

Todd River Metals Pty Ltd

ACN 600 314 038

Proprietary Company
Limited by Shares

Prepared for

TNG Limited



Todd River Metals Pty Ltd

ACN 600 314 038

Proprietary Company
Limited by Shares

Prepared by:

hunt&hunt

Gateway
1 Macquarie Place
Sydney NSW 2000

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Certificate of Registration of a Company

This is to certify that

TODD RIVER METALS PTY LTD

Australian Company Number 600 314 038

is a registered company under the Corporations Act 2001 and
is taken to be registered in Western Australia.

The company **is limited by shares.**

The company is a **proprietary** company.

The day of commencement of registration is
the twenty-fourth day of June 2014.



ASIC

Australian Securities & Investments Commission

CERTIFICATE

Issued by the
Australian Securities and Investments Commission
on this twenty-fourth day of June, 2014.

A handwritten signature in black ink, appearing to read 'G. Medcraft'.

Greg Medcraft
Chairman



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Corporations Act
A Company Limited by Shares
Constitution
of
Todd River Metals Pty Ltd

1. Interpretation

1.1. In this Constitution:

“**Company**” means the company named above governed by the terms of this constitution.

“**Directors**” means in the case of there being a single director, that director, and in the case of there being 2 or more directors, those directors.

“**Law**” means the *Corporations Act 2001* (C'th).

“**Members**” means in the case of there being a single member, that member, and in the case of there being 2 or more members, those members.

“**Related Body Corporate**” has the meaning given to it by Section 50 of the Law.

“**Representative**” means a person appointed as a representative of a body corporate pursuant to Section 250D of the Law.

“**Seal**” means the common seal of the Company (if any).

“**Secretary**” means any person appointed to perform the duties of a secretary of the Company.

1.2. Except so far as the contrary intention appears in this Constitution, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Law, the same meaning as in that provision of the Law.

2. Preliminary

2.1. Company legal capacity and powers

Subject to the Law, the Company has the legal capacity and powers of an individual, and also all the powers of a body corporate, including the power to:

- (a) issue and cancel shares in the Company, including bonus shares, preference shares and partly paid shares;
- (b) issue debentures of the Company;
- (c) grant options over unissued shares in the Company;
- (d) distribute any of the property of the Company among the Members, in kind or otherwise;

- (e) give security by charging uncalled capital;
- (f) grant a floating charge over the property of the Company;
- (g) arrange for the Company to be registered or recognised as a body corporate in any place outside its jurisdiction of registration; and
- (h) do anything that it is authorised to do by any other law (including the law of a foreign country).

2.2. Relevant provisions

Each of the provisions of the sections or sub-sections of the Law which would but for this Clause apply to the Company as a replaceable rule within the meaning of the Law are displaced and do not apply to the Company.

2.3. Type of company

The Company is a proprietary company.

2.4. Shareholders

- (a) The number of Members for the time being of the Company (exclusive of any person who is an employee of the Company or of any subsidiary of the Company and any shareholder who was an employee of the Company or of any subsidiary of the Company, when that person became a shareholder) is not to exceed fifty, but where two or more persons hold one or more shares in the company jointly, they will for the purposes of this Clause be treated as a single Member.
- (b) The Company must not engage in any activity that would require the lodgement with the Australian Securities and Investment Commission of a prospectus under Chapter 6D of the Law (except for an offer of shares to existing shareholders of the Company or employees of the Company or a subsidiary of the Company).

3. Classes of shares

Shares issued must be in a class described in the Third Schedule or any other class permitted by this Constitution.

4. Issue of shares and variation of rights

4.1. Issue of shares

Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Law, shares in the Company may be issued by the Directors and any such share may be issued with such preferred, deferred or other special rights or such restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the Directors, subject to any resolution, determine.

4.2. Issue of preference shares

Subject to the Law, the Company may issue preference shares which are, or at the option of the Company are, liable to be redeemed and such power may be exercised by the Directors.

4.3. Share capital structure

- (a) If at any time the share capital is divided into different classes of shares, the rights attached to any class unless otherwise provided by the terms of issue of the shares of that class may be varied or cancelled with the consent in writing of the holders of the issued shares who are entitled to at least 75% of the votes that may be cast in respect of shares of that class, or by a special resolution passed at a separate meeting of the holders of the shares of that class.
- (b) The provisions of this Constitution relating to meetings of the Company's Members apply so far as they are capable of application to every such separate meeting of the Member(s) of a class of shares except that:
 - (1) where there is more than one member of a class, a quorum is constituted by two persons, each being a Member or a proxy or Representative of a Member, who between them hold or represent one-third of the issued shares of the class; or
 - (2) where there is one member of a class, a quorum is constituted by that Member or a proxy or Representative of that Member; and
 - (3) any holder of shares of the class, present in person or by proxy or by Representative, may demand a poll.
- (c) The rights attached to an existing class of preference shares will be taken to be varied by the issue of new preference shares that rank equally with those existing preference shares unless the new issue is authorised by:
 - (1) the terms of issue of the existing preference shares; or
 - (2) the Company's constitution (if any) as in force when the existing preference shares were issued.

4.4. Brokerage or commission payments

- (a) The Company may pay brokerage or commission to a person in respect of that person or another person agreeing to take up shares in the Company.
- (b) Payments by way of brokerage or commission may be satisfied by the payment of cash by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.

4.5. Share recognition

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

4.6. Share certificate

- (a) A person whose name is entered as a Member in the register of Members is entitled without payment to receive a certificate in respect of the share issued in accordance with the Law under the Seal or in such other manner permitted under the Law as the Directors determine but, in respect of a share or shares held jointly by several persons, the Company is not bound to issue more than one certificate.

- (b) Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.

5. Lien

5.1. Lien on shares

- (a) The Company has a first and paramount lien on every share (not being a fully paid share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that share.
- (b) The Company has a first and paramount lien on all shares (other than fully paid shares) registered in the name of a sole holder for all money presently payable by him or his estate to the Company.
- (c) The Directors may at any time exempt a share wholly or in part from the provisions of this Clause.
- (d) The company's lien (if any) on a share extends to all dividends payable in respect of the share.

5.2. Sale of shares

- (a) Subject to Clause 5.2(b) the Company may sell, in such manner as the Directors think fit, any shares on which the Company has a lien.
- (b) A share on which the Company has a lien will not be sold unless:
 - (1) a sum in respect of which the lien exists is presently payable; and
 - (2) the Company has, not less than 14 days before the date of the sale, given to the registered holder for the time being of the share or the person entitled to the share by reason of the death or bankruptcy of the registered holder a notice in writing setting out, and demanding payment of, such part of the amount in respect of which the lien exists as is presently payable.

5.3. Transfer of shares

- (a) For the purpose of giving effect to a sale mentioned in Clause 5.2, the Directors may authorise a person to transfer the shares sold to the purchaser of the shares.
- (b) The Company must register the purchaser as the holder of the shares comprised in any such transfer and he is not bound to see to the application of the purchase money.
- (c) The title of the purchaser to the shares is not affected by any irregularity or invalidity in connection with the sale.

5.4. Proceeds of sale

The proceeds of a sale mentioned in Clause 5.2 will be applied by the Company in payment first of the expenses of the sale, then of such part of the amount in respect of which the lien exists as is presently payable, and the residue (if any) will (subject to any like lien for sums not presently payable, that existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

6. Calls on shares

6.1. Calls on shares

- (a) The Directors may make calls upon the Members in respect of any money unpaid on the shares of the Members and not by the terms of issue of those shares made payable at fixed times.
- (b) Each Member must, upon receiving at least 14 days' notice specifying the time or times and place of payment, pay to the Company at the time or times and place so specified the amount called on his shares.
- (c) The Directors may revoke or postpone a call.

6.2. Call authorisation

A call will be deemed to have been made at the time when the resolution of the Directors authorising the call was passed and may be required to be paid by instalments.

6.3. Calls on joint shareholders

The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

6.4. Interest on calls

If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due must pay interest on the sum from the day appointed for payment of the sum to the time of actual payment at such rate as the Directors determine, but the Directors may waive payment of that interest wholly or in part.

6.5. Payment of calls

Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date will for the purposes of this Constitution be deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable, and, in case of non-payment, all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

6.6. Directors' discretion on calls

The Directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

6.7. Payment on shares

- (a) The Directors may accept from a Member the whole or a part of the amount unpaid on a share although no part of that amount has been called up.
- (b) The Directors may authorise payment by the Company of interest upon the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the prescribed rate, as is agreed upon between the Directors and the Member paying the sum.

- (c) For the purpose of Clause 6.7(b), the prescribed rate of interest is:
 - (1) if the Company has, by resolution, fixed a rate - the rate so fixed; and
 - (2) in any other case - 8% per annum.

7. Transfer of shares

7.1. Transfer of shares

- (a) Subject to this Constitution, a Member may transfer all or any of his shares by instrument in writing in any usual or common form or in any other form that the Directors approve.
- (b) An instrument of transfer referred to in Clause 7.1(a) must be executed by or on behalf of both the transferor and the transferee.
- (c) A transferor of shares remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of Members in respect of the shares.

7.2. Registrations on transfers

The instrument of transfer must be left for registration at the registered office of the Company, accompanied by the certificate of the shares to which it relates and such other information as the Directors properly require to show the right of the transferor to make the transfer and thereupon the Company may register the transferee as a Member.

7.3. Directors' discretion on transfers

- (a) The Directors may, at their discretion refuse to register any transfer of shares without assigning any reason.
- (b) No transfer of shares will be registered if upon its registration the number of Members of the Company would exceed the maximum number prescribed by Clause 2.4(a).

7.4. Registration deferrals/ suspensions

The registration of transfers may be suspended at such times and for such periods as the Directors from time to time determine not exceeding in the whole 30 days in any one calendar year.

8. Transmission of shares

8.1. Title to shares on death of member

In the case of the death of a Member:

- (a) the survivor where the deceased was a joint holder; and
- (b) the legal personal representative where the deceased was a sole holder

will be the only persons recognised by the Company as having any title to the deceased Member's interest in the shares. This Clause does not release the estate of a deceased joint holder from any liability in respect of a share that had been jointly held by him with other persons.

8.2. Transferee

- (a) Subject to the Bankruptcy Act 1966, a person becoming entitled to a share in consequence of the death or bankruptcy of a Member may, upon such information being produced as is properly required by the Directors, elect either to be registered himself as a holder of the share or to have some other person nominated by him registered as the transferee of the share.
- (b) If the person becoming entitled elects to be registered himself, he must deliver or send to the Company a notice in writing signed by himself stating that he so elects.
- (c) If he elects to have another person registered, he must execute a transfer of the share to that other person.
- (d) If a Member dies or becomes bankrupt, the limitations, restrictions and provisions of this Constitution relating to the right to transfer, and the registration of transfer of shares are applicable to any such notice or transfer. These are applicable as if the death or bankruptcy of the Member had not occurred and the notice or transfer was a transfer signed by that Member.

8.3. Death of a registered holder

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

9. Forfeiture of shares

9.1. Notice of payment

- (a) The Directors may serve a notice on a Member requiring payment of any calls or instalments not paid by the due date.
- (b) The notice will name a further day at least 14 days ahead. Payment must be made by that further day. If it is not, the shares will be forfeited.

9.2. Notice of forfeiture

- (a) If the requirements of a notice served under Clause 9.1 are not complied with, the shares referred to in the notice will be forfeited by a Directors resolution.
- (b) Such a forfeiture will include all unpaid dividends declared in respect of the forfeited shares.

9.3. Director's discretion on forfeitures of shares

A forfeited share may be sold, reissued or otherwise disposed of on such terms and in such manner as the Directors think fit, and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the Directors think fit.

9.4. Members liabilities

After share forfeiture, the previous Member remains liable to pay all outstanding liability. The Company may charge interest at 8% per annum from the date of forfeiture.

9.5. Statement of forfeiture

A statement in writing declaring that the person making the statement is a director or a secretary of the Company, and that a share in the Company has been duly forfeited on a date stated in the statement, is prima facie evidence of the facts stated, in the statements as against all persons claiming to be entitled to the share.

9.6. Consideration of forfeiture

- (a) The Company may receive the consideration (if any) given for a forfeited share on any sale, reissue or disposition of the share and execute a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (b) Upon the execution of the transfer, the transferee will be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.
- (c) The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale, reissue or disposal of the share.

9.7. Non-payment

The provisions of this Constitution as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, as if that sum had been payable by virtue of a call duly made and notified.

10. Alteration of capital

10.1. Resolution to convert or cancel shares

The company may by ordinary resolution passed at a general meeting:

- (a) convert all or any of its shares into larger or smaller numbers of shares; or
- (b) cancel shares that have been forfeited under the terms on which the shares are on issue.

10.2. Subsequent offer of shares

- (a) The Directors can offer shares of a particular class, however, before doing so, they must offer them to existing shareholders of that class. The Company may authorise an issue by ordinary resolution passed at a general meeting.
- (b) Subject to Clause 10.2(e), the number of shares to be offered to each Member must be in proportion to the number of shares of that class that they already hold.
- (c) The offer must be made by notice specifying the number of shares offered and the period of time within which the offer, if not accepted, will be deemed to be declined.

- (d) After the expiration of that time or on being notified by the person to whom the offer is made that he declines to accept the shares offered, the Directors may issue those shares in such a manner as they think most beneficial to the Company.
- (e) Where, by reason of the proportion that shares proposed to be issued bear to shares already held, some of the first-mentioned shares cannot be offered in accordance with Clause 10.2(b), the Directors may issue the shares that cannot be so offered in such manner as they think most beneficial to the Company.

10.3. Capital reduction and buyback of shares

Subject to the Law, the Company may:

- (a) Reduce its share capital in any manner;
- (b) Buy back its own shares.

10.4. Pre-emptive rights to issue of shares and options

- (a) Despite anything to the contrary contained in this Constitution except for clause 10.4(d), before issuing shares or options in respect of shares, the Directors must offer the shares or options to be issued to the existing holders of the shares of that same class and if there are no existing shares of that class on issue, to all members. As far as practicable, the number of shares or options to be offered to each existing holder of shares in the class of shares to be issued must be in proportion to the number of shares of that class which they then hold as a proportion of the total number of shares in that class on issue and, if there are no such holders, to each member in proportion to the number of shares held by the member as a proportion of the total number of shares on issue by the Company.
- (b) To make the offer under clause 10.4(a), the Directors must give the members entitled to receive the offer a statement setting out the terms of the offer, including:
 - (1) the number of shares or options offered; and
 - (2) the period during which the offer will remain open.
- (c) The Directors may issue any shares or options not taken up under the offer made as they see fit.
- (d) The members may by resolution in general meeting or written consent of all the members authorise the Directors to make a particular issue of shares or options without complying with clause 10.4(a).

11. General meetings

11.1. Director may convene meeting of members

Any Director may whenever he thinks fit convene a meeting of the Company's Members.

11.2. Directors' convention

A general meeting will be convened by the Directors on the request of the Members in accordance with section 249D of the Law.

11.3. Members' convention

A general meeting may be convened by the Members in accordance with sections 249E and 249F of the Law.

11.4. Form of meetings/ structure of meetings

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

11.5. Notification period

Subject to the provisions of the Law relating to agreements for shorter notice, at least 21 days notice must be given of a meeting of the Company's Members.

11.6. Notice of meetings

(a) Notice of every meeting of the Company's Members will be given in the manner authorised by Clause 23 to:

- (1) every Member and to every Director;
- (2) every 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; and
- (3) the auditor for the time being of the Company.

(b) No other person is entitled to receive notices of meetings of the Company's Members.

11.7. Details of meetings/ records of meetings

A notice of a meeting of the Company's Members will:

- (a) Specify the place, the date and the time of meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this;
- (b) State the general nature of the business to be transacted at the meeting; and
- (c) Contain such other information as is required by section 249L of the Law.

12. Proceedings at general meetings

12.1. Quorum and proxy

(a) No business can be transacted at any meeting of the Company's Members unless a quorum of Members is present at the time when the meeting proceeds to business.

(b) Two persons each being a Member or a proxy or a Representative of a Member will be a quorum for a meeting of the Company's Members. If the Company has only one Member, that Member may pass a resolution by the Member recording it and signing the record.

12.2. Quorum of meeting

If a quorum is not present within half an hour from the time appointed for the meeting:

- (a) Where the meeting was convened upon the request of Members - the meeting will be dissolved; or
- (b) In any other case:
 - (1) the meeting stands adjourned to such day, and at such time and place, as the Directors determine or, if no determination is made by the Directors, to the same day in the next week at the same time and place; and
 - (2) if at the adjourned meeting a quorum is not present within half an hour from the time appointed for such adjourned meeting, then the meeting is dissolved.

12.3. Chairperson

- (a) The Directors may elect an individual to chair a meeting of the Company's Members.
- (b) Where a meeting of the Company's Members is held and:
 - (1) a chairperson has not been elected as provided by Clause 12.3(a); or
 - (2) the chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting;

the Members present must elect one of their number to be chairperson of the meeting (or part of it).

12.4. Adjournment

- (a) The chairperson must adjourn a meeting of the Company's Members from time to time and from place to place if the Members present with a majority of votes that may be cast at that meeting agree or direct the chairperson to do so. No business can be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (b) When a meeting of the Company's Members is adjourned for 30 days or more, notice of the adjourned meeting will be given as in the case of an original meeting.
- (c) Except as provided by Clause 12.4(a), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

12.5. Voting

- (a) At any meeting of the Company's Members a resolution put to the vote of the meeting will be decided on a show of hands unless a poll is (before a vote is taken or before or immediately after the declaration of the result of the show of hands) demanded:
 - (1) by the chairperson;
 - (2) by at least 2 Members entitled to vote in the resolution; or
 - (3) by a Member or Members with at least 5% of the votes that may be cast on the resolution on a poll.

- (b) Unless a poll is so demanded, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost. An entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (c) The demand for a poll may be withdrawn.

12.6. Polling

- (a) If a poll is duly demanded, it must be taken in such manner and (subject to Clause 12.6(b)) at once after either an interval or adjournment or otherwise as the chairperson directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a chairperson or on a question of adjournment will be taken immediately.

12.7. Casting vote

In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting of the Company's Members at which the show of hands takes place or at which the poll is demanded, has a casting vote in addition to any vote he may have in his capacity as a Member.

12.8. Class of shares restrictions/ limitations

Subject to any rights or restrictions for the time being attached to any class or classes of shares:

- (a) at meetings of the Company's Members or classes of Members each Member entitled to vote may vote in person or by proxy or by a Representative or by attorney; and
- (b) on a show of hands every person present who is a Member or a proxy or an attorney or a Representative of a Member has one vote, and on a poll every person present in person or by proxy or attorney or by a Representative has one vote for each share he holds.

12.9. Joint shareholder voting rights

If the share is held jointly and more than one Member votes in respect of that share, only the vote of the Member whose name appears first in the register of Members counts.

12.10. Incapacity to vote

If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, his committee or trustee or such other person as properly has the management of his estate may exercise any rights of the Member in relation to a meeting of the Company's Members as if the committee, trustee or other person were the Member.

12.11. Unpaid shares

A Member is not entitled to vote at a meeting of the Company's Members unless all calls and other sums presently payable by him in respect of shares in the Company have been paid.

12.12. Objections

- (a) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- (b) Any such objection will be referred to the chairperson of the meeting of the Company's Members, whose decision is final.
- (c) A vote not disallowed pursuant to such an objection is valid for all purposes.

12.13. Appointing proxies or attorneys

- (a) A Member who is entitled to attend and vote at a meeting of the Company Members or at a meeting of any class of Members of the Company is entitled to appoint not more than 2 other persons (whether Members or not) as the Member's proxy or proxies or attorneys, as the case may be, to attend and vote instead of the Member at the meeting.
- (b) A proxy or attorney may be appointed for all meetings, or for any number of meetings or for a particular purpose. The appointment may specify the proportion or number of votes that the proxy may exercise.
- (c) Where a Member appoints 2 proxies or attorneys, the appointment is of no effect unless each proxy or attorney, as the case may be, is appointed to represent a specified proportion or number of the Member's voting rights.
- (d) Any instrument of proxy in which the name of the appointee is not filled in will be deemed to be given in favour of the chairperson.

12.14. Instruments appointing a proxy

- (a) An instrument appointing a proxy will be in writing under the hand of the appointor or his attorney duly authorised in writing or, if the appointor is a body corporate, either under seal or in accordance with the Law or under the hand of an officer or attorney duly authorised.
- (b) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote in the resolution except as specified in the instrument.
- (c) An instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll.
- (d) An instrument appointing a proxy will be in the following form or in a form that is similar to the following form as the circumstances allow:

[Name of company]

I/we _____, of _____,
being a member/members of the above named company, hereby
appoint _____ of _____ or,
in his absence, _____ of _____ as my/our
proxy to vote for me/us on my/our behalf at the _____ general meeting of
the company to be held on the _____ day of _____ 20____
and at any adjournment of that meeting.

Signed this _____ day of _____ 20____.

+This form is to be used in favour of/against* the resolution.

*Strike out whichever is not desired.

+To be inserted if desired.

12.15. Validity of instrument

An instrument appointing a proxy will not be treated as valid unless:

- (a) the signed instrument or a certified copy of the signed instrument, and the power of attorney or other authority (if any) under which the instrument is signed, is deposited at the registered office of the Company not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote.
- (b) In the case of a poll, the signed instrument or a certified copy of the signed instrument, and the power of attorney or other authority (if any) under which the instrument is signed, is deposited, not less than 24 hours before the time appointed for the taking of the poll, at the registered office of the Company or at such other place in Australia as is specified for that purpose in the notice convening the meeting.

12.16. Revocation of instrument

A vote given in accordance with the terms of an instrument of proxy or of a power of attorney in relation to the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, or the transfer of the share in respect of which the instrument or power is given is valid notwithstanding the previous death or unsoundness of mind of the principal. This is however, providing that there is no intimation in writing of the death or unsoundness of mind and revocation or transfer has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

12.17. Signing of resolution

- (a) If all Members entitled to vote on a resolution have signed a document containing a statement that they are in favour of that resolution of the Members in terms set out in the document, a resolution in those terms will be deemed to have been passed at a meeting of the Company's Members held on the day on which the document was signed and at the time at which the document was last signed by a Member or, if the Members signed the document on different days, on the day on which, at the time at which, the document was last signed by a Member.
- (b) For the purposes of Clause 12.17(a) two or more separate documents containing statements in identical terms each of which is signed by one or more Members will together be deemed to constitute one document containing a statement in those terms signed by those Members on the respective days on which they signed the separate documents.

13. Appointment, removal and remuneration of directors

13.1. First directors, number of directors and no share qualification

- (a) By resolution, the names of the first Directors will be determined in writing by the persons specified in the application for the Company's registration under the Law as persons who consent to become Members of the Company or a majority of them.
- (b) The Company may by resolution increase or reduce the number of Directors, however the maximum number of Directors shall not be more than 10.

- (c) It is not be necessary for any Director to hold any share qualification.

13.2. Appointing additional persons

The Directors may at any time appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing Directors, but so that the total number of Directors does not at any time exceed the number determined in accordance with this Constitution.

13.3. Appointing replacement person

The Company may by resolution remove any director, and may by resolution appoint another person in his stead.

13.4. Term of appointment

A director appointed under any of Clauses 13, 13.2, 13.3 will hold office until he dies, or until his office becomes vacant by virtue of the Law or this Constitution.

13.5. Remuneration of directors

- (a) The Directors will be paid such remuneration as is from time to time determined by the Company in general meeting.
- (b) The remuneration will be deemed to accrue from day to day.
- (c) The Directors may also be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Company or otherwise in connection with the business of the Company.
- (d) If any Director is called upon to perform extra services or to make any special exertion in going or residing abroad or otherwise for any of the purposes of the Company, subject to the Law the Company may pay additional remuneration or provide benefits to that Director as the Directors determine.

13.6. Office of director

In addition to the circumstances in which the office of a director becomes vacant by virtue of the Law the office of a Director becomes vacant if the Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) resigns office by notice in writing to the Company; or
- (c) is absent without the consent of the Directors from meetings of the Directors held during a period of six months.

14. Powers and duties of directors

14.1. Directors' powers

- (a) Subject to the Law and to any other provision of this Constitution, the business of the Company will be managed by the Directors, who may pay all expenses incurred in promoting and forming the Company, and may exercise all such powers of the Company as are not, by the Law or by this Constitution, required to be exercised by the Company in general meeting.

- (b) Without limiting the generality of Clause 14(a), the Directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.
- (c) If the Company is a wholly owned subsidiary of a holding company, the Directors may act in the best interests of that holding company.

14.2. Appointing power of attorney

- (a) The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.
- (b) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him.

14.3. Signature of bills

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts of money paid to the Company, will be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, where there is one Director, by that Director, and where there are two or more Directors by any 2 Directors or in such other manner as the Directors determine.

15. Proceeding of directors

15.1. Proceedings of directors

- (a) The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) A meeting of Directors may be convened where there are 2 or more Directors:
 - (1) by a director at any time; or
 - (2) by a secretary on the requisition of a director.

Notice of every Director's meeting shall be given to each director and alternate director who is within Australia.

- (c) Without limiting the discretion of the Directors to regulate their meetings under Clause 15.1(a), a meeting of Directors for the purposes of this Clause may be a standing one.
- (d) Notwithstanding that the Directors are not present together in one place at the time a meeting of Directors held using technology, a resolution passed by such a meeting will be deemed to have been passed at a meeting of the Directors held on the day on which and at the time at which it was held.
- (e) The provisions of this Constitution relating to proceedings of Directors apply to a meeting of Directors held using technology to the extent that they are capable of applying, and with the necessary changes.

- (f) A Director present at the commencement of a meeting of Directors held using technology will be conclusively presumed to have been present and, subject to other provisions of this Constitution, to have formed part of the quorum throughout the meeting.
- (g) Any minutes of a meeting of Directors held using technology purporting to be signed by the chairperson of that conference or by the chairperson of the next succeeding meeting of Directors will be sufficient evidence of the observance of all necessary formalities regarding the convening and conduct of the meeting.
- (h) When by the operation of Clause (d), a resolution is deemed to have been passed at a meeting of the Directors, that meeting will be deemed to have been held at such place as is determined by the chairperson of the relevant meeting, provided that at least one of the Directors who took part in the meeting was at such place for the duration of the meeting.

15.2. Quorum of directors

At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is where there are 2 or more Directors, such number as is determined by the Directors and, unless so determined is 2.

15.3. Contracted directors in quorum

A Director or Alternate Director interested in a contract or arrangement within the meaning of Clause 15.6 will be counted in a quorum notwithstanding his interest.

15.4. Sole director resolution

Where there is one Director, that Director may pass a resolution of Directors by recording the resolution and signing the record.

15.5. Resolution by two or more directors

- (a) Subject to this Constitution, questions arising at a meeting of 2 or more Directors must be decided by a majority of votes of Directors present and voting and any such decision will for all purposes be deemed a decision of the Directors.
- (b) In case of an equality of votes, the chairperson of the meeting has a casting vote in addition to any vote he may have in his capacity as a Director.

15.6. Directors contract or arrangement

- (a) No Director will be disqualified by his office from holding any other office or place of profit under the Company or from contracting with the Company, either as vendor, purchaser or otherwise, nor will any such contract or any contract or arrangement entered into by or on behalf of the Company in which any Director is interested be avoided, nor will any Director be liable to account to the Company for any profit arising from such office or place of profit or realised by any such contract or arrangement by reason only of such Director holding that office or of the fiduciary relationship thereby established, but where there are 2 or more Directors of the Company the nature of a director's interest must be disclosed by him in any manner required by the Law.

- (b) A Director may as a director vote in respect of any contract arrangement in which he is interested in the manner described in Clause 15.6(a). A Director may affix the Seal or be appointed to sign on behalf of the Company a document evidencing a contract or arrangement in which the Director is interested will not in any way affect the validity of the document.

15.7. Appointment of an alternative director

- (a) A Director may, with the approval of the other Directors, appoint a person (whether a Member of the Company or not) to be an alternate director in his place during such period as he thinks fit.
- (b) An alternate director is entitled to notice of meetings of the Directors and, if the appointor is not present at such a meeting, is entitled to attend and vote in his stead. If the alternate director is already a Director of the Company he will be entitled to vote on his own behalf as well as on behalf of the Director appointing him, but for the purpose of determining whether a quorum is present, he will be counted only once.
- (c) An alternate director may exercise any powers that the appointor may exercise and the exercise of any such power by the alternate director will be deemed to be the exercise of the power by the appointor.
- (d) An alternate director is not required to have any share qualifications.
- (e) The appointment of an alternate director may be terminated at any time by the appointor notwithstanding that the period of the appointment of the alternate director has not expired, and terminates in any event if the appointor vacates office as a Director.
- (f) An appointment or the termination of an appointment, of an alternate director will be effected by a notice in writing signed by the Director who makes or made the appointment and served on the Company.

15.8. Appointing directors

- (a) If a vacancy occurs in the office of a Director or offices of Directors, any remaining Directors may act. If the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum or of convening a general meeting of the Company.
- (b) If a sole director dies, becomes mentally ill or is declared bankrupt etc and the director is also the sole Member of the company, any personal representative, trustee or trustee in bankruptcy of the former director who is duly appointed to administer the former director's estate or property may appoint a person (including himself) as a director of the Company.

15.9. Chairperson nomination

- (a) The Directors will elect one of their number as a chairperson of their meetings and may determine the period for which he is to hold office.
- (b) Where such a meeting is held and:
 - (1) a chairperson has not been elected as provided by Clause 15.9(a), or

- (2) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting;

the Directors present must elect one of their number to be a chairperson of the meeting (or part of it).

15.10. Delegated powers

Where there are 2 or more Directors:

- (a) The Directors may delegate any of their powers to a committee of Directors, a Director, an employee of the Company or any other person.
- (b) A delegate under Clause 15.10(a) must exercise the powers delegated in accordance with any directions of the Directors and the exercise of any of those powers is as effective as if the Directors had exercised them.
- (c) The members of a committee delegated powers under Clause 15.10(a) may elect one of their number as chairperson of their meetings.
- (d) Where such a meeting is held and:
 - (1) a chairperson has not been elected as provided by Clause 15.10(c); or
 - (2) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting, the members present may elect one of their number to be chairperson of the meeting (or part of it).
- (e) A committee may meet and adjourn as it thinks proper.
- (f) Questions arising at a meeting of a committee will be determined by a majority of votes, of the committee members present and voting.
- (g) In the case of an equality of votes, the chairman, has a casting vote in addition to any vote he may have in his capacity as a committee member.

15.11. Passing a resolution

- (a) If all the Directors entitled to vote on a resolution have signed a document containing a statement that they are in favour of, that resolution of the Directors in terms set out in the document, a resolution in those terms will be deemed to have been passed at a meeting of the Directors. The meeting should be held on the day on which the document was signed and at the time at which the document was last signed by a director. If the Directors signed the document on different days, the resolution will be deemed to have been passed on the day on which, and at the time at which, the document was last signed by a director.
- (b) For the purposes of Clause 15.11(a), two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be deemed to constitute one document containing a statement in those terms signed by those directors on the respective days on which they signed the separate documents.

- (c) When the Company is acting in its role as trustee of a self managed superannuation fund ("Fund"), the directors will form a quorum and pass resolutions in accordance with the rules of the Fund deed as if each director were an individual trustee of the Fund, or as otherwise provided by the Fund deed.

15.12. Defect in appointment

All acts done by any meeting of the Directors or of a committee of directors or by any person acting as a director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a director or a member of the committee, or to act as, a director, or that a person so appointed was disqualified, as valid as if the person had been duly appointed and was qualified to be a director or to be a member of the committee.

16. Managing director

16.1. Appointment of managing director

- (a) The Directors may from time to time appoint one or more of their number to the office of managing director for such period and on such terms as they think fit, and subject to the terms of any agreement entered into in a particular case, may revoke any such appointment.
- (b) The appointment of any such managing director will automatically terminate if he ceases from any cause to be a Director.

16.2. Remuneration of managing directors

A managing director will, subject to the terms of any agreement entered into in a particular case, receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the Directors determine.

16.3. Power of managing directors

- (a) The Directors may, upon such terms and conditions and with such restrictions as they think fit, confer upon a managing director any of the powers exercisable by them.
- (b) Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Directors.
- (c) The Directors may at any time withdraw or vary any of the powers so conferred on a managing director.

16.4. Appointment of governing director

- (a) The Company may from time to time by ordinary resolution passed at a general meeting appoint one of the company's directors to the office of governing director.
- (b) For as long as a governing director holds office, all powers, authorities and discretions vested in the Directors by the Law or this Constitution will be vested in the governing director alone.

- (c) For so long as a governing director holds office, all other Directors for the time being of the Company (including any managing director appointed under Clause 16) will:
 - (1) exercise only such powers as the governing director may confer on them; and
 - (2) be subject to the control of the governing director.
- (d) For so long as a governing director is a Director, he will be the chairperson of the Directors and the chairperson of every meeting of the Members of the Company.

17. Associate directors

- (a) The Directors may from time to time appoint any person to be an associate director and may from time to time terminate any such appointment. A person so appointed is not required to hold any shares to qualify him for the appointment.
- (b) The Directors may from time to time determine the powers, duties and remuneration of any person so appointed.
- (c) Except by the invitation and with the consent of the Directors, an associate director does not have any right to attend or vote at any meeting of Directors.

18. Secretary

A secretary of the Company, if appointed, holds office on such terms and conditions, as to remuneration and otherwise, as the Directors determine.

19. Execution of documents

19.1. Safe custody of seal

If the Company has a Seal, the Directors must provide for the safety custody of the Seal.

19.2. Use of seal

The Seal must be used only by the authority of the Directors, or of a committee of the directors authorised by the Directors to authorise the use of the seal.

19.3. Execution of documents using a seal

The Company may execute a document using a Seal if the Seal is affixed to the document and the affixing of the Seal is witnessed by:

- (a) 2 Directors;
- (b) a Director and a Secretary;
- (c) a Director and another person appointed by the Directors for this purpose;
- (d) if the Company has a sole Director who is also the sole Secretary, that Director; or
- (e) if the Company has a sole Director and no Secretary, that Director.

19.4. Execution of documents without a seal

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

- (a) 2 Directors;
- (b) a Director and a Secretary;
- (c) a Director and another person appointed by the Directors for this purpose;
- (d) if the Company has a sole Director who is also the sole Secretary, that Director; or
- (e) if the Company has a sole Director and no Secretary, that Director.

20. Inspection of records, minutes and register of members

20.1. Inspection of records

- (a) The Company will keep such accounting and other records of the business of the Company as it is required to keep by the Law.
- (b) The Company will send such documents to such persons as are required by Section 314 and 316 of the Law.
- (c) The Directors may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members other than Directors, and a Member other than a Director does not have the right to inspect any document of the Company except as provided by law, as provided in this Constitution or as authorised by the Directors or by the Company in general meeting.

20.2. Minutes

- (a) The Directors will cause minutes of:
 - (1) all proceedings and resolutions of meetings of the Company's Members;
 - (2) all proceedings and resolutions of meetings of the Directors, including meetings of committees of Directors;
 - (3) all resolutions passed by Members without a meeting;
 - (4) all resolutions passed by the Directors without a meeting; and
 - (5) where there is one Director, all declarations made by the Director,to be duly entered in books kept for that purpose in accordance with the Law.
- (b) Books containing the minutes of proceedings of meetings of the Company's Members and resolutions passed by Members without a meeting in accordance with Clause 12.17 will be open for inspection by any Member without charge.

20.3. Members access to registers

The Register of Members, the Register of Options and the Register of Debenture Holders will be open for inspection by any Member, a registered option holder or a registered debenture holder without charge.

21. Dividends and reserves

21.1. Dividends

- (a) The Directors (without the sanction of a general meeting), or a general meeting on the recommendation of the Directors, may declare a dividend whether interim or final to be paid to the Members according to the Member's rights and interests at the time of entitlement to such dividend, only in the following circumstances:
 - (1) where the Company's assets exceed its liabilities immediately before the dividend is declared and the excess is sufficient for the payment of the dividend; and
 - (2) where the payment of the dividend is fair and reasonable to the Company's Members as a whole; and
 - (3) where the payment of the dividend does not materially prejudice the Company's ability to pay its creditors;
- (b) a general meeting will not declare a larger dividend than is recommended by the Directors;
- (c) the Directors may in their discretion declare and pay or recommend such dividends as in their opinion the position of the Company justifies. The Directors may fix the time for payment of a dividend and if no time is so fixed the dividend will be payable upon its declaration; and
- (d) where at any time there is more than one class of share on issue, then subject to clause 21.1(a) being complied with and to the rights applicable to the shares concerned, dividends whether interim or otherwise may be declared and paid at different rates for different classes of shares. The dividends may be declared and paid on the shares of any one or more class or classes of shares to the exclusion of the shares of any other class or classes of shares provided that the shares comprising a particular class of shares will as between those shares participate in any such dividends declared equally.

21.2. Interest payable

Interest is not payable by the Company in respect of any dividend.

21.3. Reserves

- (a) The Directors may, before declaring or recommending any dividend, set aside out of the profits of the Company such sums as they think proper as reserves, to be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied.
- (b) Pending any such application, the reserves may, at the discretion of the Directors, be used in the business of the Company or be invested in such investments as the Directors think fit.

- (c) The Directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

21.4. Paying Dividends

- (a) Subject to clause 21.1(a) being complied with and to the rights of persons (if any) entitled to shares with special rights as to dividend, all dividends will be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid.
- (b) An amount paid or credited as paid on a share in advance of a call will not be taken for the purposes of this Clause to be paid or credited as paid on the share.

21.5. Deductions on dividends payable

The Directors may deduct from any dividend payable to a Member all sums of money (if any) presently payable by him to the Company on account of calls or otherwise in relation to shares in the Company.

21.6. Resolution of distribution of dividends

- (a) The Directors or any general meeting declaring a dividend may, by resolution, direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, any other corporation, and the Directors will give effect to such a resolution.
- (b) Where a difficulty arises in regard to such a distribution, the Directors may settle the matter as they consider expedient and fix the value for distribution of the specific assets or any part of those assets and may determine that cash payments will be made to any Members on the basis of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as the Directors consider expedient.

21.7. Method of payment of dividends

- (a) Any dividend, interest or other money payable in cash in respect of shares may be paid in any manner as determined by the Directors including:
 - (1) directly crediting the account nominated by the Member from time to time; or
 - (2) by cheque sent through the post directed to:
 - (A) the address of the holder as shown in the register of Members, or in the case of joint holders, to the address shown in the register of Members as the address of the joint holder first named in that register; or
 - (B) to such other address as the holder or joint holders in writing directs or direct; or
 - (3) Any one of 2 or more joint holders may give effectual receipts for any dividends, interest or other money payable in respect of the shares held by them as joint holders.

22. Capitalisation of profits

22.1. Capitalisation of profits

The Directors may resolve to retain profits, which may be applied as follows:

- (a) in paying up any amounts unpaid on shares held by Members;
- (b) in paying up in full unissued shares or debentures to be issued to Members as fully paid; or
- (c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

22.2. Directors to give effect to resolutions

The Directors must do all things necessary to give effect to the resolution and, in particular, to the extent necessary to adjust the rights of the Members among themselves, may:

- (a) issue fractional certificates or make cash payments in cases where shares or debentures become issuable in fractions; and
- (b) authorise any person to make, on behalf of all the Members entitled to any further shares or debentures upon the capitalisation, an agreement with the Company providing for the issue to them, credited as fully paid up, of any such further shares or debentures or for the payment up by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares. The application of their respective proportions of the sum resolved to be capitalised is required. Any agreement made under an authority referred to in paragraph (b) is effective and binding on all the Members concerned.

23. Notices

23.1. Giving of notices

A notice may be given by the Company to any Member either:

- (a) by serving it on him personally;
- (b) by sending it by post to him at the address shown in the register of Members or the address supplied by the Member for the purposes of serving notices on the Member; or
- (c) by sending it by facsimile transmission to a facsimile number nominated by the Member for the purpose of serving notices on the Member.

23.2. Service by post

Where a notice is sent by post, service of the notice will be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice and to have been effected in the case of a notice of a meeting, on the day after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.

23.3. Service by facsimile

Where a notice is sent by facsimile, service of the notice will be deemed to be served on receipt by the Company of a transmission report confirming successful transmission.

23.4. Notice to joint holders of a share

A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the register of Members in respect of the share.

23.5. Notice on death or bankruptcy of a member

A notice may be given by the Company to a person entitled to a share in consequence of the death or bankruptcy of a Member by serving it on him personally or by sending it to him by post addressed to him by name, or by the title of representative of the deceased or assignee of the bankrupt, or by any like description, at the address (if any) within Australia supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred.

24. Winding up

24.1. Division of company property

If the Company is wound up, the liquidator may, with the sanction of a special resolution, divide among the Members in kind the whole or any part of the property of the Company and may for that purpose set such value as he considers fair upon any property to be so divided and may determine how the division is to be carried out as between the Members or different classes of Members, subject to the rights of holders of shares issued with special rights on winding up of the Company.

24.2. Power to vest property in trust for members

The liquidator may, with the sanction of a special resolution, vest the whole or any part of any such property in trustees upon such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Member is compelled to accept any shares or other securities in respect of which there is any liability.

25. Indemnity

25.1. Indemnity against a liability

To the extent permitted by law, the Company:

- (a) indemnifies every person who is, or has been, a Director or Secretary; and
- (b) may, by deed, indemnify or agree to indemnify a person who is, or has been an Officer of a Group Company, against a liability incurred by that person, in his or her capacity as such a Director, Secretary or Officer, to another person provided that liability is not:
 - (1) an Excluded Liability; or
 - (2) a liability for legal costs and expenses.

25.2. Indemnity against legal costs and expenses

To the extent permitted by law, the Company:

- (a) indemnifies every person who is, or has been, a Director or Secretary; and
- (b) may, by deed, indemnify or agree to indemnify a person who is, or has been, an Officer of a Group Company, against legal costs and expenses (other than Excluded Legal Costs) incurred by that person in defending Proceedings for a liability incurred by that person in his or her capacity as such a Director, Secretary or Officer.

25.3. Payment for legal cost and expenses

To the extent permitted by law, the Company may make a payment (either by way of advance, loan or otherwise) to a Director or Secretary for the legal costs and expenses incurred by him or her in defending Proceedings for a liability incurred in his or her capacity as a Director or Secretary provided that:

- (a) the legal costs and expenses are not Excluded Legal Costs at the time the payment is made; and
- (b) the Director or Secretary is obliged to repay the legal costs and expenses to the extent that they become Excluded Legal Costs.

25.4. Payment of insurance premiums

To the extent permitted by law, the Company may pay, or agree to pay, a premium for a contract insuring a person who is, or has been, an Officer of a Group Company against a liability:

- (a) incurred by that person in his capacity as an Officer of a Group Company or in the course of acting in connection with the affairs of a Group Company or otherwise arising out of holding office as an Officer of a Group Company, provided that the liability does not arise out of conduct involving a wilful breach of duty in relation to a Group Company or a contravention of sections 182 or 183 of the Law; and
- (b) for legal costs and expenses incurred by that person in defending or resisting Proceedings, whatever their outcome.

25.5. Definitions

In this Clause:

- (a) the term "Excluded Legal Costs" means legal costs which the Company is prohibited from indemnifying a person against under section 199A(3) of the Law;
- (b) the term "Excluded Liability" means a liability which the Company is prohibited from indemnifying a person against under section 199A(2) of the Law;
- (c) the term "Group Company" means the Company or a subsidiary of the Company;
- (d) the term "Officer" has the meaning in section 9 of the Law; and

- (e) the term "Proceedings" means any proceedings, whether civil or criminal, in which it is alleged that the person has done or omitted to do some act, matter or thing in his capacity as an Officer of a Group Company or in the course of acting in connection with the affairs of a Group Company or otherwise arising out of the person holding office as an Officer of a Group Company, including proceedings alleging that he or she was guilty of negligence, default of trust or breach of duty in relation to a Group Company.

26. Loans made to shareholders

26.1. Resolutions required

In order for a loan from the Company to any Member to be resolved, a resolution in the form of the First Schedule is required.

26.2. Terms of loan

Unless otherwise agreed, every loan made by the Company from time to time, in any period, will be on the terms set out in the Second Schedule.

26.3. Second schedule

Subject to Clause 26.2, each Member will, pursuant to section 140(1) of the Law, be deemed to have accepted that all loans made from time to time will be made by the Company on the terms set out in the Second Schedule.

First Schedule

MINUTE BOOK

Minutes of Meeting of Director(s)

Todd River Metals Pty Ltd
ACN 600 314 038

Held at:

Date: / /

Time:

Present:

.....

.....

Chairperson:

was appointed Chairperson of the meeting.

Quorum: The Chairperson noted that a quorum was present at the meeting of Directors entitled to pass the proposed resolutions.

Document tabled: A loan agreement between the Company and:
.....

on the terms set out in the attached Schedule. ('Loan Agreement')

Resolution: **IT WAS RESOLVED** to execute the Loan Agreement in accordance with the Company's Constitution.

Meeting closed: There being no further business, the meeting was declared closed.

Signed as a true and correct record.

.....
Chairperson

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Second Schedule

Loan facility agreement

Loan facility agreement made at on

Parties:

Between

Todd River Metals Pty Ltd ('the Lender')
ACN 600 314 038

And

The member or members as determined by a resolution in the form shown in the First Schedule. ('the Borrower')

Recitals:

The Lender has agreed to provide a loan facility to the Borrower in accordance with this Agreement.

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Agreed terms as follows:

1. Definitions and interpretation

1.1. Definitions

In this Agreement, unless the context or subject matter otherwise require:

“Act” means the *Income Tax Assessment Act* 1936 and 1997, as amended, consolidated, re-written or re-enacted from time to time, and includes any regulations made pursuant to that Act.

“Advance” means any advance or loan made to the Borrower by the Lender after the date of this Agreement.

“Agreement” means this loan facility agreement (including the recitals).

“Authorised Representative” means:

- (a) in respect of a party which is a corporation:
 - (1) a company secretary or director or any officer of the corporation whose title or office includes the words "manager" or "director"; or
 - (2) a person acting with the title or in the office of manager or director; and
- (b) in respect of each party, a solicitor of that party or a person nominated by Notice to the other party as an authorised representative.

“Claim” means, in relation to a person, a claim, demand, remedy, suit, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent.

“Controller” has the meaning given in section 9 of the *Corporations Act*.

“Due Date” in relation to an Advance, is defined in clause 2.1.

“Insolvency Provision” means any law relating to insolvency, sequestration, liquidation or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences and any law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions) and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

“Interest Rate”, in relation to a year, is defined in clause 3.

“Jurisdiction” means the state/territory of incorporation of the company.

“Notice” means a written notice, consent, approval, direction, order or other communication.

“Obligation” means any legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability.

“Outstanding Balance” means, on any day, the aggregate of all money owing or payable actually or contingently by the Borrower to the Lender under this Agreement on that day.

“Principal Sum” means the total of all Advances made by the Lender to the Borrower;

“Term”, in relation to an Advance, is defined in clause 2.1.

“Year” means the Lender’s year of income as defined in the Act.

1.2. Interpretation

In the interpretation of this Agreement, unless the context or subject matter otherwise require:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, include successor bodies;
- (d) references to months are references to calendar months;
- (e) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Agreement; and
- (f) a reference to a party includes that party’s executors, administrators, substitutes, successors and permitted assigns.

2. Repayment of advances

2.1. Term and due date

- (a) The Term for each Advance under this Agreement will be the maximum term, as defined in section 109N(3)(b) of the Act or any regulations made thereunder, for an Advance of that kind.
- (b) The parties acknowledge that unless and until section 109N(3)(b) is amended, or any regulations are made thereunder, the maximum term is 7 years for any Advance.
- (c) The Term for each Advance will be deemed to have commenced on the date the Advance was made, and the Due Date for each Advance will be one business day before the date on which the Term expires.

2.2. Repayment

Each Advance must be repaid in full, with interest, by its Due Date.

3. Interest and yearly repayments

3.1. Interest rate

- (a) The Interest Rate must be determined afresh at the beginning of each Year, but thereafter remains constant throughout the Year.
- (b) The Interest Rate for a Year will be the benchmark interest rate, as defined in section 109N(2) of the Act or any regulations made thereunder.
- (c) The parties acknowledge that unless and until section 109N(2) of the Act is amended, or any regulations are made thereunder, the benchmark interest Rate is the Indicator Lending Rates - Bank variable housing loans interest Rate last published by the Reserve Bank of Australia before the start of the Year.

3.2. Interest free period

An Advance will be free of interest until the end of the Year in which it is made.

3.3. Accrual of interest

Interest will be calculated daily by applying the Interest Rate to the Outstanding Balance (less any Advances made during the current Year). Interest will become payable on the last day of each Year.

3.4. Yearly repayments

- (a) The Borrower must make one repayment in respect of the entire Outstanding Balance on or before the last day of each Year. The amount of this repayment will be the minimum amount necessary to prevent the Outstanding Balance being treated as a dividend by reason of section 109E of the Act.
- (b) The parties acknowledge that unless and until section 109E of the Act is amended, or any regulations are made thereunder, the amount referred to in paragraph 3.4(a) above is the minimum yearly repayment worked out in accordance with section 109E(6) of the Act.

4. Defaults

4.1. Events of default

At the option of the Lender, the Outstanding Balance will become immediately due and payable by the Borrower to the Lender notwithstanding any previous delay or waiver by the Lender, if:

- (a) the Borrower does not pay any money payable under this Agreement as and when it falls due;
- (b) the Borrower is in breach of any provision of this Agreement;
- (c) the Borrower is unable to pay its debts or certifies that it is unable to pay its debts as and when they fall due;
- (d) a receiver, manager, receiver and manager, trustee, administrator, Controller or similar officer is appointed in respect of the Borrower;
- (e) a liquidator or provisional liquidator is appointed in respect of any corporate Borrower;
- (f) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
 - (1) appointing a person referred to in clause 4.1(d) or 4.1(e);
 - (2) winding up a corporate Borrower; or
 - (3) proposing or implementing a scheme of arrangement in respect of a corporate Borrower;
- (g) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of the Borrower who is an individual or their estate under any Insolvency Provision;

- (h) a moratorium of any debts of the Borrower or an official assignment or a composition or an arrangement (formal or informal) with the Borrower's creditors or any similar proceeding or arrangement by which the assets of the Borrower are subject conditionally or unconditionally to the control of the Borrower's creditors is ordered, declared or agreed to or is applied for and the application is not withdrawn or dismissed within 7 days;
- (i) the Borrower becomes, or admits in writing that it is, or is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts;
- (j) any distress, execution or sequestration or other process is levied or enforced upon or any order is made against the property and assets of the Borrower and is not paid out, removed or discharged within 7 days.
- (k) the Borrower dies;
- (l) the Borrower creates a purpose to assign or create any charge, pledge or lien over the property the subject of any security of any part thereof without the prior consent of the Lender.

4.2. Default charge

Where the Borrower does not pay an amount payable under this Agreement when it is due, the Borrower will pay to the Lender interest on that overdue amount calculated at the Interest Rate on daily balances from the day the amount fell due and was unpaid to the day it is paid.

4.3. Remedy default

The Lender may, if it thinks fit, remedy any default of the Borrower and the Borrower agrees to repay on demand any sum expended to paid to make good such default and such sum will bear interest at the Interest Rate.

5. Representations and warranties

The Borrower represents and warrants to the Lender that:

5.1. Power - it has full legal capacity and power to enter into, exercise its rights and perform its obligations under this Agreement.

5.2. Authorisation - all conditions and things required by applicable law to be fulfilled or done in order:

- (a) to enable it lawfully to enter into, and exercise its rights and perform its obligations under, this Agreement;
- (b) to ensure that its obligations under this Agreement rank and will continue to rank at all times in accordance with paragraph 5.4 below; and
- (c) to make this Agreement admissible in evidence in the courts in this Jurisdiction;

have been fulfilled or done.

5.3. Obligations Binding - this Agreement constitutes its valid and legally binding obligations, enforceable against it in accordance with their respective terms except to the extent limited by equitable principles and laws affecting creditors' rights generally.

5.4. Ranking of Obligations - its payment obligations under this Agreement rank and will continue to rank at all times at least equally with all its other present and future unsecured payment obligations (including, without limitation, contingent obligations), other than those which are mandatorily preferred by law.

- 5.5. **No Litigation** - no litigation, arbitration or administrative proceedings are taking place, pending or, to the knowledge of the Borrower, threatened against it or any of its property which, if adversely determined, could have, either separately or in aggregate, a material adverse effect on it.

6. Borrower's undertakings

The Borrower will:

- 6.1. **Information** - provide the Lender upon request and, in any event, within five business days of request, with any information relating to the financial condition, business, assets and affairs of itself, as the Lender may reasonably request;
- 6.2. **Records** - keep proper financial records and permit the Lender or its representatives to examine and take copies of those financial records and all other documents relating to its finances at all times;
- 6.3. **Comply with Applicable Law** - comply with all applicable law including, without limitation, by paying when due all taxes to which it or its assets are assessed or liable except to the extent that these are being diligently contested in good faith and by appropriate procedures and the Borrower has made adequate reserves for them;
- 6.4. **Authorisations** - obtain, maintain and comply with any conditions attaching to any authorisations which it requires to carry out the transactions contemplated by, and to ensure the validity, enforceability and admissibility in evidence of, this Agreement; and
- 6.5. **Notice of Litigation** - give the Lender prompt notice of any litigation, arbitration or administrative proceedings affecting it or any of its property which, if adversely determined, could have, either separately or in the aggregate, an adverse effect on it.

7. Costs

The Borrower will pay to the Lender all stamp duty payable on or in respect of this Agreement, all legal and other costs, charges and expenses incurred or paid by the Lender relating to the negotiation, preparation, execution and enforcement of this Agreement.

8. Assignments

8.1. Assignment and consent

No party will be entitled to assign its rights or obligations under this Agreement without the prior written consent of the other parties, which consent may be given or withheld, or given on conditions, in the absolute discretion of the other parties

8.2. Continuation of liabilities

After an assignment:

- (a) the assignor remains principally liable jointly and severally with the assignee for the performance and observance of all obligations assigned to the assignee; and
- (b) the assignor will procure the assignee to enter into a deed in which the assignee covenants to be bound by this Agreement, including (without limitation) this clause.

9. Notices

9.1. Form of notices

Notices given under this Agreement must be:

- (a) in writing; and
- (b) signed by the party giving the Notice or by that party's Authorised Representative.

9.2. Method and address for giving notices

Notices must be either:

- (a) delivered by hand;
- (b) posted by pre paid security or certified mail; or
- (c) transmitted by facsimile.

10. Jurisdiction

This Agreement is governed by and construed in accordance with the laws of the Jurisdiction, and each party irrevocably submits to the non exclusive jurisdiction of the courts of the Jurisdiction for the purpose of any such action, suit or proceeding.

11. General provisions

11.1. Variations

No variation of this Agreement nor consent to a departure by a party from a provision, will be of effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it. Any such variation or consent will be effective only to the extent to or for which it may be made or given.

11.2. Waiver

The non exercise of or delay in exercising a right of a party will not operate as a waiver of that right, nor does a single exercise of a right preclude another exercise of it or the exercise of other rights. A right may only be waived by Notice, signed by the party (or its Authorised Representative) to be bound by the waiver.

11.3. Liability of parties

If a party consists of more than one person:

- (a) an obligation of those parties is a joint obligation of all of them and a several obligation of each of them;
- (b) a right given to those parties is a right given jointly and severally to each of them, and if exercised by one of them, is deemed to be exercised jointly; and
- (c) a representation, warranty or undertaking made by those parties is made by each of them.

11.4. Warranty of authority

Each person signing this Agreement on behalf of another person warrants that so far as he or she is aware he or she has the authority to do so.

Third Schedule

1. Class of shares

1.1. Notwithstanding any rights or restrictions conferred on holders as described in this Schedule, all rights and restrictions attaching to any shares in respect of dividends are subject to the provisions of clause 21(a) being complied.

1.2. Subject to Clause 4 and the power therein to issue shares of classes determined by the directors, the Company may also issue Subscriber shares and the shares of the classes referred to below in this clause. The Subscriber shares (if any) will be redeemable preference shares and the rights, privileges and conditions attaching to Subscriber shares are as follows:

- (a) They will only be issued upon registration of the Company and will only be issued to persons specified in the application for the Company's registration under the Law as persons who consent to become Members of the Company;
- (b) Subject to the provisions of Section 254J of the Law, the next issue of shares of any class or classes after the issue of the Subscriber shares and payment up in full thereof will be deemed to have been issued for the purposes of redeeming the Subscriber shares provided that the proceeds of shares so issued is at least equal to the consideration paid for the Subscriber shares on issue. Upon the issue of such shares, each of the Subscriber shares will ipso facto be redeemed for the consideration paid for it, and the issued capital of the Company will then stand at an amount equal to the shares which comprised the next issue of shares;
- (c) They will carry no right to participate in any distribution of surplus assets or profits;
- (d) They will rank as to repayment of capital on winding-up of the Company before any other class of shares then on issue;
- (e) They will carry no right to dividends;
- (f) They will carry the right at meetings of the Company's Members to exercise one vote for each Subscriber share held; and
- (g) Upon the redemption of the Subscriber shares in the manner provided in this Constitution, the Company will cease to be authorised to issue shares of this class.

1.3. Ordinary, "A" & "B" class shares

The rights, privileges and conditions attaching to Ordinary, "A" and "B" shares are as follows:

- (a) They will confer to the holders thereof the right to receive notice of and to attend any meeting of the Company's Members and to exercise one vote for every share held.
- (b) They will confer to the holders thereof the right to participate in any dividends declared and payable by the Company on the class of share held.

- (c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares and to participate in any distribution of surplus assets or profits of the Company.

1.4. "C" class shares

The rights, privileges and conditions attaching to "C" shares are as follows:

- (a) They will not confer on the holders thereof any right to dividends or any right to vote at any meeting of the Company's Members but the holders thereof will be entitled to notice of and to attend any meeting of the Company's Members.
- (b) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares and to participate in any distribution of surplus assets or profits of the Company ranking equally with Ordinary shares.

1.5. "D" class shares

The rights, privileges and conditions attaching to "D" shares are as follows:

- (a) They will confer to the holders thereof the right to receive notice of and to attend any meeting of the Company's Members and to exercise one vote for every share held.
- (b) They will not confer on the holders thereof any right to dividends.
- (c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares ranking equally with Ordinary shares but not to participate in any distribution of surplus assets or profits of the Company.

1.6. "E" & "F" class shares

The rights, privileges and conditions attaching to "E" and "F" shares are as follows:

- (a) They will not confer on the holders thereof any right to vote at any meeting of the Company's Members but the holders thereof will be entitled to notice of and to attend any meeting of the Company's Members.
- (b) They will confer to the holders thereof the right to participate in any dividends declared and payable by the Company on the class of share held.
- (c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares ranking equally with Ordinary shares but not to participate in any distribution of surplus assets or profits of the company.

1.7. "G" class shares

The rights, privileges and conditions attaching to "G" shares are as follows:

- (a) They will not confer on the holders thereof any right to vote at any meeting of the Company's Members but the holders thereof will be entitled to notice of and to attend any meeting of the Company's Members.
- (b) They will confer to the holders thereof the right to participate in any dividends declared and payable by the Company on the class of share held.

- (c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares and to participate in any distribution of surplus assets or profits of the Company ranking equally with Ordinary shares.

1.8. "H" redeemable preference class shares

The rights, privileges and conditions attaching to the "H" redeemable preference shares are as follows:

- (a) They will entitle the holders thereof to receive notice of and to attend any meeting of the Company's Members but will not confer any right to vote at such meetings except in one or more of the following circumstances:
 - (1) on a proposal to reduce the share capital of the Company;
 - (2) on a proposal that affects rights attached to the "H" redeemable preference shares;
 - (3) on a proposal for the disposal of the whole property, business and undertaking of the Company; and or
 - (4) during the winding up of the Company.
- (b) They will confer to the holders thereof the right to receive from the profits of the Company a non-cumulative preferential dividend at the rate of 5% per annum on the capital for the time being paid up thereon in priority to the payment of any dividend on any other share in the Company.
- (c) Upon a reduction of capital or winding up of the Company they will as regards return of paid up capital rank in priority to all other shares in the Company, but they will not confer any right to participate in any distribution of surplus assets or profits of the Company.
- (d) Subject to Sections 254J and 254K of the Law they will, at the option of the Company, be liable to be redeemed at the consideration paid for the "H" redeemable preference share on or before 30 June 2050, by giving written notice to the holders at their respective registered addresses and each such notice will be accompanied by the Company's cheque for the amount payable to the holder to whom such notice is sent. The redemption will take place on the seventh day after the date of posting such notice, and any "H" redeemable preference shares not so redeemed on 30 June 2050 will not thereafter be capable of being redeemed.

1.9. "I" redeemable preference class shares

The rights, privileges and conditions attaching to the "I" redeemable preference shares are as follows:

- (a) They will entitle the holders thereof to receive notice of and to attend any meeting of the Company's Members but will not confer any right to vote at such meetings except in one or more of the following circumstances:
 - (1) on a proposal to reduce the share capital of the Company;
 - (2) on a proposal that affects rights attached to the "I" redeemable preference shares;

- (3) on a proposal for the disposal of the whole property, business and undertaking of the Company; and or
- (4) during the winding up of the Company.
- (b) They will confer to the holders thereof the right to participate in any dividend declared and payable by the Company on the class of share held.
- (c) Upon a reduction of capital or a winding up of the Company they will as rank regards return of paid up capital after any issued "H" redeemable preference shares but in priority to all other shares in the Company, but they will not confer any right to participate in any distribution of surplus assets or profits of the Company.
- (d) Subject to Sections 254J and 254K of the Law they will, at the option of the Company, be liable to be redeemed at the consideration paid for the "I" redeemable preference share on or before 1 May 2060, by giving written notice to the holders at their respective registered addresses and each such notice must be accompanied by the Company's cheque for the amount payable to the holder to whom such notice is sent. The redemption will take place on the seventh day after the date of posting such notice, and any "I" redeemable preference shares not so redeemed on 1 May 2060 will not thereafter be capable of being redeemed.

1.10. "J" class shares

The rights, privileges and conditions attaching to "J" shares are as follows:

- (a) They will not confer on the holders thereof any right to vote at any meeting of the Company's Members but will be entitled to notice of and to attend any meeting of the Company's Members.
- (b) They will confer to the holders thereof the right to participate in any dividends declared and payable by the Company on the class of share held.
- (c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares ranking equally with Ordinary shares but not to participate in any distribution of surplus assets or profits of the Company.
- (d) In the event of the death, bankruptcy, mental incapacity or serious or prolonged ill health of a sole Director who is also the only Member entitled to vote at a meeting of the Company's Members which results in that person being unable to carry out the duties of a Director, the holders of "J" shares will have the right to appoint a new Director by the passing of an ordinary resolution of the holders of "J" shares.

1.11. "K" class dividend access share

The rights, privileges and conditions attaching to the "K" Class dividend access shares are as follows:

- (a) They will not confer to the holders any right to vote at any meeting of the Company's Members but the holders thereof will be entitled to notice of and to attend any meeting of the Company's Members.
- (b) They will confer to the holders thereof the right to participate in any dividend declared and payable by the Company on the class of share held.

- (c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares ranking equally with Ordinary shares but not to participate in any distribution of surplus assets or profits of the company.
- (d) Subject to Sections 254J and 254K of the Law they will, at the option of the Company, be liable to be redeemed at the consideration paid for the "K" dividend access share on or before 1 May 2060, by giving written notice to the holders at their respective registered addresses and each such notice must be accompanied by the Company's cheque for the amount payable to the holder to whom such notice is sent. The redemption will take place on the seventh day after the date of posting such notice, and any "K" dividend access share not so redeemed on 1 May 2060 will not thereafter be capable of being redeemed.

1.12. "L" class dividend access share

The rights, privileges and conditions attaching to the "L" Class dividend access shares are as follows:

- (a) They will not confer to the holders any right to vote at any meeting of the Company's Members but the holders thereof will be entitled to notice of and to attend any meeting of the Company's Members.
- (b) They will confer to the holders thereof the right to participate in any dividend declared and payable by the Company on the class of share held.
- (c) Upon a winding up of the Company they will confer to the holders thereof the right to repayment of capital paid upon such shares ranking equally with Ordinary shares but not to participate in any distribution of surplus assets or profits of the company.
- (d) Subject to Sections 254J and 254K of the Law they will, at the option of the Company, be liable to be redeemed at the consideration paid for the "L" dividend access share on or before 1 May 2060, by giving written notice to the holders at their respective registered addresses and each such notice must be accompanied by the Company's cheque for the amount payable to the holder to whom such notice is sent. The redemption will take place on the seventh day after the date of posting such notice, and any "L" dividend access share not so redeemed on 1 May 2060 will not thereafter be capable of being redeemed.

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Execution

I/We, the persons whose full name is set out below and who consents to becoming a member of the Company agree to the form of the Constitution for the Company set out above.

Member's signatures

Witness's names & signatures

.....
Signature

.....
Please Print Name of Witness

..... / /
Date

.....
Todd River Resources Limited (600 308 398)

