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CONSTITUTION OF
IMPEDIMED LIMITED

ACN 089 705144

16 October 2006

A COMPANY LIMITED BY SHARES

Constitution
of
IMPEDIMED LIMITED

1. GENERAL

1.1 Name of Company

The name of the Company is ImpediMed Limited.

1.2 Liability of members

The liability of shareholders is limited.

1.3 Replaceable rules

The Replaceable Rules do not apply to the Company.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In these rules unless it is inconsistent with the subject or context in which it is used:

‘ASIC’ means the Australian and Securities Investments Commission;

‘ASTC Regulated Transfer’ has the same meaning as in the ASTC Settlement Rules;

‘ASTC Settlement Rules’ means the ASTC Settlement and Transfer Corporation Pty Limited Settlement Rules, being the operating rules of the Settlement Facility for the purposes of the Law;

‘ASX’ means Australian Stock Exchange Limited;

‘Board’ means the Directors for the time being of the Company;

‘business day’ means a day defined as such under the Listing Rules;

‘call’ includes any instalment of a call and any amount due on allotment of any share;

‘Chairman’ includes an acting Chairman under **rule 10**;

‘Committee’ means a Committee to which powers have been delegated by the Board pursuant to **rule 18.7**;

‘**Company**’ means Impedimed Limited;

‘**Director**’ means a person appointed or elected from time to time to the office of Director of the Company in accordance with these rules and includes any alternate Director duly appointed as a Director;

‘**Law**’ means the *Corporations Act 2001* and the *Corporations Regulations 2001* (as defined in the *Corporations Act 1989*);

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

‘**Managing Director**’ means the person appointed to that position pursuant to **rule 17.1**;

‘**Office**’ means the registered office from time to time of the Company;

‘**Official List**’ has the meaning specified in the Listing Rules;

‘**person**’ and words importing persons include partnerships, associations and corporations unincorporated and incorporated by Ordinance, Act of Parliament or registration as well as individuals;

‘**Register**’ means the register of shareholders of the Company and includes a branch register of shareholders established pursuant to **rule 20**;

‘**Registered address**’ means the address of a shareholder specified on a transfer or any other address of which the shareholder notifies the Company as a place at which the shareholder will accept service of notices;

‘**Restricted Security**’ has the meaning specified in the Listing Rules;

‘**Retiring Director**’ means a Director who is required to retire under **rule 16.1** and a Director who ceases to hold office under **rule 16.2**;

‘**rules**’ means the rules of this constitution as altered or added to from time to time;

‘**Seal**’ means the common seal, if any, from time to time, of the Company;

‘**Secretary**’ means a person appointed as secretary of the Company and includes any person appointed to perform the duties of secretary;

‘**securities**’ includes shares, rights to shares, options to acquire shares and other securities with rights of conversion to equity;

‘**security holder**’ means a holder of securities of the Company in accordance with the Law.

‘**Settlement Facility**’ has the meaning specified in the ASTC Settlement Rules;

‘**shareholder**’ means a shareholder of the Company in accordance with the Law;

‘**shareholders present**’ means shareholders present at a general meeting of the Company in person or by duly appointed representative, proxy or attorney;

‘**shareholding account**’ means an entry made in the Register in respect of a shareholder for the purpose of providing a separate identification of some or all of the shares registered from time to time in the name of the shareholder;

‘**writing**’ and ‘**written**’ includes printing, typing, lithography and other modes of reproducing words in a visible form;

2.2 Interpretations

- (a) words and phrases which are given a special meaning by the Law have the same meaning in these rules unless a contrary intention appears;
- (b) words in the singular include the plural and vice versa;
- (c) words importing a gender include each other gender;
- (d) a reference to the Law or any other statute or regulations is to be read as though the words as modified or substituted from time to time' were added to the reference;
- (e) a reference to the Listing Rules is to the Listing Rules as are in force from time to time in relation to the Company after taking into account any waiver or exemption which is in force either generally or in relation to the Company;
- (f) the headings and sidenotes do not affect the construction of these rules;
- (g) an expression used in a particular Part, Division, Schedule or regulation of the Law that is given by that Part, Division, Schedule or regulation a special meaning for the purpose of that Part, Division Schedule or regulation has, in any of these rules that deals with a matter dealt with by that Part, Division, Schedule or regulation, unless the contrary intention appears, the same meaning as in that Part, Division, Schedule or regulation.

3. SHARES

3.1 Issue of shares and options

Without prejudice to any special rights conferred on the holders of any shares, and subject to the Listing Rules, any share in the capital of the Company may be issued with preferred, deferred or other special rights, obligations or restrictions, whether in regard to dividends, voting, return of share capital, payment of calls or otherwise, as the Board may from time to time determine. Except as provided by contract or these rules to the contrary, all unissued shares are under the control of the Board which may grant options on the shares, issue option certificates in respect of the shares, allot or otherwise dispose of the shares on the terms and conditions and for the consideration it thinks fit. The Company shall maintain a register of options in accordance with the Law.

3.2 Power to pay commission and brokerage

The Company may pay a commission to any person in consideration of the person subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the Company, or procuring or agreeing to procure subscriptions, whether absolutely or conditionally, for any shares in the Company. The commission may be paid or satisfied in cash or in shares, debentures or debenture stock of the Company or otherwise. The Company may in addition to or instead of commission pay any brokerage permitted by law.

3.3 Directors may participate

Any Director or any person who is an associate of a Director for the purposes of the Listing Rules may participate in any issue by the Company of securities unless the Director is precluded from participating by the Listing Rules.

3.4 Surrender of shares

In its discretion, the Board may accept a surrender of shares by way of compromise of any question as to whether or not those shares have been validly issued or in any other case where the surrender is within the powers of the Company. Any shares surrendered may be sold or re-issued in the same manner as forfeited shares.

3.5 Joint holders

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

- (a) **Number of holders** - the Company is not bound to register more than 3 persons as the holders of the shares (except in the case of trustees, executors or administrators of a deceased shareholder);
- (b) **Liability for payments** - the joint holders of the shares are liable severally as well as jointly in respect of all payments which ought to be made in respect of the shares;
- (c) **Death of joint holder** - on the death of any one of the joint holders, the survivor is the only person recognised by the Company as having any title to the shares but the Board may require evidence of death;
- (d) **Power to give receipt** - any one of the joint holders may give a receipt for any dividend, bonus or return of capital payable to the joint holders;
- (e) **Notices and certificates** - only the person whose name stands first in the Register as one of the joint holders of the shares is entitled, if the Company is required by the Law or the Listing Rules to issue certificates for shares, to delivery of a certificate relating to the shares or to receive notices from the Company and any notice given to that person is deemed notice to all the joint holders;
- (f) **Votes of joint holders** - any one of the joint holders may vote at any meeting of the Company either personally or by duly authorised representative, proxy or attorney, in respect of the shares as if that joint holder was solely entitled to the shares. If more than one of the joint holders are present at any meeting personally or by duly authorised representative, proxy or attorney, the joint holder who is present whose name stands first in the Register in respect of the shares is entitled alone to vote in respect of the shares.

3.6 Non-recognition of equitable interests, etc.

Except as otherwise provided in these rules, the Company is entitled to treat the registered holder of any share as the absolute owner of the share and is not, except as ordered by a Court or as required by statute, bound to recognise (even when having

notice thereof) any equitable or other claim to or interest in the share or the part of any other person.

3.7 Restricted securities

- (a) Restricted Securities may not be disposed of during the escrow period except as permitted by the Listing Rules or ASX.
- (b) If the Company at any time has on issue any Restricted Securities, the Company shall, except as permitted by the Listing Rules or ASX, refuse to acknowledge, deal with, accept or register any sale, assignment or transfer of any of such Restricted Securities which is or might be in breach of the Listing Rules or any escrow agreement entered into by the Company under the Listing Rules in relation thereto.
- (c) In the event of a breach of the Listing Rules or of any escrow agreement entered into by the Company under the Listing Rules in relation to Restricted Securities, the member holding the shares in question shall, notwithstanding any rights attached to such shares, cease to be entitled to any dividend or distribution and to any voting rights in respect of those shares for so long as the breach subsists.

3.8 Issue of redeemable preference shares

Subject to the Law, any preference shares may be issued on the terms that they are, or at the option of the Company, are liable, to be redeemed and otherwise on such terms and in such manner as the Board determines before the issue.

3.9 Variation of rights

The rights attached to any class of shares (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound up, and subject to the Listing Rules, be varied with the consent in writing of members with at least 75% of the votes in the class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class.

3.10 Issue of new preference shares

The rights conferred upon the holders of the shares of any class issued with preferred or other rights are, unless otherwise expressly provided by the terms of issue of the shares of that class, deemed not to be varied by the creation or issue of further shares ranking equally with the first-mentioned shares.

4. CERTIFICATES

4.1 Certificates/uncertificated holdings

While the Company is admitted to the Official List of ASX the following applies:

- (a) Subject to **rule 3.5(e)**, where the Company is required by the Law or the Listing Rules to issue certificates for shares, every shareholder is entitled, without payment, to one certificate for the shares registered in that shareholder's name or to several certificates in reasonable denominations, each for a part of the shares.

- (b) The Company may send any certificate to a shareholder by prepaid post addressed to the shareholder at that shareholder's Registered address or as is otherwise directed by the shareholder and every certificate so sent shall be at the risk of the shareholder entitled thereto.
- (c) If the Board wishes to issue certificates for shares, or where the Company is required by the Law to issue certificates for shares, share certificates are to be issued under the Seal or by authority of the Board (whether or not in accordance with **rule 21.4**) in any form prescribed by the Board permitted under the Law and are to be signed in any manner determined by the Board.
- (d) If a certificate is worn out or defaced, upon production of the certificate to the Company, the Board may order it to be cancelled and may issue a new certificate;
- (e) If a certificate is lost, stolen or destroyed, upon the giving of such indemnity (if any) and any evidence that the certificate has been lost, stolen or destroyed which the Board may require and upon the payment of any fee the Board may from time to time determine, a new certificate may be issued instead of the lost, stolen or destroyed certificate. A certificate issued to replace a certificate which has been lost, stolen or destroyed may be endorsed as having been issued instead of a lost, stolen or destroyed certificate.

4.2 The Company need not issue certificates

Notwithstanding any other provision in these rules, when the Company is admitted to the Official List of ASX the Board may determine not to issue a certificate for any security or may determine to cancel such a certificate without issuing any certificate in its place, if that determination is not contrary to the Law or the Listing Rules or the ASTC Settlement Rules or is required by Listing Rules or the ASTC Settlement Rules.

4.3 Computerised trading

- (a) The Board may do anything it considers necessary or desirable and which is permitted under the Law, the Listing Rules and the ASTC Settlement Rules to facilitate the involvement by the Company in any computerised or electronic system established or recognised by the Law or the Listing Rules for the purposes of facilitating dealings in securities.
- (b) If the Company is involved in a system of the kind described in **rule 4.3(a)**, the Company must comply with and give effect to the Listing Rules and the ASTC Settlement Rules applying in relation to that system.

4.4 Cancellation of certificates

Where the Board of the Company has pursuant to **rule 4.2** determined not to issue certificates for securities or to cancel existing certificates, a security holder has the right to receive such statements of the holdings of the security holder as are required to be distributed to a security holder under the Law, the Listing Rules or the ASTC Settlement Rules.

5. CALLS

5.1 Power to make calls

Subject to the terms upon which any shares may have been issued, the Board may make calls from time to time upon the shareholders in respect of all moneys unpaid on their shares. Each shareholder is liable to pay the amount of each call in the manner, at the time and at the place specified by the Board. Calls may be made payable by instalments.

5.2 Obligation for calls

The Company may make arrangements on the issue of shares for a difference between the holders of those shares in the amount of calls to be paid and the time of payment of the calls.

5.3 When a call is made

A call is deemed to have been made at the time when the resolution of the Board authorising the call was passed. Subject to the Listing Rules, the call may be revoked or postponed at the discretion of the Board at any time prior to the date on which payment in respect of the call is due.

5.4 Interest on the late payment of calls

If any sum payable in respect of a call is not paid on or before the date for payment, the shareholder from whom the sum is due is to pay interest on the unpaid amount from the due date to the date of payment at the rate the Board from time to time determines. The Board may waive the whole or part of any interest paid or payable under this rule.

5.5 Instalments

Subject to any notice requirements under the Listing Rules, if, by the terms of an issue of shares, any amount is payable in respect of any shares by instalments, every instalment is payable as if it is a call duly made by the Board of which due notice had been given, and, subject thereto, all provisions of these rules with respect to the payment of calls and of interest or to the forfeiture of shares for non-payment of calls or with respect to liens or charges apply to the instalment and to the shares in respect of which it is payable.

5.6 Payment in advance of calls

If the Board thinks fit it may receive from any shareholder all or any part of the moneys unpaid on all or any of the shares held by that shareholder beyond the sums actually called up and then due and payable either as a loan repayable or as a payment in advance of calls. The Company may pay interest on the moneys advanced at the rate and on the terms agreed by the Board and the shareholder paying the sum in advance.

5.7 Non-receipt of notice of call

Notice of any call shall be in writing including such information as the Law and Listing Rules may require, but the non-receipt of a notice of any call by, or the

accidental omission to give notice of any call to, any shareholder does not invalidate the call.

6. FORFEITURE AND LIEN

6.1 Notice requiring payment of sums payable

Subject to the Listing Rules, if any shareholder fails to pay any sum payable on or in respect of any shares, either for allotment money, calls or instalments, on or before the day for payment, the Board may, at any time after the day specified for payment whilst any part of the sum remains unpaid, serve a notice on the shareholder requiring that shareholder to pay the sum together with interest accrued and all expenses incurred by the Company by reason of the non-payment.

6.2 Time and place for payment

The notice referred to in **rule 6.1** is to name a day on or before which the sum, interest and expenses (if any) are to be paid and the place where payment is to be made. The notice is also to state that, in the event of non-payment at or before the time and at the place specified, the shares in respect of which the sum is payable will be liable to be forfeited.

6.3 Forfeiture on non-compliance with notice

If there is non-compliance with the requirements of any notice given pursuant to **rule 6.1**, any shares in respect of which notice has been given may, at any time after the day specified in the notice for payment whilst any part of allotment moneys, calls, instalments, interest and expenses (if any) remains unpaid, be forfeited by a resolution of the Board to that effect. The forfeiture is to include all dividends, interest and other moneys payable by the Company in respect of the forfeited shares and not actually paid before the forfeiture.

6.4 Notice of forfeiture

When any share is forfeited, notice of the resolution of the Board is to be given to the shareholder in whose name it stood immediately prior to the forfeiture, and an entry of the forfeiture and the date of forfeiture is to be made in the Register. Failure to give notice or make the entry as required by this rule does not invalidate the forfeiture.

6.5 Disposal of forfeited shares

Any forfeited share is deemed to be the property of the Company and, subject to the Listing Rules, the Board may sell or otherwise dispose of or deal with the share in any manner it thinks fit and with or without any money paid on the share by any former holder being credited as paid up.

6.6 Annulment of forfeiture

The Board may, at any time before any forfeited share is sold or otherwise disposed of, annul the forfeiture of the share upon any condition it thinks fit.

6.7 Liability notwithstanding forfeiture

Any shareholder whose shares have been forfeited is, notwithstanding the forfeiture, liable to pay and is obliged forthwith to pay to the Company all sums of money, interest and expenses owing upon or in respect of the forfeited shares at the time of forfeiture, together with expenses and interest from that time until payment at the rate the Board from time to time determines. The Board may enforce the payment or waive the whole or part of any sum paid or payable under this rule as it thinks fit.

6.8 Company's lien or charge

The Company has a first and paramount lien or charge for unpaid calls, instalments, reasonable interest due in relation to any calls or instalments and any amounts the Company is called upon by law to pay (and has paid) in respect of the shares of a shareholder upon shares registered in the name of the shareholder in respect of which the calls, instalments and interest are due and unpaid or in respect of which the amounts are paid and upon the proceeds of sale of the shares. The lien or charge extends to all dividends from time to time declared in respect of the shares provided that, if the Company registers a transfer of any shares upon which it has a lien or charge without giving the transferee notice of any claim it may have at that time, the shares are freed and discharged from the lien or charge of the Company in respect of that claim.

6.9 Sale of shares to enforce lien

The Company may do all such things as may be necessary or appropriate for it to do under the ASTC Settlement Rules or the Listing Rules to effect a transfer or to protect any lien, charge or other right to which it may be entitled under any law or these rules.

6.10 Title of shares forfeited or sold to enforce lien

- (a) In a sale or a re-allotment of forfeited shares or in the sale of shares to enforce a lien or charge, an entry in the Board's minute book that the shares have been forfeited, sold or re-allotted in accordance with these rules is sufficient evidence of that fact as against all persons entitled to the shares immediately before the forfeiture, sale or re-allotment of the shares. The Company may receive the purchase money or consideration (if any) given for the shares on any sale or re-allotment.
- (b) In a re-allotment, a certificate signed by a Director or the Secretary to the effect that the shares have been forfeited and the receipt of the Company for the price of the shares constitutes a good title to them.
- (c) In a sale, the Company may appoint a person to execute or effect a transfer in favour of the person to whom the shares are sold.
- (d) Upon the issue of the receipt or the execution of the transfer the person to whom the shares have been re-allotted or sold is to be registered as the holder of the shares, discharged from all calls or other money due in respect of the shares prior to the re-allotment or purchase and the person is not bound to see to the regularity of the proceedings or to the application of the purchase money or consideration; nor is the person's title to the shares affected by any irregularity or invalidity in the proceedings relating to the forfeiture, sale or re-allotment.

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- (e) The net proceeds of any sale or re-allotment are to be applied first in payment of all costs of or in relation to the enforcement of the lien or charge or the forfeiture (as the case may be) and of the sale or re-allotment, next in satisfaction of the amount in respect of which the lien exists as is then payable to the Company (including interest) and the residue (if any) paid to, or at the direction of, the person registered as the holder of the shares immediately prior to the sale or re-allotment or to the person's executors, administrators or assigns upon the production of any evidence as to title required by the Board.
 - (f) If a certificate for the shares is not produced to the Company, the Board may, where the Company is required by the Law or the Listing Rules to issue certificates for shares, issue a new certificate distinguishing it from the certificate (if any) which was not produced.

7. PAYMENTS BY THE COMPANY

7.1 Payments by the Company

If any law of any place imposes or purports to impose any immediate or future or possible liability on the Company to make any payment or empowers any government or taxing authority or government official to require the Company to make any payment in respect of any securities held either jointly or solely by any holder or in respect of any transfer of those securities or in respect of any interest, dividends, bonuses or other moneys due or payable or accruing due or which may become due or payable to the holder by the Company on or in respect of any securities or for or on account or in respect of any holder of securities, in consequence of:

- (a) the death of the holder;
- (b) the non-payment of any income tax or other tax by the holder;
- (c) the non-payment of any estate, probate, succession, death, stamp or other duty by the holder or the trustee, executor or administrator of that holder or by or out of the holder's estate; or
- (d) any assessment of income tax against the Company in respect of interest or dividends paid or payable to the holder,

the Company may exercise any of the rights set out in **rule 7.2**.

7.2 Rights of the Company

In each of the situations described in rules **7.1(a) to (d)**, the Company:

- (a) is to be fully indemnified from all liability by the holder or the holder's trustee, executor or administrator and by any person who becomes registered as the holder of the securities on the distribution of the deceased holder's estate;
- (b) has a lien or charge upon the securities for all moneys paid by the Company in respect of the securities under or in consequence of any law;
- (c) has a lien upon all dividends payable in respect of the securities registered in the Register as held either jointly or solely by the holder for all moneys paid by the Company in respect of the securities under or in consequence of any

law, together with interest at a rate the Board may determine from time to time from the date of payment to the date of repayment, and may deduct or set off against any dividends payable any moneys paid by the Company together with interest;

- (d) may recover as a debt due from the holder or the holder's trustee, executor or administrator or any person who becomes registered as the holder of the securities on the distribution of the deceased holder's estate, any moneys paid by the Company under or in consequence of any law which exceed any dividend, bonus or other money then due or payable by the Company to the holder together with interest at a rate the Board may determine from time to time from the date of payment to the date of repayment; and
- (e) may, if any money is paid by the Company under any law but subject to the Listing Rules, refuse to register a transfer of any securities by the holder or the holder's trustee, executor or administrator until the money and interest is set off or deducted or, in case the money and interest exceeds the amount of any dividend then due or payable by the company to the holder, until the excess is paid to the Company.

7.3 No prejudice to the Company

Nothing in **rules 7.1** or **7.2** prejudices or affects any right or remedy which any law confers on the Company, and, as between the Company and each holder, each holder's trustee, executor, administrator and estate, any right or remedy which the law confers on the Company, is enforceable by the Company.

8. TRANSFER AND TRANSMISSION OF SECURITIES

8.1 Instrument of transfer

Subject to these rules, a security holder may transfer all or any of the security holder's securities:

- (a) in any manner required or permitted by the Listing Rules or the ASTC Settlement Rules applying in relation to any computerised or electronic system established or recognised by the Listing Rules or the Law for the purpose of facilitating dealings in securities, including a transfer that may be effected pursuant to the ASTC Settlement Rules or other electronic transfer process; and
- (b) by any instrument in writing in any usual or common form or in any other form that the Board approves.

8.2 Registration procedure

Where an instrument of transfer referred to in **rule 8.1** is to be used by a security holder to transfer securities the following provisions apply:

- (a) it must be executed by or on behalf of both the transferor and the transferee unless it is a sufficient transfer of marketable securities within the meaning of the Law;
- (b) the instrument of transfer must be left for registration at the share registry of the Company, accompanied by the certificate for the securities to which it relates (if any) and such information as the Board properly requires to show

the right of the transferor to make the transfer, and in that event, the Company must, subject to the powers vested in the Board by these rules, register the transferee as a security holder;

- (c) the Company must register all registrable transfer forms, split certificates, renunciations and transfers, issue certificates and transmission receipts and mark or note transfer forms without charge except in the case the Company issues a certificate for securities where the issue of a certificate is to replace a lost or destroyed certificate;
- (d) on registration of a transfer of securities, the Company must cancel the old certificate (if any).

8.3 Completion of registration

- (a) Except in the case of ASTC Regulated Transfer, a transferor of securities remains the holder of the securities transferred until the transfer (if any) is registered and the name of the transferee is entered in the Register in respect of the securities. The right to any dividends declared on any shares subject to a transfer will be determined by reference to the record date for the purposes of that dividend and the date of registration of the transfer.
- (b) The Company must comply with such obligations as may be imposed on it by the Listing Rules and ASTC Settlement Rules in connection with any transfer of securities.

8.4 Closing register

Subject to the provisions of the Law, the Listing Rules and the ASTC Settlement Rules, the Register may be closed at any time the Board thinks fit.

8.5 Right to refuse registration

Notwithstanding any other provisions contained in these rules, the Company may in the Board's absolute discretion and without assigning any reason therefor, refuse to register or prevent or interfere with the registration of a transfer of securities in the Company while it is not admitted to the Official List of ASX, and when it is admitted to the Official List of ASX the Company may only refuse to register or prevent or interfere with the registration of a transfer of securities in the Company where permitted or required by any of the Listing Rules or ASTC Settlement Rules.

8.6 Transmission by death

The trustee, executor or administrator of a deceased shareholder (who is not one of several joint holders) is the only person recognised by the Company as having any title to securities registered in the name of the deceased shareholder provided that the Board may, subject to compliance by the transferee with these rules, register any transfer signed by a shareholder prior to the shareholder's death notwithstanding that the Company has notice of the shareholder's death.

8.7 Transmission by operation of law

A person ("transmittee") who establishes to the satisfaction of the Board that the right to any securities has devolved on the transmittee by will or by operation of law may be registered as a shareholder in respect of the securities or may (subject to the provisions in these rules relating to transfers) transfer the securities provided that the

Board has the same right to refuse to register the transferee as if the transferee was the transferee named in an ordinary transfer presented for registration.

9. GENERAL MEETINGS

9.1 General meetings

- (a) General meetings of the Company may be called by the Board and held in the manner determined by the Board. Except as permitted by the Law, no other person may convene a general meeting of the Company. By resolution of the Board, any general meeting (other than a general meeting which has been requisitioned or called by shareholders or by a single Director if permitted by the Law) may be cancelled or postponed prior to the date on which it is to be held.
- (b) The Chairman of a general meeting may refuse admission to, or require to leave and remain out of, the meeting any person:
 - (i) in possession of a pictorial-recording or sound-recording device;
 - (ii) in possession of a placard or banner;
 - (iii) in possession of an object considered by the Chairman to be dangerous, offensive or liable to cause disruption;
 - (iv) who refuses to produce or to permit examination of any object, or the contents of any object or container, in the person's possession;
 - (v) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
 - (vi) who is not:
 - (A) a shareholder or a proxy, attorney or representative of a shareholder;
 - (B) a Director; or
 - (C) an auditor of the Company.
- (c) A person, whether or not a shareholder, who is requested by the Board or the Chairman to attend a general meeting, is entitled to be present.

9.2 Notice of general meeting

- (a) Not less than 28 days notice of a general meeting, or such other shorter period allowed or longer period prescribed by the Law, may be given by the Board in the form and in the manner the Board thinks fit including notice of any general meeting at which the Board proposes or these rules require that an election of Directors be held. Notice of meetings shall be given to the shareholders, the Directors, ASX and to such persons as are entitled to receive notice under these rules, the Law or the Listing Rules. The non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to notice does not invalidate any resolution passed at that meeting.
- (b) If the meeting is to be held at 2 or more places the notice is to set out details of the technology that will be used to facilitate such a meeting and any other matters required to be stated by the Law in relation to the use of such technology.

10. PROCEEDINGS OF MEETINGS

10.1 Business of general meetings

The business of an annual general meeting is to receive and consider the financial and any other reports required by the Law to be laid before each annual general meeting, to elect Directors in the place of those retiring under these rules, when relevant to appoint an auditor, and to transact any other business which, under these rules, is required to be transacted at any annual general meeting. All other business transacted at an annual general meeting and all business transacted at other general meetings is deemed to be special. Except with the approval of the Board, with the permission of the Chairman or pursuant to the Law, no person may move at any meeting either:

- (a) in regard to any special business of which notice has been given under **rule 9.2**, any resolution or any amendment of a resolution; or
- (b) any other resolution which does not constitute part of special business of which notice has been given under **rule 9.2**.

The auditors and their representative are entitled to attend and be heard on any part of the business of a meeting which concerns the auditors. The auditors or their representative, if present at the meeting, may be questioned by the shareholders, as a whole, about the audit.

10.2 Quorum

Two shareholders present constitute a quorum for a general meeting. No business may be transacted at any meeting except the election of a Chairman and the adjournment of the meeting unless the requisite quorum is present at the commencement of the business.

10.3 Adjournment in absence of quorum

If within 15 minutes after the time specified for a general meeting a quorum is not present, the meeting, if convened upon a requisition by shareholders or called by shareholders, is to be dissolved, and in any other case it is to be adjourned to the same day in the next week (or, where that day is not a business day, the business day next following that day) at the same time and place and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time specified for holding the meeting, the meeting is to be dissolved.

10.4 Chairman

- (a) The Chairman of the Board is entitled to take the chair at every general meeting.
- (b) If at any general meeting:
 - (i) the Chairman of the Board is not present at the specified time for holding the meeting; or
 - (ii) the Chairman of the Board is present but is unwilling to act as Chairman of the meeting,

the deputy Chairman of the Board is entitled to take the chair at the meeting.

- (c) If at any general meeting:
- (i) there is no Chairman of the Board or deputy Chairman of the Board;
 - (ii) the Chairman of the Board and deputy Chairman of the Board are not present at the specified time for holding the meeting; or
 - (iii) the Chairman of the Board and the deputy Chairman of the Board are present but each is unwilling to act as Chairman of the meeting,
- the Directors present may choose another Director as Chairman of the meeting and if no Director is present or if each of the Directors present are unwilling to act as Chairman of the meeting, a shareholder chosen by the shareholders present is entitled to take the chair at the meeting.

10.5 Acting Chairman

If during any general meeting the Chairman acting pursuant to **rule 10.4** is unwilling to act as chairman for any part of the proceedings, the Chairman may withdraw as Chairman during the relevant part of the proceedings and may nominate any person who immediately before the general meeting was a Director or who has been nominated for election as a Director at the meeting to be acting Chairman of the meeting during the relevant part of the proceedings. Upon the conclusion of the relevant part of the proceedings the acting Chairman is to withdraw and the Chairman is to resume acting as Chairman of the meeting.

10.6 General conduct of meeting

Except as provided by the Law, the general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined by the Chairman. The Chairman may at any time the Chairman considers it necessary or desirable for the proper and orderly conduct of the meeting demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the shareholders present. The Chairman may require the adoption of any procedure which is in the Chairman's opinion necessary or desirable for the proper and orderly casting or recording of votes at any general meeting of the Company, whether on a show of hands or on a poll.

10.7 Adjournment

The Chairman may at any time during the course of the meeting adjourn from time to time and place to place the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion and may adjourn any business, motion, question, resolution, debate or discussion either to a later time at the same meeting or to an adjourned meeting. If the Chairman exercises a right of adjournment of a meeting pursuant to this rule, the Chairman has the sole discretion to decide whether to seek the approval of the shareholders present to the adjournment and, unless the Chairman exercises that discretion, no vote may be taken by the shareholders present in respect of the adjournment. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

10.8 Voting

- (a) Each question submitted to a general meeting is to be decided in the first instance by a show of hands of the shareholders present and entitled to vote. In the case of an equality of votes, the Chairman, both on a show of hands and at a poll, has no casting vote in addition to the vote or votes to which the Chairman may be entitled as a shareholder or as a proxy, attorney or duly appointed representative of a shareholder.
- (b) On a show of hands, where the Chairman has 2 or more appointments that specify different ways to vote on a resolution, the Chairman must not vote as a proxy.

10.9 Declaration of vote on a show of hands; when poll demanded

- (a) At any meeting, unless a poll is demanded, a declaration by the Chairman that a resolution has been passed or lost, having regard to the majority required, and an entry to that effect in the book to be kept of the proceedings of the Company signed by the Chairman of that or the next succeeding meeting, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution. A poll may be demanded:
 - (i) before a vote is taken;
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.
- (b) A poll may be demanded by:
 - (i) the Chairman;
 - (ii) at least 5 shareholders present entitled to vote on the resolution;
 - (iii) by a shareholder or shareholders present with at least 5% of the votes that may be cast on the resolution on a poll.
- (c) No poll may be demanded on the election of a Chairman of a meeting.

10.10 Taking a poll

If a poll is demanded as provided in **rule 10.9**, it is to be taken in the manner and at the time and place as the Chairman directs, and the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. In the case of any dispute as to the admission or rejection of a vote, the Chairman's determination in respect of the dispute made in good faith is final.

10.11 Continuation of business

A demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting immediately and without adjournment.

11. SPECIAL MEETINGS

All the provisions of these rules as to general meetings apply to any special meeting of any class of shareholders which may be held pursuant to the operation of these rules or the Law.

12. VOTES OF SHAREHOLDERS

12.1 Voting rights

- (a) Subject to the restrictions on voting from time to time affecting any class of shares and subject to **rules 3.5(f), 12.4 and 12.8**:
- (b) on a show of hands, each shareholder present has one vote;
- (c) where a shareholder has appointed 2 persons as proxies for that shareholder, neither proxy may vote on a show of hands;
- (d) where a person is entitled to vote by virtue of **rule 12.3** in more than one capacity, that person is entitled only to one vote on a show of hands; and
- (e) if the person appointed as proxy has 2 or more appointments that specify different ways to vote on a resolution, the proxy must not vote on a show of hands; and
- (f) on a poll, each shareholder present:
 - (i) has one vote for each fully paid share held; and
 - (ii) has for each share which is not fully paid a fraction of a vote equivalent to the proportion which the amount paid up, but not credited as paid up, on that share bears to the total of the amounts paid and payable (excluding amounts credited) on that share.

12.2 Voting rights of personal representatives, etc

Any person entitled under **rules 8.6 or 8.7** to transfer any shares may vote at a general meeting in the same manner as if the person were the registered holder of the shares provided that at least 48 hours before the time of holding the meeting at which the person proposes to vote the person has satisfied the Board of the person's right to transfer the shares, unless the Board has previously admitted the person's right to vote at the meeting in respect of the shares.

12.3 Appointment of proxies

- (a) Any shareholder entitled to vote at a general meeting may appoint a proxy. Any shareholder who is entitled to cast 2 or more votes at a general meeting may appoint not more than 2 proxies to vote at a general meeting on that shareholder's behalf and may, but need not, direct the proxy or proxies how to vote in relation to each or any resolution.
- (b) The Company must record in the minutes of a general meeting, in respect of each resolution in the notice of meeting, the total number of proxy votes exercisable by all proxies validly appointed and:
 - (i) if the resolution is decided on a show of hands - the total number of proxy votes in respect of which the appointment specified that:
 - (A) the proxy is to vote for the resolution:

- (B) the proxy is to vote against the resolution;
 - (C) the proxy is to abstain on the resolution;
 - (D) the proxy is to vote at the proxy's discretion.
- (ii) if the resolution is decided on a poll - the information specified in **rule 12.3(b)(i)** and the total number of votes cast on the poll:
 - (A) in favour of the resolution;
 - (B) against the resolution;
 - (C) abstaining on the resolution.
- (c) A proxy need not be a shareholder in the Company.
- (d) Where a shareholder appoints 2 proxies and each proxy is not appointed to represent a specified proportion of the shareholder's voting rights, then each proxy may exercise half of the shareholder's voting rights.
- (e) The instrument appointing a proxy (and the power of attorney, if any, under which it is signed or proof of the power of attorney to the satisfaction of the Board) must be deposited duly stamped (if necessary) at the Office, faxed to the Office or deposited, faxed or sent by electronic mail to any other place specified in the notice of meeting at least 48 hours (or a lesser period as the Board may determine and stipulate in the notice of meeting) before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument proposes to vote.
- (f) No instrument appointing a proxy is, except as provided in this rule, valid after the expiration of 12 months after the date of its execution. Any shareholder may deposit at the Office an instrument duly stamped (if necessary) appointing a proxy and the appointment is valid for all or any stipulated meetings of the Company.

12.4 Voting by corporation

Any corporation, being a shareholder and entitled to vote, may by resolution of its directors or other governing body or by an instrument of proxy authorise any person, though not a shareholder of the Company, or any person occupying a particular office from time to time, to act as its representative at meetings, and such representative is, in accordance with their authority and until their authority is revoked by the corporation which they represent, entitled to exercise the same powers on behalf of the corporation which they represent as that corporation could exercise if it were a natural person who was a shareholder.

12.5 Validity of vote

A vote given in accordance with the terms of an instrument of proxy or power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument of proxy or power of attorney or transfer of the shares in respect of which the vote is given, provided no notice in writing of the death, unsoundness of mind, revocation or transfer has been received at the Office before the meeting or any adjourned meeting. A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used.

12.6 Form and execution of instrument of proxy

- (a) An instrument appointing a proxy is required to be in writing signed by the appointor or the attorney of the appointor or, if the appointor is a corporation, under its common seal or signed by a duly authorised officer and in the form which the Board may from time to time prescribe to accept. The instrument of proxy is deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specifically directed to vote for or against any proposal) the power to act generally at the meeting for the person giving the proxy.
- (b) An instrument appointing a proxy, unless the contrary is stated, is valid for any adjournment of the meeting, as well as for the meeting to which it relates. Any duly signed proxy which is incomplete may be completed by the Secretary on authority from the Board and the Board may authorise completion of the proxy by the insertion of the name of any member of the Board as the person in whose favour the proxy is given.

12.7 Board to issue forms of proxy

The Board may issue with any notice of general meeting of shareholders or any class of shareholders forms of proxy for use by the shareholders. Each form shall make provision for the shareholder to write in the name of the person or persons to be appointed as proxy and may provide that, if the shareholder does not so write in one or more names, the proxy shall be one or more persons named on the form. The form may include the names of any of the Directors or of any other persons as suggested proxies. The forms are to be worded so that a proxy may be directed to vote either for or against each or any of the resolutions to be proposed.

12.8 Attorneys of shareholders

Any shareholder may, by duly executed power of attorney, appoint an attorney to act on the shareholder's behalf at all or certain specified meetings of the Company. Before the attorney is entitled to act under the power of attorney, the power of attorney or proof of the power of attorney to the satisfaction of the Board must be produced for inspection at the Office or any other place the Board may determine from time to time together, in each case, with evidence of the due execution of the power of attorney as required by the Board. The attorney may be authorised to appoint a proxy for the shareholder granting the power of attorney.

12.9 Rights of shareholder indebted to company in respect of other shares

Subject to any restrictions from time to time affecting the right of any shareholder or class of shareholders to attend any meeting, a shareholder holding a share in respect of which for the time being no call is due and payable to the Company is entitled to be present at any general meeting and to vote and be reckoned in a quorum notwithstanding that any call is then due and payable to the Company by the shareholder in respect of any other share held by the shareholder provided that, upon a poll, a shareholder is only entitled to vote in respect of shares held by the shareholder upon which, at the time when the poll is taken, no call is due and payable to the Company.

13. DIRECTORS

13.1 Number and appointment of directors

- (a) The names of the first Directors are those persons named as directors in the application for registration of the Company.
- (b) The number of Directors (not including alternate Directors) is required to be the number, not being less than 3 nor more than 7, which the Board may from time to time determine provided that the Board may not reduce the number below the number of Directors in office at the time of the reduction.
- (c) All Directors are required to be natural persons.

13.2 Power to appoint directors

The Board has the power at any time to appoint any person as a Director, either to fill a casual vacancy or as an addition to the Board but so that the number of Directors does not exceed the maximum number determined pursuant to **rule 13.1(b)**. Any Director appointed under this rule may hold office only until the next annual general meeting of the Company and is then eligible for election at that meeting but is not to be taken into account in determining the number of Directors who are to retire by rotation at the meeting.

13.3 Remuneration of directors

- (a) Subject to **rule 13.3(b)**, the Directors are to be paid out of the funds of the Company as remuneration for their services as Directors, such sum accruing from day to day as the Company in general meeting determines to be divided among them in such proportion and manner as they agree or in default of agreement equally.
- (b) Subject to **rule 17.1**, the Directors' remuneration for their services as Directors is by fixed sum and not a commission on or percentage of profits or operating revenue and may not be increased except at a general meeting where particulars of the proposed increase have been given to the shareholders in the notice convening the meeting.

13.4 Remuneration of directors for extra services

Any Director who devotes special attention to the business of the Company, or who otherwise performs services which in the opinion of the Board are outside the scope of the ordinary duties of a Director, or who at the request of the Board engages in any journey on the business of the Company, may be paid extra remuneration as determined by the Board.

13.5 Travelling and other expenses

Every Director is, in addition to any other remuneration provided for in these rules, entitled to be paid from Company funds all reasonable travel, accommodation and other expenses incurred by the Directors in attending meetings of the Company or of the Board or of any Committees or while engaged on the business of the Company.

13.6 Retirement benefits

Any Director may be paid a retirement benefit, as determined by the Board, in accordance with the Law and the Listing Rules. The Board is authorised to make arrangements with any Director with respect to the payment of retirement benefits in accordance with this rule.

13.7 Directors may contract with Company

- (a) A Director is not disqualified by the office of Director from contracting or entering into any arrangement with the Company or any other person either as vendor, purchaser or otherwise and no contract or arrangement entered into with the Company or any other person by a Director or any contract or arrangement entered into by or on behalf of the Company or any other person in which a Director is in any way interested may be avoided for that reason. A Director is not liable to account to the Company for any profit realised by any contract or arrangement, by reason of holding the office of Director or of the fiduciary relationship established by the office.
- (b) No Director may as a Director vote in respect of any contract or arrangement in which the Director has directly or indirectly any material personal interest if to do so would be contrary to the Law and if the Director does vote his vote may not be counted nor shall the Director be counted in the quorum present at the meeting but either or both of these prohibitions may at any time be relaxed or suspended to any extent by ordinary resolution passed at a general meeting, if permitted by the Law.
- (c) To the extent and in the manner required by the Listing Rules, the Company shall inform ASX of any material contract or arrangement involving a Director's interests.
- (d) A Director who is interested in any contract or arrangement may, notwithstanding the interest, attest the affixing of the Seal to, or otherwise executing any document evidencing or otherwise connected with the contract or arrangement.

13.8 Director may hold other office

- (a) A Director may hold any other office or position under the Company (except that of auditor) in conjunction with the office of Director, on terms and at a remuneration in addition to remuneration (if any) as a Director, as the Board approves.
- (b) A Director may be or become a director of or hold any other office or position under any corporation promoted by the Company, or in which it may be interested, whether as a vendor or shareholder or otherwise, or with any other corporation or organisation, and the Director is not accountable for any benefits received as a director or shareholder of or holder of any other office or position under that corporation or organisation.

13.9 Exercise of voting power in other corporations

The Board may exercise the voting power conferred by the shares in any corporation held or owned by the Company as the Board thinks fit (including the exercise of the voting power in favour of any resolution appointing the Directors or any of them directors of that corporation or voting or providing for the payment of remuneration

to the directors of that corporation) and a Director of the Company may vote in favour of the exercise of those voting rights notwithstanding that the Director is, or may be about to be appointed, a director of that other corporation and may be interested in the exercise of those voting rights.

13.10 Directors may lend to the Company

Any Director may lend money to the Company at interest with or without security or may, for a commission or profit, guarantee the repayment of any money borrowed by the Company and underwrite or guarantee the subscription of shares or securities of the Company or of any corporation in which the Company may be interested without being disqualified in respect of the office of Director and without being liable to account to the Company for the commission or profit.

14. ALTERNATE DIRECTORS

14.1 Director may appoint alternate Director

- (a) Subject to these rules, each Director has power from time to time to appoint any person to act as an alternate Director in the Director's place, whether for a stated period or periods or until the happening of a specified event or from time to time, whenever by absence or illness or otherwise the Director is unable to attend to duties as a Director.
- (b) The Director must first seek and obtain the consent of the Board to the appointment, which consent is not to be unreasonably withheld nor delayed. The appointment is to be in writing and signed by the Director and a copy of the appointment is to be given by the appointing Director to the Company by forwarding or delivering it to the Office.
- (c) The appointment takes effect immediately upon receipt of the appointment at the Office.

14.2 Conditions of office of alternate Director

The following provisions apply to an alternate Director:

- (a) the alternate Director may be removed or suspended from office upon receipt at the Office of written notice, letter, facsimile transmission or other form of visible communication from the Director by whom the alternate Director was appointed to the Company;
- (b) the alternate Director is entitled to receive notice of meetings of the Board and to attend and vote at the meetings if the Director by whom the alternate Director was appointed is not present;
- (c) the alternate Director is entitled to exercise all the powers (except the power to appoint an alternate Director) and perform all duties of a Director, in so far as the Director by whom the alternate Director was appointed had not exercised or performed them;
- (d) the alternate Director is not, unless the Board otherwise determines (without prejudice to the right to reimbursement for expenses pursuant to **rule 13.5**) entitled to receive any remuneration as a Director from the Company, and any remuneration (not including remuneration authorised by the Board or reimbursement for expenses) paid to the alternate Director by the Company

is to be deducted from the remuneration of the Director by whom the alternate Director was appointed;

- (e) the office of the alternate Director is vacated upon the vacation of office by the Director, or by written resignation being given to the Company by the Director, by whom the alternate Director was appointed;
- (f) the alternate Director is not to be taken into account in determining the number of Directors or rotation of Directors; and
- (g) the alternate Director is, while acting as a Director, responsible to the Company for the alternate Director's own acts and defaults and is not to be deemed to be the agent of the Director by whom the alternate Director was appointed.

15. VACATION OF OFFICE OF DIRECTOR

15.1 Vacation of office by Director

- (a) The office of a Director is vacated:
 - (i) upon the Director becoming an insolvent under administration, suspending payment generally to creditors or compounding with or assigning the Director's estate for the benefit of creditors;
 - (ii) upon the Director becoming a person of unsound mind or a person who is a patient under laws relating to mental health or whose estate is administered under laws relating to mental health;
 - (iii) upon the Director being absent from meetings of the Board during a period of 3 consecutive calendar months without leave of absence from the Board where the Board has not, within 14 days of having been served by the Secretary with a notice giving particulars of the absence, resolved that leave of absence be granted;
 - (iv) upon the Director resigning office by notice in writing to the Company;
 - (v) upon the Director being removed from office pursuant to the Law; or
 - (vi) upon the Director being prohibited from being a Director by reason of the operation of the Law.
- (b) A Director who vacates office pursuant to **rule 15.1** is not to be taken into account in determining the number of Directors who are to retire by rotation at any annual general meeting.

15.2 Directors who are employees of the Company

The office of a Director who is an employee of the Company and/or any of its subsidiaries becomes vacant upon the Director ceasing to be employed (so that they are no longer employed by the Company or any subsidiary of the Company) but the person concerned is eligible for reappointment or re-election as a Director of the Company.

16. ELECTION OF DIRECTORS

16.1 Retirement of Directors

Without prejudice to **rules 13.2** and **15.1(b)**, at every annual general meeting, one third of the Directors (other than any Managing Director) or, if their number is not a multiple of 3, then the number nearest to but not less than one third must retire from office. A Director (other than a Director who is a Managing Director) must retire from office at the conclusion of the third annual general meeting after which the Director was elected or re-elected. A Retiring Director retains office until the dissolution or adjournment of the meeting at which the Retiring Director retires.

16.2 Who must retire?

The Directors to retire pursuant to **rule 16.1** are the Directors or Director longest in office since last being elected. As between Directors who were elected on the same day the Directors to retire are (in default of agreement between them) determined by ballot. The length of time a Director has been in office is calculated from the Director's last election or appointment. A Retiring Director is eligible for re-election.

16.3 Nomination of Directors

No person (other than a Retiring Director) is eligible for election to the office of Director at any general meeting unless the person or some shareholder intending to nominate the person has given notice in writing signed by the nominee giving consent to the nomination and signifying either candidature for the office or the intention of the shareholder to nominate the nominee. To be valid, the notice is required to be left at the Office not less than the period permitted by the Listing Rules, before the meeting unless the nominee has been recommended by the Board for election, in which case the notice is required to be left at the Office at least 5 business days before the meeting.

17. MANAGING DIRECTOR

17.1 Appointment of a Managing Director

The Board may from time to time appoint one of the Board to be Managing Director (who may bear that title or any other title determined by the Board) for a period ending on the happening of events (if any) stipulated by the Board, at a remuneration which may be by way of salary or commission on or participation in profits or by any or all of these methods (but not by a commission on or percentage of operating revenue) and otherwise on terms as determined by the Board from time to time. The Board may confer upon a Managing Director any of the powers exercisable under these rules by the Board as it thinks fit and upon any conditions it thinks expedient but the conferring of powers by the Board upon a Managing Director does not exclude the exercise of those powers by the Board.

17.2 Managing Director not to be subject to retirement by rotation

A Managing Director is not subject to retirement as a Director by rotation while continuing to hold the office of Director and is not to be taken into account in determining the rotation or retirement of Directors or the number of Directors to

retire, but is subject to the same provisions as to resignation and removal as the other Directors of the Company. A Managing Director ceases to be a Managing Director if the Managing Director ceases to hold office as a Director.

18. PROCEEDINGS OF DIRECTORS

18.1 Procedures relating to Directors' meetings

- (a) The Board may meet together, upon each Director being given reasonable notice, for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- (b) A majority of Directors form a quorum until otherwise determined by the Board.
- (c) Notice is deemed to have been given to a Director and all Directors are hereby deemed to have consented to the method of giving notice if notice is sent by mail, personal delivery, facsimile transmission or by electronic mail to the usual place of residence, fax number or electronic address of the Director (if any, fax number or electronic address is notified to the Company) or at any other address given to the Secretary by the Director from time to time, subject to the right of the Director to withdraw their consent within a reasonable period before a meeting.

18.2 Meetings by telephone or other means of communication

The Directors may meet either in person or by telephone or by other means of communication consented to by all Directors subject to the right of a Director to withdraw their consent within a reasonable period before a meeting. All persons participating in the meeting must be able to hear and be heard by all other participants. A meeting conducted by telephone or other means of communication is deemed to be held at the place agreed upon by the Directors attending the meeting, provided that at least one of the Directors present at the meeting is at that place for the duration of the meeting.

18.3 Votes at meetings

Questions arising at any meeting of the Board are decided by a majority of votes. In the case of an equality of votes, the chairman of the meeting has a casting vote in addition to the chairman's deliberative vote.

18.4 Convening of meetings

The Chairman or the Board may at any time convene a meeting of the Board and the Secretary must do so if directed by any one Director.

18.5 Chairman

The Board may elect a Chairman and a deputy Chairman of its meetings and determine the period for which each is to hold office. If no Chairman or deputy Chairman is elected or if at any meeting the Chairman and the deputy Chairman are not present at the time specified for holding the meeting (or, if being present, the relevant Directors refuse to act as Chairman or deputy Chairman), the Directors present may choose one of their number to be Chairman of the meeting.

18.6 Powers of meetings

A meeting of the Board or any adjournment of a meeting at which a quorum is present is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board.

18.7 Delegation of powers to committees

The Board may, subject to the constraints imposed by law, delegate any of its powers to Committees consisting of one or more Directors or any other person or persons as the Board thinks fit. Any Committee formed or person or persons appointed to the Committee must, in the exercise of the powers delegated, conform to any regulations that may from time to time be imposed by the Board. A delegate of the Board may be authorised to sub-delegate any of the powers for the time being vested in the delegate.

18.8 Proceedings of committees

The meetings and proceedings of any Committee are to be governed by the provisions of these rules for regulating the meetings and proceedings of the Board so far as they are applicable and are not superseded by any regulations made by the Board under **rule 18.7**.

18.9 Validity of acts

- (a) All acts done at any meeting of the Board or by a Committee or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the Committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been duly appointed and was qualified and continued to be a Director or a member of the Committee (as the case may be).
- (b) If the number of Directors is reduced below the minimum number fixed pursuant to these rules, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of calling a general meeting of the Company but for no other purpose.

18.10 Resolution in writing

- (a) A resolution in writing of which notice has been given to all Directors and which is signed by all of the Directors entitled to vote on the resolution is as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted and may consist of several documents in the same form each signed by one or more of the Directors.
- (b) For the purposes of this rule, the references to ‘**Directors**’ include any alternate Director for the time being present in Australia who is appointed by a Director not for the time being present in Australia but does not include any other alternate Director.
- (c) A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the Director's authority is deemed to be a document in writing signed by the Director.

19. POWERS OF THE BOARD

19.1 General powers of the board

The management and control of the business and affairs of the Company are vested in the Board, which (in addition to the powers and authorities conferred upon them by these rules) may exercise all powers and do all things as are within the power of the Company and are not by these rules or by the Law directed or required to be exercised or done by the Company in general meeting.

19.2 Power to borrow and guarantee

Without limiting the generality of **rule 19.1**, the Board may exercise all the powers of the Company to raise or borrow money, may guarantee the debts or obligations of any person and may enter into any other financing arrangement, in each case in the manner and on the terms it thinks fit.

19.3 Power to give security

Without limiting the generality of **rule 19.1**, the Board may charge any property or business of the Company or any of its uncalled capital and may issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person, in each case, in the manner and on the terms it thinks fit.

19.4 Power to authorise debenture holders, etc to make calls

Without limiting the generality of **rule 19.1**, if any uncalled capital of the Company is included in or charged by any debenture, mortgage or other security, the Board may, by instrument under the Seal, or other appropriate instrument, authorise the person in whose favour the debenture, mortgage or other security is executed or any other person in trust for him to make calls on the shareholders in respect of that uncalled capital and to sue in the name of the Company or otherwise for the recovery of moneys becoming due in respect of calls made and to give valid receipts for those moneys, and the authority subsists during the continuance of the debenture, mortgage or other security, notwithstanding any change in the Directors, and is assignable if so expressed.

19.5 Power to issue securities

Any bonds, debentures or other securities may be issued with or without the right of or obligation on the holder thereof to exchange the same in whole or in part of shares in the Company at a certain or uncertain time or with any special privileges as to redemption, surrender, drawings, allotment of shares, attending and voting at general meetings of the Company, appointment of Directors and otherwise and generally with such rights and options and upon such conditions in all respects as the Board thinks fit.

19.6 Personal liability of officer

If the Board or any member thereof or any officer of the Company becomes personally liable for the payment of any sum primarily due from the Company, the Board may execute or cause to be executed any charge or security over or affecting the whole or any part of the assets of the Company by way of indemnity to secure the persons or person so becoming liable as aforesaid from any loss in respect of such liability.

19.7 Disposal of main undertaking

Any sale or disposal of the Company's main undertaking is conditional upon approval or ratification by the Company in general meeting. No person who may benefit (other than as a holder of securities issued by the Company) from the sale or disposal, and no associate of such person, may vote on any resolution to approve or ratify the sale or disposal.

20. BRANCH REGISTER

The Company may cause to be kept a branch register of shareholders in accordance with, and as permitted by the Law.

21. THE SEAL

21.1 Execution of cheques, bills, etc

All cheques, bills of exchange and promissory notes are to be signed, drawn, made, accepted or endorsed (as the case may be) for and on behalf of the Company by 2 directors, or by one Director and the Secretary or some other officer authorised by the Board, or in such other manner as the Board may from time to time determine.

21.2 Company Seal is optional

The Company may have a Seal.

21.3 Affixing the Seal

If the Company has a Seal, the Board is to provide for its safety and it should only be used by the authority of the Board. Every instrument to which the Seal is affixed is to be signed by a Director and countersigned by the Secretary or by a second Director or by another person appointed by the Board for the purpose. The Board may determine either generally or in any particular case that a signature may be affixed by a mechanical means specified in the determination.

21.4 Execution of documents without a Seal

The Company may execute a document, including a deed, by having the document signed by:

- (a) two Directors;
- (b) a Director and the Secretary, and

if the Company executes a deed, the document is to be expressed to be executed as a deed and be executed in accordance with the appropriate procedures set out in **rule 21.3** or this rule.

21.5 Other ways of executing documents

Notwithstanding the provisions of **rules 21.3** and **21.4**, any document including a deed, may also be executed by the Company in any other manner permitted by law.

22. MINUTES

22.1 Contents of minutes

The Board must ensure that minutes are duly recorded in any manner it thinks fit:

- (a) of the names of the Directors present at each meeting of the Board and of any Committees; and
- (b) of all resolutions and proceedings of general meetings of the Company and of meetings of the Board and any Committees.

22.2 Signing of minutes

The minutes of any meeting of the Board or of any Committee or of the Company, if purporting to be signed by the Chairman of the meeting or by the Chairman of the next succeeding meeting, are prima facie evidence of the matters stated in the minutes.

23. DIVIDENDS

23.1 Payment of dividend

The Board may from time to time determine that a dividend is payable to the shareholders. The dividend is (subject to the rights of, or any restrictions on, the holders of shares created or raised under any special arrangement as to dividend) payable on all shares pro rata to the total amount for the time being paid, but not credited as paid, in respect of the shares as a proportion of the total of the amounts then paid and payable thereon, excluding amounts credited, and may be paid at a rate per annum in respect of a specified period provided that (for the purposes of this rule) no amount paid on a share in advance of calls is to be treated as paid on that share.

23.2 Dividend plans

- (a) The Board may establish and maintain one or more dividend plans (including the establishment of rules) pursuant to which shareholders may elect with respect to some or all of their shares (subject to the rules of the relevant plan):
 - (i) to reinvest in whole or in part dividends paid or payable or which may become payable by the Company to the shareholder in cash by subscribing for shares in the capital of the Company;
 - (ii) to receive a dividend from the Company by way of the allotment of shares paid up from such account or reserves from which shares may be issued under the Law;
 - (iii) that dividends from the Company not be paid and that instead a payment or distribution other than a dividend be made by the Company;
 - (iv) that cash dividends from the Company not be paid and that instead a cash dividend be received from a related corporation nominated by the Board;

- (v) to participate in a dividend plan, including but not limited to a plan pursuant to which shareholders may elect to receive a dividend from the Company or any related corporation which is less in amount but franked to a greater extent than the ordinary cash dividend that would be payable by the Company or any related body corporate or to receive a dividend from the Company or any related body corporate which is greater in amount but franked to a lesser extent than the ordinary cash dividend that would be payable by the Company or any related body corporate.
- (b) Pursuant to a dividend plan established in accordance with **rule 23.2(a)**, any shareholder may elect for a specified period or for a period to be determined by specified notice (in either case determined by the Board and prescribed in the rules of the plan) that all or some of the ordinary shares held by that shareholder and designated by the shareholder in accordance with the rules of the plan (“**designated shares**”) will participate in the dividend plan. During that period the designated shares will be entitled to participate in the dividend plan subject to the rules of the dividend plan.
- (c) In the event of any inconsistency between any dividend plan established in accordance with **rule 23.2(a)** or rules of any dividend plan and these rules these rules shall prevail.
- (d) The Board is authorised to do all things which they consider to be desirable or necessary for the purpose of implementing every dividend plan established in accordance with **rule 23.2(a)**.
- (e) The Board is authorised to vary the rules of any dividend plan established in accordance with **rule 23.2(a)** at their discretion and to suspend or terminate any dividend plan at their discretion. Any dividend plan may also be suspended, terminated or varied by resolution of a general meeting of the Company.

23.3 Employee share Plan

Subject to the Listing Rules, the Board may, in addition to its powers under **rule 23.8**, resolve to apply the whole or a portion of any sum, standing to the credit of any reserve or other account in paying up in full unissued shares of the Company to be issued to the holders of shares, options or other securities of the Company in accordance with, or to give effect to, the terms of any plan for the issue of shares, rights to shares or options to acquire shares to or for the benefit of employees which has been approved by the Company by special resolution in general meeting.

23.4 Interim dividends

The Board may from time to time pay to the shareholders on account of the next forthcoming dividend any interim dividend as in its judgment the position of the Company justifies.

23.5 Dividends out of profits

No dividend is payable except out of the profits of the Company, and no dividend or other moneys payable on or in respect of a share carries interest as against the Company. The declaration of the Board as to the amount of the profits of the Company is conclusive.

23.6 Reserves

The Board may, in priority to any dividend, set aside out of the profits of the Company any sums as it thinks proper as a reserve, which at the discretion of the Board may be applicable for any purpose to which the profits of the Company may be properly applied, and pending application may be employed in the business of the Company or be invested in any investments the Board may from time to time think fit. Any income derived from or accretions to such shares, securities or other investments may either be carried to the credit of the reserve fund or reserve funds represented by such shares, securities or other investments or be dealt with as profits arising from the business of the Company.

23.7 Distribution otherwise than in cash

When declaring a dividend the Board may:

- (a) direct payment of the dividend wholly or in part by the distribution of specific assets or documents of title and in particular of paid up shares, debentures or debenture stock of the Company or any other company; and
- (b) (if the Company in general meeting has approved the adoption of a dividend plan), determine and announce that each shareholder entitled to participate in the dividend may elect that the payment of the dividend be satisfied in respect of all, or a number of shares less than all of the shares held by the shareholder by the allotment of paid up shares in accordance with the dividend plan.

23.8 Power to capitalise profits

Subject to the Listing Rules, the Board may resolve that the whole or any portion of any sum forming part of the undivided profits of the Company or standing to the credit of any reserve or other account and which is available for distribution, be capitalised and distributed to shareholders in the same proportions in which they would be entitled to receive it if distributed by way of dividend or in accordance with either the terms of issue of any shares or the terms of any plan for the issue of securities for the benefit of officers or employees. All or any part of the sum is to be applied on the behalf of shareholders either in paying up the amounts for the time being unpaid on any issued shares held by them, or in paying up in full unissued shares or other securities the Company (of an aggregate amount equal to the amount capitalised) which are to be issued to them accordingly, or partly in one way or partly in the other.

23.9 Appropriation and application of amounts to be capitalised

The Board may specify the manner in which any fractional entitlements and any difficulties relating to distribution are to be dealt with and, without limiting the generality of the foregoing, may specify that fractions are to be disregarded or that any fractional entitlements are to be increased to the next whole number or that payments in cash in lieu of fractional entitlements be made. The Board may make all necessary appropriations and applications of the amount to be capitalised pursuant to **rule 23.8** and all necessary allotments and issues of fully paid shares or debentures. Where required, the Board may appoint a person to sign a contract on behalf of the shareholders entitled upon a capitalisation to any shares or debentures, which provides for the issue to them, credited as fully paid of any further shares or debentures or for the payment by the Company on their behalf of the amounts or any

part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised.

23.10 Transfer of shares

A transfer of shares registered after the transfer books close for dividend purposes, but before a dividend is payable, does not pass the right to any dividend fixed for payment before the books are closed.

23.11 Retention of dividends

The Board may retain the dividends payable on shares which any person is under **rules 8.6** or **8.7** entitled to transfer until the person becomes registered as a shareholder in respect of the shares or duly transfers them. The Board may also retain any dividends on or in respect of which (or on or in respect of the shares upon which any such dividend is payable) the Company has a lien or charge under **rule 6.8** and may apply the same in or towards satisfaction of the calls, instalments or sums owing in respect of which the lien or charge exists.

23.12 How dividends are payable

Payment of any dividend may be made in any manner and by any means as determined by the Board. Without prejudice to any other method of payment which the Board may adopt any dividend may be paid by cheque or warrant made payable to the shareholder entitled to the dividend or in the case of joint holders to the shareholder whose name stands first in the Register in respect of the joint holding. Payment in any dividend may be made by sending the cheque, warrant or other means of payment to the shareholder entitled to the dividend through the post to the shareholder's Registered address, and upon posting every payment of any dividend is at the risk of the shareholder.

23.13 Unclaimed dividends

All unclaimed dividends may be invested or otherwise made use of by the Board for the benefit of the Company until claimed or otherwise disposed of according to law.

24. NOTICES

24.1 Service of notices

A notice may be given by the Company to any shareholder, or in the case of joint holders to the shareholder whose name stands first in the Register, personally, by leaving it at the shareholder's Registered address or by sending it by prepaid post or to the shareholder's Registered address or by sending it to the facsimile transmission address or electronic address nominated by the shareholder (if any). All notices to persons whose registered address is not in Australia are to be sent by pre-paid post by airmail, by fax or in some other way that ensures they will be received quickly.

24.2 When notice deemed to be served

Any notice sent by post is deemed to have been served at the expiration of 48 hours after the envelope containing the notice is posted and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted. Any notice served on a shareholder personally or left at the

shareholder's Registered address is deemed to have been served when delivered. Any notice served on a shareholder by facsimile transmission is deemed to have been served when the transmission is sent. A facsimile is deemed to be duly sent when the Company's facsimile system generates a message confirming successful transmission of the total number of pages of the notice to the addressee. Any notice served on a shareholder by electronic means is deemed to have been served when the electronic message is sent.

24.3 Shareholder not known at registered address

Where a shareholder does not have a Registered address or where the Company has bona fide reason to believe that a shareholder is not known at the shareholder's Registered address, all future notices are deemed to be given to the shareholder if the notice is exhibited in the Office for a period of 48 hours (and is deemed to be duly served at the commencement of that period) unless and until the shareholder informs the Company of a registered place of address.

24.4 Signature to notice

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

24.5 Reckoning of period of notice

Where a given number of days' notice or notice extending over any other period is required to be given the day of service is not to be reckoned in the number of days or other period.

24.6 Notice to transferor binds transferee

Every person who, by operation of law, transfer or any other means becomes entitled to be registered as the holder of any shares is bound by every notice which, prior to the person's name and address being entered in the Register in respect of those shares, was duly given to the person from whom the person derives title to those shares.

24.7 Service on deceased shareholders

A notice delivered or sent by post to the Registered address of a shareholder pursuant to these rules is (notwithstanding that the shareholder is then dead and whether or not the Company has notice of the shareholder's death) deemed to have been duly served in respect of any registered shares, whether held solely or jointly with other persons by the shareholder, until some other person is registered in the shareholder's place as the holder or joint holder and the service is for all purposes deemed to be sufficient service of the notice or document on the shareholder's heirs, executors or administrators and all persons (if any) jointly interested with the shareholder in the shares.

24.8 Persons entitled to notice of general meeting

- (a) Notice of every general meeting is to be given to:
 - (i) each member individually who is entitled to vote at general meetings of the Company;
 - (ii) each Director;

- (iii) each person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting;
 - (iv) the auditor for the time being of the Company; and
 - (v) ASX.
- (b) No other person is entitled to receive notices of general meetings unless they are required to receive a notice under the Law or the Listing Rules.

25. WINDING UP

25.1 Distribution in specie

If the Company is wound up, whether voluntarily or otherwise, the liquidator may divide among all or any of the contributories as the liquidator thinks fit in specie or in kind any part of the assets of the Company, and may vest any part of the assets of the Company in trustees upon any trusts for the benefit of all or any of the contributories as the liquidator thinks fit.

25.2 Variation of rights of contributories

If thought expedient, any division may be otherwise than in accordance with the legal rights of the contributories and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part, but in case any division otherwise than in accordance with the legal rights of the contributories is determined, any contributory who would be prejudiced by the division has a right to dissent and ancillary rights as if the determination were a special resolution passed pursuant to the Law relating to the sale or transfer of the Company's assets by a liquidator in a voluntary winding up.

25.3 Liability to calls

If any shares to be divided in accordance with **rule 25.1** involve a liability to calls or otherwise, any person entitled under the division to any of the shares may by notice in writing within 10 business days after the passing of the special resolution, direct the liquidator to sell the person's proportion and pay the person the net proceeds and the liquidator is required, if practicable, to act accordingly.

26. INDEMNITY AND INSURANCE

26.1 Indemnity in favour of Directors, Secretaries and executive officers

Subject to the Law and **rule 26.2**, the Company shall indemnify each Director, Secretary and executive officer to the maximum extent permitted by law, against any Liability incurred by them by virtue of their holding office as, and acting in the capacity of, Director, Secretary or executive officer of the Company, other than:

- (a) a Liability owed to the Company or a related body corporate of the Company;
- (b) a Liability for a pecuniary penalty order under section 1317G of the Law or a compensation order under section 1317H of the Law;
- (c) a Liability owed to a person other than the Company that did not arise out of conduct in good faith.

26.2 Indemnity for legal costs

The Company shall indemnify each Director, Secretary and executive officer to the maximum extent permitted by law, against any Liability for legal costs incurred by them in respect of a Liability incurred by them by virtue of their holding office as, and acting in the capacity of, Director, Secretary or executive officer of the Company other than for legal costs incurred:

- (a) in defending or resisting proceedings, in which the Director, Secretary or executive officer is found to have a Liability for which they could not be indemnified under **rule 26.1**;
- (b) in defending or resisting criminal proceedings in which the Director, Secretary or executive officer is found guilty;
- (c) in defending or resisting proceedings brought by the ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this **rule 26.2(c)** does not apply to costs incurred in responding to actions taken by the ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with proceedings for relief to the Director, Secretary or executive officer under the Law in which the court denies the relief.

26.3 Indemnity for employees

Subject to the Law and **rule 26.4**, the Company may indemnify an employee, who is not a Director, Secretary or executive officer of the Company, to the maximum extent permitted by law, against any Liability incurred by them by virtue of their holding office as, and acting in the capacity of, an officer of the Company, other than:

- (a) a Liability owed to the Company or a related body corporate of the Company;
- (b) a Liability for a pecuniary penalty order under section 1317G of the Law or a compensation order under section 1317H of the Law; or
- (c) a Liability owed to a person other than the Company that did not arise out of conduct in good faith.

26.4 Indemnity for legal costs of employees

The Company may indemnify an employee other than a Director, Secretary or executive officer to the maximum extent permitted by law, against any Liability for legal costs incurred in respect of a Liability as, or by virtue of their holding office as, and acting in the capacity of, an officer of the Company other than for legal costs incurred:

- (a) in defending or resisting proceedings, in which the officer is found to have a Liability for which they could not be indemnified under **rule 26.3**;
- (b) in defending or resisting criminal proceedings in which the officer is found guilty;
- (c) in defending or resisting proceedings brought by the ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this **rule 26.4(c)** does not apply to costs incurred

in responding to actions taken by the ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or

- (d) in connection with proceedings for relief to the officer under the Law in which the court denies the relief.

26.5 Proceedings

For the purposes of **rules 26.2 and 26.4**, ‘proceedings’ includes the outcomes of the proceedings and any appeal in relation to the proceedings.

26.6 Insurance for the benefit of Directors, Secretaries and executive officers

- (a) Subject to the Law, the Company may pay a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer of the Company acting in that capacity against:
 - (i) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
 - (ii) a Liability arising from negligence or other conduct.

26.7 Insurance for other officers

Subject to the Law, the Company may pay a premium for a contract insuring a person who is or has been an employee and also an officer of the Company, acting in that capacity, but who is not a Director, Secretary or executive officer of the Company against:

- (a) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
- (b) a Liability arising from negligence or other conduct .

26.8 When insurance may not be provided by the Company

The Company shall not pay, nor agree to pay, a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer or an employee who is also an officer of the Company, against a Liability (other than one for legal costs) arising out of:

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

26.9 Definitions for the purposes of rule 26

In this **rule 26**, except to the extent the context otherwise requires:

‘**Liability**’ includes any claim, action, suit, proceeding, investigation, inquiry, damage, loss, cost or expense;

‘**executive officer**’ means a person who is concerned, or takes part in, the management of the Company (regardless of the person’s designation and whether or not the person is a Director of the Company);

‘**officer**’ means:

- (a) a Director or Secretary of the Company;

- (b) a person:
- (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company;
 - (ii) who has the capacity to affect significantly the Company's financial standing; or
 - (iii) in accordance with whose instructions or wishes the members of the Board is accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the Board or the Company).

27. PARTIAL TAKEOVERS

27.1 Interpretation

For the purposes of this rule:

'Proportional Takeover Bid' has the same meaning as given to that term by section 9 of the Law;

'Relevant Day' in relation to a Proportional Takeover Bid, means the day that is 14 days before the end of the period during which the offers under the Proportional Takeover Bid remain open;

a reference to a **'person associated with'** another person has the meaning given to that expression by Division 2 of Part 1.2 of the Law.

27.2 Approval of partial takeovers bids

- (a) Subject to the Listing Rules, where offers have been made under a Proportional Takeover Bid in respect of shares in a class of shares in the Company, the registration of a transfer giving effect to a takeover contract for the bid is prohibited unless and until a resolution (in this rule referred to as an **'Approving Resolution'**) to approve the Proportional Takeover Bid is passed in accordance with the provisions of this rule.
- (b) A person (other than the bidder or an associate of the bidder) who, as at the end of the day of which the first offer under the Proportional Takeover Bid was made, held shares in that class is entitled to vote on an Approving Resolution and, for the purpose of so voting, is entitled to one vote for each of the shares held in that class.
- (c) An Approving Resolution is to be voted on at a meeting, convened and conducted by the Company, of the persons entitled to vote on the Approving Resolution.
- (d) The provisions of these rules that apply in relation to a general meeting of the Company, with such modifications as the circumstances require, apply in relation to a meeting that is convened to vote on an Approving Resolution as if such a meeting was a general meeting of the Company.
- (e) An Approving Resolution that has been voted on in accordance with this rule, is taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the

resolution is greater than one-half, and otherwise is taken to have been rejected.

- (f) Where offers have been made under a Proportional Takeover Bid then the Board must ensure that a resolution to approve the Proportional Takeover Bid is voted on in accordance with this rule before the Relevant Day.
- (g) Where a resolution to approve a Proportional Takeover Bid is voted on, in accordance with this rule, before the Relevant Day, the Company must, on or before the Relevant Day:
 - (i) give to the bidder; and
 - (ii) serve on each notifiable securities exchange in relation to the Company,

a notice in writing stating that a resolution to approve the Proportional Takeover Bid has been voted on and whether the resolution has been passed, or has been rejected, as the case requires.
- (h) Where, at the end of the day before the Relevant Day no resolution to approve the Proportional Takeover Bid has been voted on in accordance with this rule, a resolution to approve the Proportional Takeover Bid is to be, for the purpose of this rule, deemed to have been passed in accordance with this rule.
- (i) Where a resolution under this rule is rejected, then:
 - (i) notwithstanding section 652A of the Law, all offers under the Proportional Takeover Bid that have not, as at the end of the Relevant Day, been accepted, and all offers (in this paragraph referred to as the '**accepted offers**') under the Proportional Takeover Bid that have been accepted and from whose acceptance binding contracts have not resulted, at the end of the Relevant Day, are deemed to be withdrawn at the end of the Relevant Day;
 - (ii) the bidder is, forthwith after the end of the Relevant Day, to return to each person who has accepted any of the accepted offers any documents that were sent by the person to the bidder with the acceptance of the offer;
 - (iii) the bidder is entitled to rescind, and is required, forthwith after the end of the Relevant Day, to rescind, each binding contract resulting from the acceptance of an offer made under the Proportional Takeover Bid; and
 - (iv) a person who has accepted an offer made under the Proportional Takeover Bid is entitled to rescind the contract (if any) resulting from that acceptance.
- (j) This rule ceases to have effect on the third anniversary of the later of the date of adoption or last renewal of this rule.

28. LISTING RULES

28.1 Company not admitted to official list of ASX

Notwithstanding any of these rules the Company and its Directors and other officers are not required to comply with any rule insofar as it may specifically relate to ASX,

the Listing Rules or the ASTC Settlement Rules until the Company is admitted to the Official List of ASX.

28.2 Company admitted to official list of ASX

If the Company is admitted to the Official List of ASX, the following clauses apply:

- (a) Notwithstanding anything contained in these rules, if the Listing Rules prohibit an act being done, the act shall not be done.
- (b) Nothing contained in these rules 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 these rules to contain a provision and they do not contain such a provision, these rules are deemed to contain that provision.
- (e) If the Listing Rules require these rules not to contain a provision and they contain such a provision, these rules are deemed not to contain that provision.
- (f) If any provision of these rules is or becomes inconsistent with the Listing Rules, these rules are deemed not to contain that provision to the extent of the inconsistency.

29. PRIOR TO LISTING

The rules contained in **attachment A** only apply to the Company prior to the Company being admitted to the Official List of ASX and shall not apply after that time.

30. CAPITAL MANAGEMENT

30.1 Capital reduction by way of in specie distribution

Where the Company reduces its share capital, it may do so wholly or partly by way of payment of cash, the distribution of or the allotment of specific assets (including paid up securities, debenture or debenture stock of any other company) or in any other manner permitted by law. Where required to give effect to such distribution of assets, the Directors may:

- (a) settle such payment as they think expedient;
- (b) fix the value for distribution of such specific assets or part thereof;
- (c) determine that cash payments be made to any members upon the footing of the value so fixed in order to adjust the rights of the parties; and
- (d) vest any such specific assets in trustees or nominees (including the Company) as may seem expedient to the Directors.

30.2 Payment by way of securities in another corporation

Where, under **rules 23.7** or **30.1**, the Company pays a dividend or reduces its capital by way of a distribution of securities in another corporation:

- (a) the Members are deemed to have agreed to become members of that corporation and are bound by the constitution of that corporation; and
- (b) each of the Members appoints the Company as its agent to execute any transfer of shares or other securities, or any other document required to give effect to the distribution of those securities, and to receive and hold those securities on trust for the Member for no more than 13 months from the date of distribution.

ATTACHMENT A

Rules that apply prior to listing

A.1 DEFINITIONS

In this **attachment A** of the Constitution of the Company:

“**Accepting Preference Shareholder**” is defined in **rule A.3.1(f)**;

“**Adverse Market Conditions**” means the All Ordinaries Index being on any three consecutive ASX trading days before 31 December 2006 more than 10% below the level of that index after the relevant date;

“**As Converted Basis**” means the voting and other rights holder of Securities would have from time to time as if they had been converted to ordinary shares in the Company at the relevant time under the formula set out in **rule A1.3(b)**;

“**Asset Sale**” means a sale of all or a substantial part of the assets of the Company or its subsidiaries;

“**Convertible Note Deed**” means the convertible note facility deed dated on or about May 2006 including the schedules to that deed;

“**Convertible Notes**” mean the convertible notes issued by the Company to the Noteholders pursuant to the Convertible Note Deed;

“**Effective Date**” means the date the constitution of the Company is amended to include this **attachment A**;

“**Face Value**” has the meaning given to that term in the Convertible Note Deed;

“**Group**” means all Group Entities and each of them;

“**Group Entity**” means the Company, a subsidiary of the Company or an entity controlled by any of the Company and its subsidiary within the meaning of section 50AA of the Law;

“**Issue Price**” means the price or notional price per Security at which Securities were issued to the holder, including:

- (a) in the case of Series A Preference Shares or ordinary Shares pursuant to the conversion of Convertible Notes, 69.64509% of the aggregate Face Value of the Convertible Notes converted into Series A Preference Shares or ordinary Shares by the holder divided by the number of Series A Preference Shares issued to the holder;
- (b) in the case of Series A Preference Shares or ordinary Shares pursuant to the issue to them of the Warrant Shares 69.64509% of the aggregate value of those shares in the hands of the holder divided by the number of Warrant Shares issued to the holder; and
- (c) in the case of Series A Preference Shares issued on 7 July 2006 other than those referred to in paragraphs (a) and (b)
69.64509% of the price per Series A Preference Share.

“**Lead Investor**” means the holder of the greatest number of Series A Preference Shares (if any);

“**Listing**” means the admission of the Company to the official list of a public stock exchange and the quotation of its shares on that exchange;

“**Prescribed Proportion**” is defined in **rule A.3.1(b)**;

“**Remaining Securities**” is defined in **rule A.3.1(h)**;

“**Security**” means a share, debenture, stock, bond, note, interest in a managed investment scheme, unit, warrant, option, convertible note or derivative instrument;

“**Series A Preference Shares**” means the shares issued pursuant to **clause A.2** with the rights and restrictions specified in this **attachment A** (including **schedule 1** to this **attachment A**);

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

“**Share Sale**” means any sale or transfer of at least 90% of all of the Shares;

“**Shareholder**” means a holder from time to time of any Share;

“**VC Investor**” means Starfish Technology Fund 1, L.P., ARBN 112 405 044 (an incorporated limited partnership under the Partnership Act 1958 (Vic)) of 66 Jolimont Street, Jolimont, Victoria and Versant Venture Capital III, L.P., and Versant Side Fund III, L.P., both of 3000 Sand Hill Road, Building 4, Suite 210, Menlo Park, California, 94025, USA; and

“**Warrant Shares**” means the warrant shares issued to Noteholders on the conversion of their Convertible Notes.

A.2 SERIES A PREFERENCE SHARES

The Company may issue preference shares (known as **Series A Preference Shares**) from time to time.

A.3 NEW ISSUES

A.3.1 New Issues

- (a) (a) Notwithstanding any provision in this constitution to the contrary, but subject to **rule A.3.2**, the provisions of this **rule A.3.1** apply where the Company proposes to make a new issue of Securities. In that event Securities of the Company may not be:
 - (i) offered for issue unless they are offered first to each holder of Series A Preference Shares; and
 - (ii) issued, except pursuant to any offer referred to in **rule A.3.1(a)(i)** being made in accordance with this **rule A.3**.
- (b) A separate written offer must be made to each holder of Series A Preference Shares on the same terms, except that the proportion of the total number of Securities offered will equal the proportion (in this **rule A.3.1**, **Prescribed Proportion**) that the Shareholder’s holding of Series A Preference Shares at that time bears to the total number of Series A Preference Shares on issue.

- (c) The total number and class of Securities offered for issue, issue price of each Security, offer period and all other terms of the offer must be:
 - (i) set out in the offer;
 - (ii) capable of performance by the offeree; and
 - (iii) consistent with this **rule A.3.1**.
- (d) The Company must send the offer to each holder of Series A Preference Shares.
- (e) The offers must remain open for acceptance for the offer period stated in the offer. The period must start on the business day after the date the offer is sent to the offeree and must last for at least 30 days.
- (f) Each holder of Series A Preference Shares may accept the offer for all or some of the Securities offered to it by giving the Company written notice of acceptance for the relevant number of Securities on or before the last day of the offer period (**Accepting Preference Shareholder**).
- (g) If the acceptances exceed the total number of Securities offered, the Company must allocate the Securities among the holders of Series A Preference Shares who have duly accepted the offer so that, as nearly as may be, the proportion of the total allocated to each accepting Shareholder equals the proportion that the Shareholder's holding of Series A Preference Shares immediately before the offer was made bears to all of the Series A Preference Shares held by all of the Accepting Preference Shareholders at that time, subject to such further proportional allocations being made to ensure that no holder of Series A Preference Shares is allocated more Securities than it has accepted for.
- (h) If the acceptances are less than the total number of Securities offered, the Company must, within 7 days from the end of the offer period, offer the Securities for which acceptances have not been received (**Remaining Securities**) for issue to the Accepting Preference Shareholder at not less than the price, and otherwise on terms no more favourable than those, on which the Securities were offered to the other holders of Series A Preference Shares. The Accepting Preference Shareholder may accept the offer for all or some of the Remaining Securities offered to them by giving the Company written notice of acceptance for the relevant number of Securities within 7 days after the Company offers the Remaining Securities to those Accepting Preference Shareholder .
- (i) The Company must:
 - (i) within 7 days from the end of the offer period; or
 - (ii) if an offer was required to be made under **rule A.3.1(h)**, within 7 days after the latest date on which the Accepting Preference Shareholder may notify the Company of their acceptances under that rule,notify each holder of Series A Preference Shares in writing of details of:
 - (iii) the acceptances received from each holder of Series A Preference Shares (including under **rule A.3.1(h)**, if any);
 - (iv) any necessary allocation of Securities in accordance with **rule A.3.1(g)**; and

- (v) the number of Securities to be subscribed for by the holder of Series A Preference Shares and the aggregate issue price payable for those Securities.
- (j) Each holder of Series A Preference Shares who has accepted the offer must subscribe and pay for those Securities it has accepted for or which have been allocated to it by the Company (as the case may be) in accordance with the terms of the offer but not later than 10 Business Days after receipt of the Company's notice, and on receipt of this payment the Company must issue those Securities to the Shareholder.
- (k) If the acceptances received under **rules A.3.1(f) and (h)** are less than the total number of Securities offered, the Company may offer the remaining Securities for issue and issue all (or part only) of them to any person approved by the Board at not less than the price, and otherwise on terms no more favourable to that person than those on which the Securities were offered to the holders of Series A Preference Shares, within 90 days after the latest date on which the holders of Series A Preference Shares may notify the Company of their acceptances under **rule A.3.1(h)**.
- (l) If, in performing a calculation under **rule A.3.1(b), (g) or (h)**, a number of Securities results which is a fraction, the number will be rounded up or down as determined by the Company.

A.3.2 Exceptions

Rule A.3.1 shall not apply to an offer or issue:

- (a) of Securities to employees, consultants and/or directors of any member of the Group pursuant to employee share or share option plans or agreements approved by the Board;
- (b) of Securities by the Company in connection with any acquisition, merger or dividend approved by the Board and Shareholders (if required);
- (c) of Securities pursuant to a share split;
- (d) of Securities on the conversion of securities on issue on the Effective Date;
- (e) of Securities issued pursuant to a contractual commitment in place prior to the Effective Date;
- (f) of Securities agreed to in writing by:
 - (i) the VC Investors; or
 - (ii) if the VC Investors do not hold Series A Preference Shares, the Lead Investor.

B.1 DEFINITIONS

In this **attachment A** of the Constitution of the Company:

“**Accepting Members**” is defined in **rule B.2.7(b)**;

“**Acceptance Period**” means the period of at least 15 business days from the date of service of a Notice of Sale;

“**Allocation Notice**” is defined in **rule B.2.4(f)**;

“Change of Control Event” means:

- (a) with respect to an individual, the individual becoming liable to be dealt with in any way under the laws relating to mental health;
- (b) with respect to a body corporate other than the VC Investors, a change in the identity of the person or persons who:
 - (i) have the power to control the composition of the board of directors of the body corporate or a holding company of the body corporate;
 - (ii) have the power to cast or control the casting of more than one half of the maximum number of votes that might be cast at a general meeting of the body corporate or a holding company of the body corporate; or
 - (iii) hold more than one half of the issued share capital of the body corporate or a holding company of the body corporate; and
- (c) with respect to a person in its capacity as trustee of a trust other than the VC Investors, a change in the identity of the person or persons who have the power to remove or control the removal of the trustee of the trust;

“Close Relative” means, in respect of a natural person at any relevant time:

- (a) a spouse or a de facto spouse of that person, whether current or within the previous 2 years;
- (b) a father, mother, guardian, brother, sister, son or daughter of that person; or
- (c) a father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law of that person;

“Compulsory Seller” is defined in **rule B.2.2(c)**;

“Dispose” or **“Disposal”** means:

- (a) in respect of any Security in the case of a Key Member only, any grant or creation of any Security Interest over the Security or over any interest in or rights of the Security;
- (b) any sale or transfer (or as the context requires, sold or transferred) of the Security; or
- (c) in the case of a Key Member only, any creation of any interest in or rights over the Security;

“Drag Along Notice” is defined in **rule B.2.7(b)**;

“Fair Value” means the sum which is calculated by the Valuer as the fair value of the Shares being sold by:

- (a) taking into account the amount which a third party arm’s length purchaser would be prepared to pay for those Shares; and
- (b) taking into account the absence or existence of an actively traded market for the Shares;

“Insolvency Event” means:

- (a) in respect of a party which is a body corporate:

- (i) an administrator, liquidator or provisional liquidator, receiver, receiver and manager, or controller of property of the body corporate is appointed;
 - (ii) the body corporate commences to be wound up or ceases to carry on business;
 - (iii) the body corporate enters into a compromise or arrangement with creditors or a class of them (other than the optionholders);
 - (iv) the party is unable to pay its debts as and when they fall due;
 - (v) any execution, attachment or other process of any court or authority or any distress is issued out against or levied upon any property of the party; or
 - (vi) anything which is analogous or has an effect which is substantially similar to any events in **paragraphs (a)(i) to (v)** of this definition occurs under any Law;
- (b) in respect of a party which is a natural person:
- (i) a creditor's petition or a debtor's petition is presented under the Bankruptcy Act against the person, a partnership in which the person is a partner or 2 or more joint debtors who include the person;
 - (ii) the property of the person becomes subject to control under the Bankruptcy Act;
 - (iii) the person executes a deed of assignment or deed of arrangement under the Bankruptcy Act;
 - (iv) the creditors of the person accept a composition under the Bankruptcy Act;
 - (v) the person is unable to pay his debts as and when they fall due;
 - (vi) any execution, attachment or other process of any court or authority or any distress is issued out against or levied upon any property of the party; or
 - (vii) anything which is analogous or has an effect which is substantially similar to any events in **paragraphs (b)(i) to (vi)** of this definition occurs under any law;

"Institutional Investor" means any person who conducts a business of investing in entities which are not listed on any stock exchange or which are proposed to be de-listed, including any trustee, responsible entity, partner, custodian or nominee of any trust, company or partnership which conducts such a business;

"Internal Rate of Return" means:

- (a) in the case of Series A Preference Shares issued on 7 July 2006, the discount rate at which the present value of all cashflows from an investment in the Company by the VC Investor is equal to 69.64509% of the cost of that VC Investor's investment; and
- (b) in all other cases, the discount rate at which the present value of all cashflows from an investment in the Company by the VC Investor is equal to the cost of that VC Investor's investment;

"Investors" means all the holders of Series A Preference Shares;

"Key Member" means those members listed in **schedule 2** of this **attachment A**;

“**Notice of Sale**” is defined in **rule B.2.2(a)**;

“**New Member**” means a person who becomes a member of the Company after the Effective Date (other than a Key Member or the Investors);

“**Offeree**” is defined in **rule B.2.2(a)(viii)**;

“**Other Member**” is defined in **rule B.2.7(b)**;

“**Proportionate Share**” in relation to a member means the proportion that the number of shares from time to time held by that member bears to the total number of shares held by Offerees from whom the Seller receives offers under **rule B.2.3(a)** (excluding any Offerees who have been fully allocated the number of Sale Shares they have offered to buy), provided that each member’s Proportionate Share will be determined on the basis that the number of Series A Preference Shares are calculated on an As Converted Basis;

“**Related Body Corporate**” means a “related body corporate” as that expression is defined in the Law and includes a body corporate which is at any time after the date of this deed a “related body corporate” but ceases to be a “related body corporate” because of an amendment, consolidation or replacement of the Law;

“**Remaining Member**” is defined in **rule B.2.6(a)**;

“**representative**” means, for a body corporate, a representative under section 250D of the Corporations Act or a corresponding previous law;

“**Restricted Shares**” means:

- (a) any share issued by the Company before 3 July 2006;
- (b) any share issued on conversion of securities issued by the Company before 3 July 2006;
- (c) the Series A Preference Shares issued by the Company to the VC Investors pursuant to the Subscription Deed between the Company, the VC Investors and others dated on or about July 2006;
- (d) any share issued on conversion of Series A Preference Shares referred to in paragraph (c); and
- (e) any share issued on conversion of the Convertible Notes or Series A Preference Shares issued on conversion of the Convertible Notes;

“**Sale Shares**” is defined in **rule B.2.2(a)(iv)**;

“**Security Interest**” means an interest or power:

- (a) reserved in or over an interest in any asset including, but not limited to, any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of security for the payment of a debt or any other monetary obligation or the performance of any other obligation and includes, but is not limited to, any agreement to grant or create any of the above;

“**Seller**” is defined in **rule B.2.2(a)**;

“**Shareholder**” means a holder from time to time of any Share;

“**Starfish**” means the Starfish Technology Fund 1, LP ARBN 112 405 044 (an incorporated limited partnership under the *Partnership Act 1958* (Vic)) constituted by a venture capital limited partnership deed executed by Starfish Ventures and dated 23 January 2004;

“**Starfish Ventures**” means Starfish Ventures Pty Ltd ACN 095 333 663 and each other responsible entity from time to time of the Starfish Technology Fund.

“**Tag Along Notice**” is defined in **rule B.2.6(a)**;

“**Third Party Offer**” is defined in **rule B.2.7(a)**;

“**Third Party Purchaser**” is defined in **rule B.2.2(a)(vi)**;

“**Valuer**” means the president from time to time of the Institute of Chartered Accountants in Australia or the nominee of that president;

“**Versant**” means Versant Venture Capital III, L.P., and Versant Side Fund III, L.P., both of 3000 Sand Hill Road, Building 4, Suite 210, Menlo Park, California, 94025, USA1; and

“**Versant Ventures**” means Versant Venture Management L.L.C.

B.2 RESTRICTIONS ON DISPOSAL OF SHARES

B.2.1 No disposal of shares

- (a) A Key member, New Member or Investor may only Dispose of a share in the manner allowed by this **rule B.2**.
- (b) The Company must note on each share certificate that shares may only be transferred in accordance with this constitution.

B.2.2 Notice of sale

- (a) A Key Member, New Member or Investor who wants to sell (whether or not for value) shares (a **Seller**) other than in circumstances contemplated by:
 - (i) **rule B.2.6 (Tag Along)** following giving of a Tag Along Notice;
 - (ii) **rule B.2.7 (Drag Along)**; or
 - (iii) **rule B.2.8 (Permitted Transfers)**,
 must give an identical written notice (**Notice of Sale**) to each other member:
 - (iv) **number**: specifying the number of shares that it wishes to sell (**Sale Shares**);
 - (v) **price**: specifying the sale price per Sale Share in Australian dollars;
 - (vi) **third party**: specifying the name of any proposed third party purchaser (**Third Party Purchaser**) (if any);
 - (vii) **terms**: specifying any other terms of the proposed sale which must be reasonably capable of acceptance by any willing purchaser;
 - (viii) **option**: granting each member (other than the Seller) (**Offeree**) an option to buy such number of Sale Shares during the Acceptance Period as the Offeree may specify (subject to adjustment under **rule B.2.4 (Determining allocation of Sale Shares)**) on the terms set out in the Notice of Sale; and

- (ix) **certification:** certifying that there are no other terms or collateral benefits that will or may be received by the Seller in relation to the sale of the Sale Shares.
- (b) A Seller must attach a copy of any offer for its shares that it has received from the Third Party Purchaser (if any) to each Notice of Sale.
- (c) If a Change of Control Event occurs in relation to a Key Member, New Member or Investor (other than a VC Investor) (**Compulsory Seller**), then that Compulsory Seller is deemed to have given a Notice of Sale for all their Shares to the Company on the following terms:
 - (i) the price per Share for which the Compulsory Seller wishes to transfer the Shares is the Fair Value of the Shares; and
 - (ii) the Notice of Sale is deemed to have been given on the date that the purchase price is determined.
- (d) If the price per Share at which a Compulsory Seller is or may be required to sell the Shares as a result of the application of this **rule B.2.2** is the Fair Value per Share, then the Company must instruct the Valuer to determine the Fair Value per Share as soon as reasonably possible and in any event within 10 Business Days after the Valuer's engagement and the Company must promptly provide the Valuer with such information as the Valuer may reasonably request to assist the Valuer in reaching his or her decision.

B.2.3 Exercise of Offeree's option to buy Sale Shares

- (a) Each Offeree may, at any time within the Acceptance Period, exercise its option granted under the Notice of Sale to buy Sale Shares by giving written notice to the Company and the Seller specifying the number of Sale Shares it offers to buy.
- (b) If an Offeree exercises the option referred to in **paragraph (a)**:
 - (i) the Seller must sell to that Offeree the number of Sale Shares specified by that Offeree (as adjusted under **rule B.2.4**); and
 - (ii) the Offeree must buy those Sale Shares,
 on the terms set out in the Notice of Sale.

B.2.4 Determining allocation of Sale Shares

The Company must determine the allocation of Sale Shares according to the following principles:

- (a) **enough Sale Shares:** If the Seller receives offers from Offerees under **rule B.2.3(a)** to buy, in aggregate, equal to or less than the total number of Sale Shares, the Seller must sell to each Offeree the number of Sale Shares that Offeree has so offered to buy as set out in the notices given under **rule B.2.3(a)**.
- (b) **not enough Sale Shares:** If the Seller receives offers from Offerees under **rule B.2.3(a)** to buy, in aggregate, more than the total number of Sale Shares, then, subject to **paragraph (c)**, the Sale Shares must be allocated to the Offerees in their Proportionate Shares.
- (c) **no more than offered:** An Offeree is not bound to buy or entitled to buy more than the number of Sale Shares which that Offeree has offered to buy

as set out in the notice given under **rule B.2.3(a)**, even if **paragraph (b)** would result in a higher number of Sale Shares being allocated to that Offeree.

- (d) **unallocated Sale Shares:** Any Sale Shares which remain unallocated because of **paragraph (c)** must be re-allocated in accordance with **paragraphs (b) and (c)** amongst those remaining Offerees who offered to buy more than the number of Sale Shares already allocated to them under **paragraph (b)**. This process may be repeated if necessary until all of the Sale Shares have been allocated.
- (e) **rounding:** The Company may round a fractional allocation of shares up or down as it thinks fit.
- (f) **notice:** The Company must as soon as practicable notify the Seller and each Offeree of the number of Sale Shares to which each Offeree is entitled (**Allocation Notice**).
- (g) **transfer:** Within 5 Business Days of the later of the date of the Allocation Notice or receipt by the Seller of the consideration payable in respect of that sale, the Seller must give each Offeree a transfer of the relevant number of Sale Shares allocated to it under this **rule B.2.4**, signed by the Seller.
- (h) **share certificates:** The Seller must give the Company the share certificates for the Sale Shares at the same time as it gives the Offeree a transfer under **paragraph (g)**.

B.2.5 Sale Shares not purchased by shareholders

- (a) **sale to third party:** If:
 - (i) the Seller does not receive offers from Offerees under **rule B.2.3(a)** to buy, in aggregate, the total number of Sale Shares; or
 - (ii) the Seller does not, within 15 Business Days of the date of the Allocation Notice, receive from Offerees payment of the consideration payable in respect of the sale of the total number of Sale Shares,

the Seller may sell those Sale Shares not bought by the Offerees to any third party on the same terms as contained in the Notice of Sale within 40 Business Days (but not before 15 Business Days) of the date of the Allocation Notice.

- (b) **terms:** The Seller must not sell Sale Shares to any third party for a lower price than that specified in the Notice of Sale or otherwise on more beneficial terms.
- (c) **copy of agreement:** The Seller must give a copy of any agreement with the third party purchaser of any Sale Shares to each member within 3 days of signing the agreement.
- (d) **comply again:** If the Seller does not sell the Sale Shares to a third party within the period set out in **paragraph (a)**, it may not sell those Sale Shares without complying again with **rules B.2.2 to B.2.5** (inclusive).

B.2.6 Tag Along

(a) If a Seller (other than the VC Investors) gives a Notice of Sale relating to the sale of Restricted Shares, then the holders of Series A Preference Shares other than the Seller (**Remaining Members**) may, within the Acceptance Period, give written notice (**Tag Along Notice**) to the Seller of its wish to sell its shares in accordance with this **rule B.2.6**.

(b) If a Remaining Member gives a Tag Along Notice to the Seller, the Seller may not sell any of its Sale Shares to any person (including any Third Party Purchaser named in any Notice of Sale) unless contemporaneously with the sale of any Sale Shares:

- (i) the number of the Remaining Member's ordinary shares (if any); and
- (ii) the number of its Series A Preference Shares,

held at the date of the Notice of Sale given by the Seller worked out under **rule B.2.6(c) (Prescribed Number)** are sold on the terms (including price) contained in the Notice of Sale given by the Seller with such changes as are necessary to reflect the fact that either:

- (iii) Series A Preference Shares; or
- (iv) such number of ordinary shares as are converted by that holder under **rule A1.3(b) of schedule 1 of attachment A** to this constitution,

will be sold, including that the price per Series A Preference Share will be equal to the price for the number of ordinary shares into which the Series A Preference Share would convert were it converted into ordinary shares pursuant to **rule A1.3(b) of schedule 1 of attachment A** to this constitution at the time of the Tag Along Notice.

(c) The Prescribed Number is worked out as follows:

- (i) Subject to **rule B.2.6(c)(ii)**, the Prescribed Number of each class of shares is worked out by the following formula:

$$A = \frac{B}{C} \times D$$

where:

A is the Prescribed Number of shares of the relevant class held by the Remaining Member who gives a Tag Along Notice;

B is the total number of shares of that class held by the Remaining Member who gives a Tag Along Notice at the date of the Notice of Sale calculated on an As Converted Basis;

C is the total number of shares of all classes held by all of the Remaining Members who gave a Tag Along Notice and the Seller as at the date of the Notice of Sale calculated on an As Converted Basis; and

D is the total number of Sale Shares.

- (ii) If the number worked out under **rule B.2.6(c)(i)** exceeds the number of shares in a class, or the total number of shares (as the case may be), held by a Remaining Member who gives a Tag Along Notice, the Prescribed Number is equal to the number of shares of that class,

or the total number of shares (as the case may be), held by the Remaining Member who gives a Tag Along Notice.

(d) In the event of one or more holders of Series A Preference Shares exercising their right to tag along to a share sale under **rule B.2.6** (a **Tagged Sale**), those holders of Series A Preference Shares will be entitled to convert such proportion of their Series A Preference Shares (as is calculated by **rule A1.3(b)**) to the number of ordinary shares (**Converted Shares**) as are required for them to receive from the proceeds of such Tagged Sale:

- (i) an amount equal to the Issue Price of the Series A Preference Shares converted under this rule to Converted Shares pursuant to the Tagged Sale plus any unpaid dividends in respect of those Series A Preference Shares converted to Converted Shares (**First Amount**); plus
- (ii) an amount (**Additional Amount**) calculated in accordance with the following formula:

$$\text{Additional Amount} = \frac{A}{B} \times C$$

where

A = the number of Converted Shares held by the relevant holder and sold as part of the Tagged Sale;

B = the total number of shares held by all of the Shareholders who sold Shares as part of the Tagged Sale;

C = the total price offered by the third party buyer for all Shares less the First Amount;

B.2.7 Drag along rights

- (a) If the Company or any Key Member, any New Member or any Investor receives a written offer from a third party purchaser to purchase all of the shares on issue in the Company (**Third Party Offer**):
 - (i) the Key Member, the New member or Investor which received that Third Party Offer must, within 3 Business Days of receipt of that offer, provide a copy of the Third Party Offer to the Company; and
 - (ii) the Company must, within 2 Business Days of receipt of a copy of the Third Party Offer, provide a copy of the Third Party Offer to all members,

and any member may accept that Third Party Offer, subject to the terms of this **rule B.2.7** and in the case of Restricted Shares held by Key Members, New Members and Investors only, (unless the VC Investors (if they hold Series A Preference Shares) waive the following requirement in writing), provided always that the VC Investor (if they hold Series A Preference Shares) consents, which they must do if the Third Party Offer provides each VC Investor with an Internal Rate of Return of at least 40%.

- (b) Where:
 - (i) members holding at least two thirds of the issued shares accept the Third Party Offer (determined on an As Converted Basis); and

- (ii) the Third Party Offer provides each VC Investor (if they hold Series A Preference Shares) with an Internal Rate of Return of at least 40% (unless this rule is waived by the VC Investors (if they hold Series A Preference Shares) in writing),

then (for the avoidance of doubt) **rules B.2.2, B.2.3, B.2.4 and B.2.5** shall not apply, and any Investor which has accepted the Third Party Offer under **rule B.2.7(a) (Accepting Members)** may serve on each other Key Member, New Member and Investor (**Other Members**) a written notice (**Drag Along Notice**).

- (c) The Drag Along Notice must:
 - (i) **number**: specify the number of Restricted Shares being proposed to be sold by the Accepting Members, which must be all the Restricted Shares held by them;
 - (ii) **price**: specify the sale price per share in Australian dollars;
 - (iii) **name**: specify the name of the purchaser who made the Third Party Offer;
 - (iv) **terms**: specify any other terms of the Third Party Offer (which must be no less favourable than the terms on which each Accepting Member transfers their shares); and
 - (v) **certification**: certify that there are no other terms or collateral benefits that will or may be received by any Accepting Member in relation to the sale,

and require each Other Member to transfer to the purchaser who made the Third Party Offer all of the Other Members' Restricted Shares on the terms and conditions specified in the Drag Along Notice and attach a copy of the Third Party Offer.
- (d) Each Other Member must (subject to **paragraph (e)**), within 5 Business Days of receipt of the Drag Along Notice, transfer all of its Restricted Shares to the purchaser who made the Third Party Offer on the terms and conditions of the Drag Along Notice.
- (e) The Other Members are not obliged to sell their Restricted Shares in accordance with this **rule B.2.7** if the Accepting Members do not simultaneously complete the transfer of all their Restricted Shares to the unrelated third party purchaser who made the Third Party Offer on the same terms and conditions set out in the Drag Along Notice.
- (f) Each Accepting Member may not Dispose of any of its Restricted Shares under this **rule B.2.7** unless it completes the transfer of all of its Restricted Shares to the purchaser who made the Third Party Offer on the same terms and conditions set out in the Drag Along Notice.

B.2.8 Permitted transfers

Subject to appropriate notification by the relevant member to the Company for the purposes of maintaining the Company's statutory registers, the provisions of this **rule B.2** do not apply to any of the following Disposals:

- (a) a transfer made with the prior written consent of the VC Investors (if they hold Series A Preference Shares);

- (b) a transfer by a member of any shares pursuant to an offer for sale of shares in conjunction with a Listing;
- (c) a transfer of shares by a member to (each a **Permitted Transferee**):
 - (i) in the case of corporate shareholders, a Related Body Corporate; or
 - (ii) in the case of each other member, the following:
 - (A) their legal spouse;
 - (B) the trustee of a trust controlled by the member and in respect of which the member is a beneficiary entitled to at least 90% of any distribution of income or capital by the trust; or
 - (C) a company controlled by the member, the shares in which are held at least to 90% by the member.

If:

- (iii) in the case of a corporate shareholder, the person to whom the shares are transferred under **paragraph (c)(i)** ceases to be a Related Body Corporate of the original transferring member; or
- (iv) in the case of each other member, if the person to whom the shares are transferred under **paragraph (c)(ii)** ceases to be a Permitted Transferee of the transferring member,

the person to whom the shares are transferred must transfer the shares transferred under this **paragraph (c)** to the transferring member within 5 Business Days;

- (d) a transfer of shares under the terms of an employee share or share option plan approved by the directors;
- (e) a Disposal in respect of Shares held by a VC Investor:
 - (i) in the case of Starfish, to or in favour of:
 - (A) a Related Body Corporate of Starfish Ventures or the responsible entity of Starfish, or to or in favour of a general partner or limited partner of Starfish provided that if such transferee ceases to be such a Related Body Corporate of Starfish Ventures or the responsible entity or a general partner or limited partner of Starfish it must, within 15 Business Days of so ceasing, transfer the Shares held by it to Starfish or any Related Body Corporate of Starfish Ventures or the responsible entity of Starfish or a general partner or limited partner of Starfish which is nominated by Starfish;
 - (B) the trustee of any trust, any partnership or any company managed by Starfish Ventures or by any Related Body Corporate of Starfish Ventures provided that if such transferee ceases to be managed by Starfish Ventures or by an Related Body Corporate of Starfish Ventures it must, within 15 Business Days of so ceasing, transfer its Shares to Starfish or any other person to which such transfer, assignment or novation is permitted under this **rule B.2.8(e)** which is nominated by Starfish; or
 - (C) any custodian, sub custodian, nominee, trustee or responsible entity of Starfish or any person to or in favour of or from whom such a Disposal is permitted under **rule**

- B.2.8(e)(A) to B.2.8(e)(C)** provided that if such transferee ceases to be such a custodian, sub-custodian, nominee, trustee or responsible entity it must, with 15 Business Days of so ceasing, transfer its Shares to Starfish or other person to which such a transfer, assignment or novation is permitted under this **rule B.2.8(e)** which is nominated by Starfish; and
- (ii) in the case of Versant, to or in favour of:
 - (A) a Related Body Corporate of Versant Ventures or the responsible entity of Versant or to or in favour of a general partner or limited partner of Versant, provided that if such transferee ceases to be such a Related Body Corporate of Versant Ventures or the responsible entity or a general partner or limited partner of Versant it must, within 15 Business Days of so ceasing, transfer its Shares to Versant or any Related Body Corporate of Versant Ventures or the responsible entity of Versant or a general partner or limited partner of Versant which is nominated by Versant;
 - (B) the trustee of any trust, any partnership or any company managed by Versant Ventures or by an Related Body Corporate of Versant Ventures provided that if such transferee ceases to be managed by Versant Ventures it must, within 15 Business Days of so ceasing, transfer its Shares to Versant or any other person to which such a transfer, assignment or novation is permitted under this **rule A.2.8(e)** which is nominated by Versant;
 - (C) any custodian, sub custodian, nominee, trustee or responsible entity of Versant or any person to or in favour of or from whom such a Disposal is permitted under **rule B.2.8(e)(A) to B.2.8(e)(C)** provided that if such transferee ceases to be such a custodian, sub-custodian, nominee, trustee or responsible entity it must, with 15 Business Days of so ceasing, transfer its Shares to Versant or other person to which such a transfer, assignment or novation is permitted under this **rule B.2.8(e)** which is nominated by Versant;
 - (f) a transfer in good faith by a VC Investor of any of its Shares to any Institutional Investor in the fund (if any) of the VC Investor in whose favour their investment in the Company is held;
 - (g) a transfer (with the prior written approval of the VC Investors (if they hold Series A Preference Shares)) by a member who is a natural person to a Close Relative or to the trustee or trustees of a family trust set up for the benefit solely of that natural person and his or her Close Relatives provided that the person acquiring Shares pursuant to this **rule B.2.8(g)** may not transfer any Shares under this **rule B.2.8(g)** except to the person from whom the person acquired the Shares or, in the case of a transfer by a trustee or trustees, the persons beneficially entitled under such trusts;
 - (h) a Disposal in respect of any Shares held by a member following the earliest to occur of:
 - (i) a Share Sale;

- (ii) a Listing (subject to the expiry of any applicable escrow arrangements imposed by Law, or agreed with an underwriter or otherwise);
- (i) completion of a merger or takeover where Securities are offered as consideration;
- (j) the trustee or administrator of the deceased estate of a person; or
- (k) the distribution to one beneficiary on the death of any person.

B.3 POWER OF ATTORNEY

B.3.1 Purpose

The appointments of attorney in **rule B.3.2**:

- (a) are for the purposes only of any of the Disposals of shares contemplated by **rule B.2 (Disposal of Shares)**; and
- (b) take effect from the date of adoption of this constitution and bind each Key Member, New Member and Investor from time to time.

B.3.2 Power of Attorney

- (a) **irrevocable appointment**: each Key Member, New Member and Investor irrevocably appoints each director of the Company from time to time severally as its attorney for the purpose of **rule B.2 (Disposal of Shares)** to complete and sign any documents under hand or under seal, on its behalf which the attorney reasonably requires to give effect to a Disposal of shares under **rule B.2 (Disposal of Shares)**;
- (b) **interest of attorney**: each attorney may exercise or concur in exercising its powers even if the attorney has a conflict of duty in exercising powers or has a direct or personal interest in the means or result of that exercise of powers;
- (c) **ratification**: each appointor agrees to ratify and confirm whatever the attorney lawfully does under the appointment or causes to be done under the appointment;
- (d) **indemnity**: each appointor agrees to indemnify the attorney against any claim, loss, liability, cost or expense arising directly or indirectly from the attorney's lawful exercise of a power under that appointment; and
- (e) **deliver documents**: each appointor must give to the Company on demand by the Company any power of attorney, instrument of transfer or other instruments as that attorney requires for the purposes of any of the transactions contemplated by **rule B.2 (Disposal of Shares)**.

SCHEDULE 1 OF ATTACHMENT A

Series A Preference Share Terms

A1.1 DIVIDENDS

Subject to **rule A1.2**, each Series A Preference Share confers on its holder the same rights to participate in a dividend as are conferred by the number of ordinary shares (including fractions of ordinary shares) given by the following formula:

A/B

where:

A is the Issue Price per share (subject to any adjustment in accordance with **rule A1.7**); and

B is the lowest of:

- (i) A;
- (ii) the lowest issue price per ordinary share at which the Company has issued ordinary shares after the Effective Date other than an issue:
 - (A) pursuant to the conversion of Series A Preference Shares;
 - (B) pursuant to the exercise of an option issued to employees, consultants or officers of any member of the Group as part of their remuneration package approved by the Board;
 - (C) to employees, consultants or officers of any member of the Group as part of their remuneration package approved by the Board;
 - (D) pursuant to the conversion of Securities on issue on the date of the Convertible Note Deed;
 - (E) pursuant to a commitment in a contract that has been disclosed in writing to the VC Investors and is in place prior to the date of the Convertible Note Deed; or
 - (F) agreed to in writing by the VC Investors pursuant to the letter to them dated 22 May 2006,
(and, if A has been subsequently adjusted pursuant to **rule A1.7**, adjusted in the same manner as A has been subsequently adjusted); and
- (iii) the lowest exercise price per option issued by the Company after the Effective Date other than an option issued:
 - (A) to employees, consultants or officers of any member of the Group as part of their remuneration package approved by the Board;
 - (B) pursuant to a commitment in a contract that has been disclosed in writing to the VC Investors and is in place prior to the date of the Convertible Note Deed;
(and, if A has been subsequently adjusted pursuant to **rule A1.7**, adjusted in the same manner as A has been subsequently adjusted).

A1.2 PRIORITY

- (a) A Series A Preference Share confers on its holder a right in priority to any other class of shares to repayment of the amount paid on the Series A Preference Share plus any unpaid dividends in respect of the Series A Preference Share (“**Preference Amount**”):
- (i) in a winding up or reduction of capital;
 - (ii) on redemption of the Series A Preference Share; and
 - (iii) a Share Sale or Asset Sale.
- (b) In the event of a winding up, reduction of capital, a Share Sale or Asset Sale following payment of the amounts specified in **rule A1.2(a)**, a Series A Preference Share confers on its holder the same right to participate in the profits or property of the Company on a winding up, or reduction of capital, Share Sale or Asset Sale as are conferred by the number of ordinary shares (including fractions of ordinary shares) given by the formula in **rule A1.1** (in the case of a winding up or reduction of capital) and as set out in **rule A1.2(c)** (in the case of an Asset Sale) and **rules A1.2(d) to (h)** inclusive (in the case of a Share Sale).
- (c) In the event of an Asset Sale, the Shareholders must procure that immediately following the Asset Sale the Company is wound up and the surplus proceeds (if any) distributed to the Shareholders in accordance with **rules A1.2(a) and A1.2(b)**;
- (d) In the event of a Share Sale the holders of Series A Preference Shares will be entitled to receive from the proceeds of such Share Sale:
- (i) an amount equal to the amount paid on the Series A Preference Shares held by them (being the Issue Price multiplied by the number of Series A Preference Shares held) plus any unpaid dividends in respect of those Series A Preference Shares (**First Amount**); plus
 - (ii) an amount (**Additional Amount**) calculated in accordance with the following formula:
$$\text{Additional Amount} = \frac{A}{B} \times C$$

where

A = the number of Series A Preference Shares sold by the relevant holder in the Share Sale (subject to any adjustment in accordance with **rule A1.7**) calculated on an As Converted Basis;

B = total number of Securities sold on an As Converted Basis;

C = the total price offered by the third party buyer for all Shares less the First Amount;
- (e) Prior to completion of any Share Sale, the Investor and the Company must either:
- (i) open a bank account in the joint names of the Company and Starfish or, if Starfish does not continue to hold Series A Preference Shares, the Lead Investor (**Escrow Account**) with a major trading bank in Australia (**Bank**) and use their best endeavours to procure that the proceeds of any Share Sale are paid by the third party purchaser

(Buyer) into the Escrow Account to be dealt with in accordance with this **rule A1.2**; or

- (ii) procure that the Buyer will distribute the proceeds from the Share Sale to the Shareholders participating in the Share Sale (**Participating Shareholders**) in accordance with this **rule A1.2**.
- (f) The signatories to the Escrow Account will be the Chief Executive Officer (or such other person as the Board elects) (**Company's Agent**) and such person as Starfish, or if Starfish does not continue to hold Series A Preference Shares, the Lead Investor nominates (**Investors' Agent**). Other than as contemplated in this **rule A1.2**, the Bank will be instructed that no dealings in the Escrow Account will be permitted unless they receive joint instructions from the Company's Agent and the Investors' Agent. The proceeds of any Share Sale deposited in the Escrow Account must be held on trust for all Participating Shareholders.
- (g) The proceeds of any Share Sale that are either to be paid to Participating Shareholders by the Buyer or which are paid into the Escrow Account, must be distributed as follows:
 - (i) the First Amount and the Additional Amount must be paid to the holders of the Series A Preference Shares on completion of the Share Sale; and
 - (ii) the balance of the proceeds must be paid to the other Participating Shareholders pro rata to their shareholdings in the Company that they held immediately prior to completion of the Share Sale. Participating Shareholders must deliver to Starfish, or if Starfish does not continue to hold Series A Preference Shares, the Lead Investor or Buyer duly executed share transfers, sale documents (if any) and share certificates pro rata as to their shareholdings in the Company on or before completion of the Share Sale.
- (h) In the event that the holders of Series A Preference Shares do not receive the First Amount and the Additional Amount, each member must, if requested in writing by persons holding at least 50% of the Series A Preference Shares, transfer the relevant pro-rata amount from the proceeds of the Share Sale received by them to the holders of Series A Preference Shares to achieve the outcome contemplated by this **rule A1.2**.

A1.3 CONVERSION

- (a) All of the Series A Preference Shares held by a person will convert into the number of fully paid ordinary shares given by the formula in **rule A1.3(b)**, upon the earlier of:
 - (i) holders of at least two thirds of the Series A Preference Shares electing to require such conversion, by 7 days notice in writing to the Company; or
 - (ii) the closing of an underwritten Initial Public Offering of ordinary shares by the Company ("**IPO**"),

(in addition to the bonus shares (if any) to be issued under **rule A1.3(c), (d), (e), (g), (h) or (i)**).

- (b) The number of fully paid ordinary shares into which the Series A Preference Shares held by a person will convert pursuant to **rule A1.3(a)** is given by the following formula:

$$(A/B) \times C$$

where:

A is the Issue Price of the Series A Preference Shares (subject to any adjustment in accordance with **rule A1.7**);

B is the lowest of:

- (i) A;
- (ii) the lowest issue price per ordinary share at which the Company has issued ordinary shares after the Effective Date other than an issue:
 - (A) pursuant to the conversion of Series A Preference Shares;
 - (B) pursuant to the exercise of an option issued to employees, consultants or officers as part of their remuneration package approved by the Board;
 - (C) to employees, consultants or officers of any member of the Group as part of their remuneration package approved by the Board;
 - (D) pursuant to the conversion of Securities on issue on the date of the Convertible Note Deed;
 - (E) pursuant to a commitment in a contract that has been disclosed in writing to the VC Investors and is in place prior to the date of the Convertible Note Deed; or
 - (F) agreed to in writing by the VC Investors pursuant to the letter to them dated 22 May 2006, (and, if A has been subsequently adjusted pursuant to **rule A1.7**, adjusted in the same manner as A has been subsequently adjusted); and
- (iii) the lowest exercise price per option issued by the Company after the date of issue of the relevant Series A Preference Share other than an option issued:
 - (A) to employees, consultants or officers of any member of the Group as part of their remuneration package approved by the Board;
 - (B) pursuant to a commitment in a contract that has been disclosed in writing to the VC Investors and is in place prior to the date of the Convertible Note Deed; (and, if A has been subsequently adjusted pursuant to **rule A1.7**, adjusted in the same manner as A has been subsequently adjusted).

C is the number of Series A Preference Shares held by the person.

- (c) If the VC Investors have subscribed for cash a minimum of \$2,500,000 in Series A Preference Shares, (excluding the cash paid for any subscription for the Convertible Notes), by 7 July 2006 (**Follow on VC Investment**), and the Listing (including an IPO) is not concluded by 31 December 2006 other than as a result of Adverse Market Conditions occurring after the close of normal trading on the ASX trading day before the date of the Follow on VC

Investment, the Company must ensure that any Listing (including any IPO) is conducted on the basis that each holder of Series A Preference Shares will have the additional right, pursuant to the Listing and in priority to any other person, to apply for and for no consideration be issued with the number of shares (issued pursuant to the Listing) that are given by the formula set out in **rule A1.3(f)** in respect of the Series A Preference Shares issued pursuant to the Follow on VC Investment (in addition to the shares to be issued pursuant to the conversion under **rule A1.3(b)**).

- (d) If a Follow on VC Investment has occurred by 7 July 2006 and the Listing (including an IPO) is not concluded by 31 December 2006 as a result of Adverse Market Conditions occurring after the close of normal trading on the ASX trading day before the date of the Follow on VC Investment, and the Listing (including an IPO) is concluded by 30 June 2007, the Company must ensure that any Listing (including any IPO) is conducted on the basis that the each holder of Series A Preference Shares will have the additional right, pursuant to the Listing and in priority to any other person, to apply for and for no consideration be issued with half the number of shares (issued pursuant to the Listing) that are given by the formula set out in **rule A1.3(f)** in respect of the Series A Preference Shares issued pursuant to the Follow on VC Investment (in addition to the shares to be issued pursuant to the conversion under **rule A1.3(b)**).
- (e) If the Listing (including an IPO) is not concluded by 30 June 2007, the Company must ensure that any Listing (including any IPO) is conducted on the basis that the each holder of Series A Preference Shares will have the additional right, pursuant to the Listing and in priority to any other person, to apply for and for no consideration be issued with the number of shares issued pursuant to the Listing that are given by the formula set out in **rule A1.3(f)** in respect of the Series A Preference Shares issued pursuant to the Follow on VC Investment (in addition to the shares to be issued pursuant to the conversion under **rule A1.3(b)**).
- (f) The formula referred to in **rules A1.3(c), (d), (e), (g), (h) and (i)** is as follows:

$$A * [(B + C) / D]$$
where:
A = the Issue Price of the relevant Series A Preference Shares held by the holder of Series A Preference Shares;
B = the number of Series A Preference Shares held by that person;
C = the number of Series A Preference Shares that would be issued to that person if any unpaid dividends in relation to the person's holding of the relevant Series A Preference Shares were to be converted to Series A Preference Shares at the Issue Price; and
D = the issue price of a share under the Listing.
- (g) If an Investor has been issued Series A Preference Shares pursuant to the conversion of Convertible Notes by 7 July 2006, and the Listing (including an IPO) is not concluded by 31 December 2006 other than as a result of Adverse Market Conditions occurring after the close of normal trading on the ASX trading day before the date of the conversion of the relevant

Convertible Notes, the Company must ensure that any Listing (including any IPO) is conducted on the basis that each holder of Series A Preference Shares will have the additional right, pursuant to the Listing and in priority to any other person, to apply for and for no consideration be issued with the number of shares (issued pursuant to the Listing) that are given by the formula set out in **rule A1.3(f)** in respect of the Series A Preference Shares issued on conversion of the Convertible Notes (in addition to the shares to be issued pursuant to the conversion under **rule A1.3(b)**).

- (h) If an Investor has been issued Series A Preference Shares pursuant to the conversion of Convertible Notes by 7 July 2006 and the Listing (including an IPO) is not concluded by 31 December 2006 as a result of Adverse Market Conditions occurring after the close of normal trading on the ASX trading day before the date of the conversion of the Convertible Notes, and the Listing (including an IPO) is concluded by 30 June 2007, the Company must ensure that any Listing (including any IPO) is conducted on the basis that each holder of Series A Preference Shares will have the additional right, pursuant to the Listing and in priority to any other person, to apply for and for no consideration be issued with half the number of shares (issued pursuant to the Listing) that are given by the formula set out in **rule A1.3(f)** in respect of the Series A Preference Shares issued pursuant to the conversion of Convertible Notes (in addition to the shares to be issued pursuant to the conversion under **rule A1.3(b)**).
- (i) If the Listing (including an IPO) is not concluded by 30 June 2007, the Company must ensure that any Listing (including any IPO) is conducted on the basis that each holder of Series A Preference Shares will have the additional right, pursuant to the Listing and in priority to any other person, to apply for and for no consideration be issued with the number of shares issued pursuant to the Listing that are given by the formula set out in **rule A1.3(f)** in respect of the Series A Preference Shares issued pursuant to the conversion of the Convertible Notes (in addition to the shares to be issued pursuant to the conversion under **rule A1.3(b)**).

A1.4 GENERAL MEETINGS

- (a) The holder of a Series A Preference Share has the same right as the holder of an ordinary Share to:
 - (i) receive notice of a general meeting;
 - (ii) attend the general meeting; and
 - (iii) receive notices, reports and audited accounts.
- (b) The holder of Series A Preference Shares has the following voting entitlements at a general meeting:
 - (i) on a show of hands, the holder has one vote; and
 - (ii) on a poll, the holders have such number of votes as the holder would have if, at the time for determining voting entitlements for the meeting, the holders' Series A Preference Shares had converted into ordinary shares in accordance with **rule A1.3(b)**.
- (c) The holders of Series A Preference Shares shall have the right to appoint two Directors to the Board (and remove and appoint replacements for those

Directors) while the holders of Series A Preference Shares hold at least 10% of the share capital of the Company on an As Converted Basis.

- (d) If there are only two holders of Series A Preference Shares that hold greater than 10% of the Series A Preference Shares each of these holders shall be entitled to appoint a Director referred to in **rule A1.4(c)** (and remove and appoint a replacement for that Director).
- (e) If there is only one holder of Series A Preference Shares that holds greater than 10% of the Series A Preference Shares, that holder shall be entitled to appoint the Directors referred to in **rule A1.4(c)** (and remove and appoint replacements for the Directors).
- (f) If there are more than two holders of Series A Preference Shares that hold greater than 10% of the Series A Preference Shares, holders of more than 50% of the Series A Preference Shares may resolve to appoint the Directors referred to in **rule A1.4(c)** (and remove and appoint replacements for the Directors).

A1.5 REDEMPTION

In the event that an Asset Sale, Share Sale or a Listing does not occur on or before the fifth anniversary of the issue of Series A Preference Shares, the holder of a Series A Preference Share may, by 7 days notice in writing to the Company, require the Company to redeem some or all of the holder's Series A Preference Shares for the price per Series A Preference Share equal to the value of A specified in **rule A1.1** (including any adjustment in accordance with **rule A1.7**).

A1.6 FURTHER ISSUES AND VARIATION OF RIGHTS

The company must not:

- (a) issue further Series A Preference Shares or other securities ranking equally with or in priority to the Series A Preference Shares as to dividends or a return of capital on a winding up or on a reduction or other return of capital; or
- (b) vary or cancel any of the rights attaching to the Series A Preference Shares; without:
 - (c) the consent in writing of the holders of at least 50% of the Series A Preference Shares then on issue; or
 - (d) the approval of an ordinary resolution passed at a separate meeting of holders of Series A Preference Shares. The provisions of the constitution governing the convening and holding of meetings of Shareholders of the Company will apply to the separate meeting with all necessary changes.

A1.7 REORGANISATION OF SERIES A PREFERENCE SHARES

- (a) Notwithstanding any other provision of these rules, if prior to the conversion or redemption of all of the Series A Preference Shares:
 - (i) the ordinary shares are subdivided or consolidated into a larger or smaller number of ordinary shares, the number of Series A

Preference Shares must be subdivided or consolidated in the same ratio as the ordinary shares and the value for A in **rules A1.1, A1.2(d), A1.3(b) and A1.3(d)** must be adjusted in inverse proportion to that ratio;

- (ii) there is a pro-rata cancellation of ordinary shares in respect of which no consideration is paid or distributed to the holders of ordinary shares, the number of Series A Preference Shares must be reduced in the same ratio as the ordinary shares and the value for A in **rules A1.1, A1.2(d), A1.3(b) and A1.3(d)** must be adjusted in inverse proportion to that ratio; or
 - (iii) there is any other reconstruction or reorganisation of the Company's share capital, the number of Series A Preference Shares and the value for A in **rules A1.1, A1.2(d), A1.3(b) and A1.3(d)** and the Issue Price must be adjusted in such manner as the directors of the Company consider necessary provided that no material advantage is conferred on the holders of Series A Preference Shares, or the holders of Series A Preference Shares are not materially disadvantaged, when compared with the position of the holders of ordinary shares in connection with the reconstruction or reorganisation.
- (b) All entitlements of holders of Series A Preference Shares on any adjustment under **rule A1.7(a)** will be rounded up to the nearest whole number and fractions will be disregarded.

A1.8 GENERAL

In this schedule **1**, references to rules or paragraphs are deemed to be references to rules and paragraphs in this **schedule 1**, respectively.

SCHEDULE 2 OF ATTACHMENT A

Key Members

Greg Brown

Parma Corporation Pty Ltd

Kim Maree Stubbings

Thorpe Road Nominees Pty Ltd (Ian Tregoning Family A/C)

Thorpe Road Nominees Pty Ltd (Ian Tregoning Family A/C LT)

Mr Ian Tregoning (Dario Stocco A/C)

Roxanne Pty Ltd ATF The Roxanne Investment Trust

Biophys Pty Ltd ATF The Advanced Biophysics Trust

Robert Lilley

Colin Frederick Brown and Lynette Anne Brown (The Collyn Super Fund PAC)

Wayne Black

Belinda Robinson

Allan Robinson

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