical or other automatic means) in which the Certificate Seal is to be affixed and that affixing attested and may determine (without limitation):

- (a) that the affixing of the Certificate Seal need not occur in the presence of any person;
- (b) that no signatures of any persons are required for the affixing of the Certificate Seal; and
- (c) that, if signatures are required for the affixing of the Certificate Seal, those signatures may be affixed by any mechanical or other automatic means,

but, except to the extent that the Board has made a contrary determination under this rule 23.7, the Certificate Seal must be affixed in the manner set out in rule 23.5.

23.8 Effect of Certificate Seal

A certificate in respect of marketable securities of the Company, when issued under the Certificate Seal in accordance with rule 23.7, is to be treated for all purposes as having been validly issued under the Common Seal.

23.9 Execution of bills and cheques

All cheques, bills of exchange and other negotiable instruments, all orders for payment and all receipts for money paid to the Company, may only be signed for and on behalf of the Company in the manner (which may include the use of facsimile signatures) determined, and by the persons appointed for the purpose, by the Board from time to time.

24. RESERVES

The Board may do any or all of the following with the profits of the Company before declaring any Dividend to the Members from them:

- (a) set aside any sum the Board determines as reserves to be applied, in the discretion of the Board, for any purpose it considers to be appropriate and use any sum so set aside in the business of the Company or invest any such sum in investments (which the Board may vary and deal with as it determines) which the Board determines; and
- (b) carry forward any amount from them which the Board considers ought not to be distributed as Dividends without transferring those amounts to a reserve.

25. DIVIDENDS AND OTHER DISTRIBUTIONS

25.1 Determination of Dividends

The Board may determine that a Dividend is payable, fixing:

- (a) the amount of the Dividend;
- (b) the time for payment; and
- (c) how it is to be paid; and
- (d) if the Board determines that some or all of the Dividend is to be paid and satisfied by distributing specific assets — what those assets are.

Dividends are to be distributed to the Members according to their respective rights and interests

25.2 No interest on Dividends

No Dividend (whether in money or otherwise) bears interest as against the Company.

25.3 Payment of Dividend in specie

Without limiting rule 25.1, where the Board determines to pay a Dividend by a distribution of money, it may also decide that all or any part of that Dividend be paid and satisfied by the distribution of specific assets (including, without limitation, paid up shares or other securities of the Company or of any other body corporate).

25.4 Capitalisation of profits or reserves

The Board may capitalise any amount available for distribution as a Dividend and, having applied the amount in either or both of the following manners, distribute that amount to the Members in the same proportions as the Members would have been entitled to if distributed as a Dividend:

- (a) in paying up any amounts unpaid on Shares already issued; and
- (b) in paying up in full unissued Shares.

25.5 Share plans generally

The Board may adopt and implement any number of plans on terms it determines by which a Member may elect to receive Shares as, or instead of, Dividends.

25.6 Kinds of share plans

The plans which the Board may adopt and implement under rule 25.5 include (without limitation):

- (a) a plan under which a Member who elects to participate in respect of a Share held by the Member is entitled to an issue of bonus Shares satisfied from amounts in any share premium account instead of a Dividend distributed as money in respect of that Share; and
- (b) a plan under which a Dividend to be distributed as money to a Member in respect of a Share is, if the Member elects that the Share participate in the plan, retained by the Company and applied in subscribing for fully paid Shares.

25.7 Powers concerning share plans

The Board has all powers necessary or desirable to implement and carry out fully any plan adopted by it under rule 25.5 and may (without limitation):

- (a) amend the terms of any plan as it considers desirable; and
- (b) suspend for any period or terminate the operation of any plan as it considers desirable.

25.8 Calculation of entitlement

Except to the extent that the terms of issue of a Share provide otherwise, each Share is entitled to the same amount of Dividend as every other Share, irrespective of the amount paid up or credited as paid up (either in respect of capital or premium) on the Share.

25.9 Retention of Dividends

The Board may retain any Dividend in respect of which the Company has a lien and:

- (a) if the Dividend is a distribution of property other than money, realise that property so that it is represented by money; and
- (b) apply the Dividend in or towards the satisfaction of the debts or liabilities in respect of which the lien exists.

25.10 Settlement of difficulties

The Board may settle any difficulty that may arise in respect of any distribution under this rule 25 as it considers desirable to adjust the rights of all parties and, in particular, may (without limitation):

- (a) round or disregard any fractional entitlement;
- (b) set the value of each asset to be distributed;
- (c) determine that money to be paid to any Member instead of a particular distribution;
- (d) vest any property in trustees for any Member;
- (e) authorise a person to make on behalf of all Members entitled to a distribution of Shares following a capitalisation under rule 25.4 an agreement with the Company which will be effective against and bind all the Members concerned for the Company to issue to them, credited as fully paid, the Shares the subject of the distribution or for the Company to apply the sum capitalised proportionately in paying up Shares already issued to them; and
- (f) appoint a person to execute as agent or attorney on behalf of each Member entitled to a Dividend to be distributed otherwise than as money any instrument of transfer or other document necessary to vest in the Member full legal and equitable title to the property the subject of the Dividend.

25.11 Entitlement to Dividend pending registration

Subject, in the case of a Market Transfer, to the ASTC Settlement Rules, the right to any Dividend declared on a Share does not pass until the transfer of that Share has been registered and the name of the transferee is entered in the Register.

25.12 Retention of transmittee's Dividends

The Company may retain any Dividend to be distributed in respect of a Share which is subject to rule 10.1 until the name of the person entitled to be registered under that rule is entered in the Register as the holder of that Share.

25.13 Joint holders' entitlement to Dividend

Where more than one person holds a Share, any one of those joint holders may give an effective receipt for any Dividend, in relation to that Share.

25.14 Payment of Dividends

Any Dividend distributed as money may be paid:

- (a) by cheque;

- (b) if the Board approves, by deposit to the credit of the Member in an account with a bank or other financial institution nominated in writing by the Member; or
- (c) in any other manner agreed by the Company and the Member.

25.15 Notification of Dividends

Notification of any Dividend and the Dividend may be dispatched to the Member through the post directed:

- (a) to the address of the Member (or, in the case of a Share held by more than one person, the address of the first-named of those joint holders) as shown in the Register; or
- (b) to any other address that the Member (or, in the case of a Share held by more than one person, all of those joint holders) directs in writing.

25.16 Unclaimed Dividend

All Dividends declared but unclaimed may:

- (a) in the case of Dividends not to be distributed as money, be realised into money; and
- (b) in any case, be invested for the benefit of the Company until claimed or until required to be dealt with under any applicable law dealing with unclaimed money.

26. NOTICES

26.1 Application

This rule 26 applies to serving a notice or document (called a "**notice**") on a Member for the purposes of this constitution, whether the expression "serve", "give", "send" or a similar expression is used.

26.2 Australia

For the purposes of this rule 26, Australia's external Territories are not within Australia.

26.3 How to serve

Subject to the rest of this rule 26, a notice may be served on a Member in any of the following ways:

- (a) by **giving** it to the Member;
- (b) by **leaving** it at the Member's address;

- (c) **by post**, that is, by sending it by pre-paid post addressed to the Member at the Member's address;
- (d) **by fax**, that is, by sending it by fax addressed to the Member at the Member's fax number;
- (e) **by e-mail**, that is, by sending it by e-mail to the Member at the Member's e-mail address;
- (f) as set out in rule 26.13;
- (g) in any other way the law provides for service on the Member.

26.4 Members' addresses

A Member's address is:

- (a) the address shown in the Register as the Member's address;
- (b) if the address shown in the Register as the Member's address is outside Australia — either that address or an address within Australia that the Member has notified the Company is to be used for service of notices.

26.5 Sending notices by post to overseas Members

A notice to be served by post on a Member to an address outside Australia must be sent by airmail.

26.6 When notices sent by post received

A notice served by post to an address in Australia is taken to be received the next Business Day.

If sent to an address outside Australia, it is taken to be received 3 Business Days later.

26.7 Members' fax numbers and e-mail addresses

A Member's fax number is the number shown in the Register as the Member's fax number.

A Member's e-mail address is the electronic address shown in the Register as the Member's e-mail address.

26.8 Service by fax

A notice served by fax is taken not to be served unless a complete and correct transmission report is received. The notice is taken to be received by the Member (whether it is in fact received or not) on the day of transmission, if a Business Day; otherwise, on the next Business Day.

26.9 Service by e-mail

A notice served by e-mail is taken not to be served if the computer system used to send it reports that it was not received by anyone.

It is taken to be received by the Member (whether it is in fact received or not) on the day of transmission, if a Business Day; otherwise, on the next Business Day.

26.10 Notices to joint holders

Except as otherwise expressly provided in this constitution, a notice to 2 or more holders of a Share is effectively given to all of them if given to any of them.

26.11 Notices when Member dies

A notice or document given in accordance with rule 26.3, even if the Share concerned is then subject to rule 10, is taken to be validly given to each person entitled to be registered in respect of the Share and all persons who claim through such person.

26.12 Binding on transferees

A person entitled to a Share (whether by transfer, operation of law or otherwise) is taken to have received every notice in respect of that Share that was served on the person from whom he or she derives the entitlement before the person entitled is entered in the Register as the holder of the Share.

26.13 Signature of notice

The Company may sign a notice in any way it determines.

26.14 Counting days

Where a specified period must elapse after giving a notice before an action may be taken, neither the day the notice is given nor the day the action is to be taken is counted in reckoning the period.

26.15 Certificate of Director or Secretary

A certificate signed by a Director or Secretary that a notice was given by the Company as set out in the certificate is admissible as evidence, and is conclusive evidence, that the notice was so served.

26.16 Deemed service of notices

If:

- (a) the Company, or an officer of the Company, believes on reasonable grounds that a Member is not at the Member's registered address; or

- (b) on 2 or more consecutive occasions a notice served on the Member at that address is returned with an indication that the Member is not known at the address;

a notice may be effectively served on the Member by exhibiting it at the Company's registered office for at least 48 hours.

However, this does not apply if before the end of the 48 hours, the Member gives the Company notice of a new address.

27. INSPECTION AND SECRECY

27.1 No right to inspect

No Member is entitled to require discovery of, inspection of, or any information concerning the affairs of the Company, except as provided by the Law or as permitted by the Board.

27.2 Board may permit inspection

Subject to the Law, the Board may determine whether any of the books, accounts and other information of the Company is to be available for inspection by Members and, if so, the extent, time, place and conditions of inspection so permitted.

27.3 Obligation of Secrecy

Except for disclosure made (either confidentially or not as the Board considers appropriate) to the Exchange as required by the Listing Rules, every officer of the Company must:

- (a) keep strictly secret all transactions and affairs of, the accounts of and all information concerning the Company; and
- (b) if so required by the Board, sign a declaration accepting the obligation of secrecy and undertaking not to disclose any information within the officer's knowledge the subject of that obligation to any person, except in the proper course and performance of the officer's duties, as required by law or as required by the Board.

28. WINDING UP

28.1 Power of Board

The Board may authorise the presentation of a petition for the winding up of the Company by the Court.

28.2 Distribution if insufficient assets

Subject to the terms of issue of a Share, if the Company is wound up and the assets available for distribution among the Members (in that capacity) are insufficient to repay all the paid up capital, those assets will be distributed:

- (a) to Members in relation to each class of Shares in accordance with the respective rights to those assets established by the terms of issue of each class of the Shares; and
- (b) so that (to the greatest possible extent), in relation to each class of Shares, the amount distributed to the Members holding Shares of that class is distributed in proportion to the number of the Shares of that class held by each of those Members without regard to the amounts paid up on those Shares,

except that a Member who is in arrears in payment of any call, but whose Shares (of whatever class) have not been actually forfeited, is not entitled to share in that distribution until the amount owing in respect of the call has been fully paid and satisfied.

28.3 Distribution of surplus assets

If the Company is wound up and after distribution of assets to repay the paid up capital, there remain assets available for distribution to the Members (in that capacity), those assets will be distributed:

- (a) to Members in relation to each class of Shares in accordance with the respective rights to those assets established by the terms of issue of each class of the Shares; and
- (b) so that (to the greatest possible extent), in relation to each class of Shares, the amount distributed to the Members holding Shares of that class is distributed in proportion to the number of the Shares of that class held by each of those Members without regard to the amounts paid up on those Shares,

except that a Member who is in arrears in payment of any call, but whose Shares (of whatever class) have not been actually forfeited, is not entitled to share in that distribution until the amount owing in respect of the call has been fully paid and satisfied.

28.4 Distribution in specie

If the Company is wound up and a Special Resolution is passed authorising that it be done, the liquidator may distribute to the Members all or any part of the assets to be distributed to them in specie (whether they are property of the same kind or not) and for that purpose may, if so authorised by the Special Resolution:

- (a) set the value of each asset to be distributed that the liquidator considers fair; and
- (b) determine how the distribution is to be carried out (including by allocating the assets) as between the Members or different classes of Members,

but so that no Member must accept any shares or other property in respect of which there is any liability.

28.5 Vesting in trustee

If so authorised by a Special Resolution, the liquidator of the Company may vest all or any part of the assets to be distributed to the Members in a trustee on terms of trust for the benefit of the Members as the liquidator considers appropriate.

29. MISCELLANEOUS

29.1 Restricted Securities

If the Company is Listed and has on issue any securities which are then restricted securities for the purposes of the Listing Rules ("**Restricted Securities**") notwithstanding any other provision of this constitution:

- (a) the Restricted Securities may not be disposed of except as permitted by the Listing Rules or by the Exchange;
- (b) the Company must refuse to acknowledge a disposal of the Restricted Securities (including by registering a transfer of them) except as permitted by the Listing Rules or by the Exchange; and
- (c) if there is a breach of the Listing Rules in relation to restricted securities or of a restriction agreement in relation to any Restricted Securities ("**defaulting restricted securities**"), while that breach continues the Member holding the defaulting restricted securities automatically ceases to be entitled to receive any Dividends or distributions or to exercise any voting rights in respect of the defaulting restricted securities.

29.2 Indemnity of officers

To the extent that it is permitted to do so by the Law, the Company must indemnify each Director, officer, Auditor and agent of the Company ("**Officer**") against any liability which that Officer may incur by reason of being an Officer or in carrying out the business or exercising the powers of the Company.

29.3 Specific indemnities

Without limitation to rule 29.2, to the extent that it is permitted to do so by the Law, the Company must indemnify each Officer against:

- (a) any liability (other than a liability which arises out of conduct involving a lack of good faith) to another person (other than the Company or a related body corporate) incurred by reason of being an Officer or in carrying out the business or exercising the powers of the Company; and
- (b) any liability for costs and expenses incurred by that Officer as such:

- (i) in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the Officer or in which the Officer is acquitted; or
- (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the person under the Law.

29.4 Further power to indemnify

The Company may indemnify or agree to indemnify or enter into (and pay premiums on) a contract of insurance in respect of any person (whether or not that person is, or has been, an Officer) to the extent permitted by the Law and this power is not restricted by the provisions of rules 29.2 and 29.3.

29.5 Former Officer

The indemnities conferred on Officers by rules 29.2 and 29.3 apply in respect of each person who is at any time an Officer for all the period that person is an Officer and the person may claim on those indemnities in respect of that period even though the person is not an Officer at the time the claim is made.

29.6 General Authorisation

Where the Law authorises or permits a company to do any thing if so authorised by its constitution, the Company is authorised by this rule to do that thing.

SCHEDULE 1**(rule 1.5)**

The provisions of this schedule 1 apply despite the other provisions of this constitution, even provisions that are expressed to apply despite the other provisions of this constitution.

If the Company is Listed, the following provisions apply:

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

SCHEDULE 2**(rule 2.2)****PREFERENCE SHARES**

1. In this schedule 2, unless the context calls for another meaning:

"Dividend Date" means, in relation to a Preference Share, a date specified in the Issue Resolution on which a Dividend in respect of that Preference Share is payable;

"Dividend Rate" means, in relation to a Preference Share, the terms specified in the Issue Resolution for the calculation of the amount of Dividend to be paid in respect of that Preference Share on any Dividend Date, which calculation may be wholly or partly established by reference to an algebraic formula;

"Franked Dividend" has the meaning ascribed to it in the Tax Act;

"Issue Resolution" means the resolution specified in clause 4 of this schedule 2;

"Preference Share" means a Share issued under rule 2.2(b);

"Redeemable Preference Share" means a Preference Share which the Issue Resolution specifies as being, or being at the option of the Company to be, liable to be redeemed;

"Redemption Amount" means, in relation to a Redeemable Preference Share, the amount specified to be paid on redemption of the Redeemable Preference Share;

"Redemption Date" means, in relation to a Redeemable Preference Share, the date specified in the Issue Resolution for the redemption of that Preference Share; and

"Tax Act" means the *Income Tax Assessment Act 1936* (as amended).

2. Each Preference Share confers upon its holder:

(a) the right in a winding up to payment in cash of the capital (including any premium) then paid up on it, and any arrears of Dividend in respect of that Preference Share, in priority to any other class of Shares;

(b) the right in priority to any payment of Dividend to any other class of Shares to a cumulative preferential Dividend payable on each Dividend Date in relation to that Preference Share calculated in accordance with the Dividend Rate in relation to that Preference Share; and

(c) no right to participate beyond the extent elsewhere specified in clause 2 of this schedule in surplus assets or profits of the Company, whether in a winding up or otherwise.

3. Each Preference Share also confers upon its holder the same rights as the holders of ordinary Shares to receive notices, reports and audited accounts of the Company and to attend general meetings but does not confer upon its holder the right to vote at any general meeting of the Company unless either:
- (a) at the date of the notice convening the meeting any Dividend payable in respect of the Preference Share is in arrears or the Company is being wound up; or
 - (b) the business of the meeting includes a proposal to reduce the share capital of the Company, a proposal to wind up the Company, a proposal that affects rights attached to the Preference Share or a proposal for the disposal of the whole of the Company's property, business and undertaking,

but in the latter case the holder of that Preference Share is not entitled to vote generally at that meeting, but only on the resolutions in respect of which that Preference Share confers a vote on its holder.

4. The Board may only allot a Preference Share where by resolution it specifies the Dividend Date, the Dividend Rate, and whether the Preference Share is or is not, or at the option of the Company is to be, liable to be redeemed, and, if the Preference Share is a Redeemable Preference Share, the Redemption Amount and Redemption Date for that Redeemable Preference Share and any other terms and conditions to apply to that Preference Share.
5. The Issue Resolution in establishing the Dividend Rate for a Preference Share may specify that the Dividend is to be one of:
- (a) fixed;
 - (b) variable depending upon any variation of the respective values of any factors in an algebraic formula specified in the Issue Resolution; or
 - (c) variable depending upon such other factors as the Board may specify in the Issue Resolution,

and may also specify that the Dividend is to be a Franked Dividend or not a Franked Dividend.

6. Where the Issue Resolution specifies that the Dividend to be paid in respect of the Preference Share is to be a Franked Dividend the Issue Resolution may also specify:
- (a) the extent to which such Dividend is to be franked (within the meaning of the Tax Act); and
 - (b) the consequences of any Dividend paid not being so franked, which may include a provision for an increase in the amount of the Dividend to such an extent or by reference to such factors as may be specified in the Issue Resolution.

7. Subject to the Law, the Company must redeem a Redeemable Preference Share on issue:
- (a) on the specified date where the Company, at least 15 Business Days before that date, has given a notice to the holder of that Redeemable Preference Share stating that the Redeemable Preference Share will be so redeemed on the specified date; and
 - (b) in any event, on the Redemption Date,
- but no Redeemable Preference Share may be redeemed and no notice of redemption may be given before the second anniversary of the date upon which that Redeemable Preference Share is issued.
8. The certificate issued by the Company in relation to any Preference Share must specify in relation to that Preference Share:
- (a) the date of issue of the Preference Share;
 - (b) the Dividend Rate and Dividend Dates;
 - (c) whether the Preference Share is a Redeemable Preference Share and if it is:
 - (i) the Redemption Amount and Redemption Date; and
 - (ii) the conditions of redemption (if any);
 - (d) the conditions of participation (if any) in respect of the Preference Share set out in clause 3 of this schedule; and
 - (e) any other matter the Board determines.
9. On redemption of a Redeemable Preference Share, the Company, after the holder has surrendered to the Company the certificate in respect of that Redeemable Preference Share, must pay to the holder the Redemption Amount in cash, by cheque or in any other form that the holder agrees to in writing.

SCHEDULE 3**(rule 9.11)****UNMARKETABLE PARCELS**

1. If at any time a Member holds an Unmarketable Parcel of Shares (including Shares held jointly with other Members) (the "**Relevant Shares**"), the Board may give a notice in writing (the "**First Notice**") to that Member stating that unless the Member gives notice to the Company by a specified date (being at least 45 days after the date of giving of the First Notice) requiring that the provisions of this schedule are not to apply to the Relevant Shares, then the Relevant Shares are liable to be sold or disposed of under this schedule.
2. If the Listing Rules so require, where the Board gives a First Notice to a Member under clause 1 of this schedule 3, the Board must also give a First Notice to every other Member who at that time holds an Unmarketable Parcel of Shares (including Shares held jointly with other Members).
3. Subject to the following provisions of this schedule 3, where a Member has been given a First Notice the Board may sell or otherwise dispose of ("**Divest**") the Relevant Shares (together with all rights attaching to them including any Dividends declared but unpaid).
4. Where the Board proposes to Divest any Relevant Shares under this schedule the Company must:
 - (a) publish in a newspaper circulating generally in the area in which the Member holding the Relevant Shares has an address for the purposes of being given notices by the Company, a notice specifying:
 - (i) the intention to Divest the Relevant Shares;
 - (ii) the name of the relevant Member;
 - (iii) the number of the Relevant Shares; and
 - (b) give a notice of intention to Divest the Relevant Shares (the "**Second Notice**") to the Member which, if the ASTC Settlement Rules apply to the Relevant Shares, complies with the ASTC Settlement Rules, and notifies the Member that the Relevant Shares are liable to be Divested under this schedule on a day which is at least 25 days after the date of giving of the Second Notice.
5. Where a First Notice or a Second Notice is given in respect of Shares which are held by Members jointly, that notice must be given to each of those joint holders.
6. Each Member to whom a the First Notice or Second Notice has been given may, by notice in writing addressed to the Secretary and delivered to the Company prior to the Relevant Shares being Divested, require the Company not to Divest the Relevant Shares, in which case the Relevant Shares may not be Divested

unless a new First Notice is given to that Member in accordance with this schedule.

7. If a Member who gives notice under clause 6 of this schedule 3 is a joint holder of a parcel of Relevant Shares, that notice will only prevent those Relevant Shares being Divested but will not prevent any other Shares held by any of the joint holders of that parcel being Divested and any First Notice or Second Notice concerning those other Relevant Shares will apply only to those other Relevant Shares.
8. Any Shares to be Divested may be Divested on the terms and in the manner and at the time the Board determines (including by means of the Shares being bought back by the Company if and to the extent that it is permitted to do so by the Law) and for the purpose of the Shares being Divested:
 - (a) the Member appoints the Company as its agent; and
 - (b) the Member appoints the Company and each Director and Secretary from time to time jointly and severally as its attorney in its name and on its behalf to execute any instrument of transfer or disposal of the Shares or to effect a Market Transfer of the Shares.
9. The Company must pay all costs and expenses in connection with the Divestiture of any Relevant Shares under this schedule.
10. The transferee of any Relevant Shares Divested under this schedule 3 is not required to see to the regularity of the Divestiture or the application of the purchase money and, after the transferee's name has been entered in the Register in respect of the Relevant Shares, the validity of the Divestiture to the transferee may not be impeached by any person and the remedy of any person aggrieved by the Divestiture is damages only and against the Company exclusively.
11. Where the Company receives any consideration as a result of the Divestiture of any Relevant Shares, the Company's receipt is a good discharge to the transferee of those Relevant Shares and any person claiming through that transferee.
12. The title of the transferee to any Relevant Shares Divested under this schedule is not affected by any irregularity or invalidity in connection with the Divestiture of the Relevant Shares to the transferee.
13. The proceeds of Divestiture of Relevant Shares under this schedule (following deduction of any Money Called (if any) in respect of the Relevant Shares) (the "**Sale Consideration**") must be dealt with as follows:
 - (a) the Sale Consideration must be paid into a separate bank account opened and maintained by the Company for that purpose only;
 - (b) the Sale Consideration must be held in trust for the Member whose Relevant Shares were Divested;

- (c) the Company must, immediately following the receipt of the Sale Consideration, notify the Member in writing that the Sale Consideration in respect of the Relevant Shares has been received by the Company and is being held by the Company pending instructions from the Member as to how it is to be dealt with;
- (d) the Company must deal with the Sale Consideration as instructed by the Member on whose behalf it is held, provided that the Member accompanies that instruction with the certificate for the Relevant Shares (unless the Relevant Shares are uncertificated securities within the meaning of the Listing Rules ("**Uncertificated Securities**")) or, if any such certificate has been lost or destroyed, by a statement and undertaking pursuant to section 1070D; and
- (e) where the Sale Consideration has been held in trust for more than two years, the Company may deal with the money according to any applicable legislation concerning unclaimed moneys.

14. Where a certificate in writing under the hand of any Director or the Secretary states that:

- (a) any notice required to be served by or on the Company was or was not served, as the case may be;
- (b) any advertisement required to be published was published; and
- (c) any resolution of the Board required to be made was made,

that certificate is conclusive evidence of the facts stated in it as against all persons claiming to be entitled to any Shares affected by that certificate and to the right and title of the Company to Divest the same.

15. Except where the Relevant Shares are Uncertificated Securities, the Company must cancel the share certificates for all Relevant Shares Divested.

16. The Company may not proceed with the Divestiture of any Relevant Shares where a takeover offer or takeover announcement has been announced and notwithstanding clause 17 of this schedule the Divestiture of those Relevant Shares may recommence in accordance with the Listing Rules, after the close of the offers made under the takeover offer or takeover announcement.

17. If the Listing Rules so require, the Company may not give a Member more than one First Notice in any 12 month period.

SCHEDULE 4

(rule 13.6)

APEX MINERALS NL

(ACN 098 612 974)

Proxy Form

.....

(Name of member or members)

of.....

(Address of member or members)

(the "Member"), a member of Apex Minerals NL (ACN 098 612 974) appoints

.....

(Name of proxy)

of.....

(Address of proxy)

or, failing that person, the chairman of the meeting as the Member's proxy to vote for the Member and on the Member's behalf at the general meeting of the company to be held on [] at [] am/pm and at any adjournment of that meeting.

The proxy is directed to vote in the following manner:

Resolution #:

(A mark should be placed in the appropriate box if the Member wishes to direct the proxy to vote in a specified way in relation to the above resolution[s]. If no direction is given, the proxy may vote or not as the proxy sees fit.)

This form must be signed by the Member (in the case of a body corporate under its common seal) or by an attorney of the Member.

Dated:

Signed:

.....

.....

SIGNED for [*name of party*] under power of attorney in the presence of:

Signature of attorney

Signature of witness

Name of attorney

Name of witness

Date of power of attorney

THE COMMON SEAL of [*name of party*],
the fixing of which was witnessed by:

Signature of director

Signature of director/secretary

Name of director

Name of director/secretary

SCHEDULE 5

(rule 17.2)

FORM OF APPOINTMENT OF ALTERNATE DIRECTOR

I, the undersigned, a Director of [*insert company name*], exercise the power given to me by the constitution of that company and appoint, subject to the approval of the Board, [*insert name*] of [*insert address*] to act as Alternate Director for me. This appointment takes effect **immediately/**on [*insert date*] and extends until **[insert date]/**revoked by me.

Notice of meetings of the Board **is/**is not to be given to the person appointed by this notice.

Dated:

.....
(Signature)

.....
(Name printed)

* Delete and complete as required