



Resilience Mining Mongolia Pty Ltd

ACN 609 265 607

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Constitution

Resilience Mining Mongolia Pty Ltd.

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Constitution of Resilience Mining Mongolia Pty Ltd

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Preliminary

1. Defined terms

1.1 In this Constitution:

Alternate Director means a person appointed as an alternate director under clause **Error!**
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Auditor means the Company's auditor, if any.

Company means Resilience Mining Mongolia Pty Ltd (which name may be changed)
ACN 609 265 607.

Constitution means the constitution of the Company as amended from time to time.

Corporations Act means the *Corporations Act 2001* (Cth) as modified or amended from time to time.

Director includes any person occupying the position of director of the Company and, where appropriate, includes an Alternate Director.

Directors means all or some of the Directors acting as a board.

Dividend includes bonus.

Executive Director means a person appointed as an executive director under clause 61.

Managing Director means a person appointed as managing director under clause 61.1.

Member means a person whose name is entered for the time being on the Register or any branch register as the holder of one or more Shares.

Register means the register of Members of the Company.

Representative means a person appointed by a Member to act as its representative under clause 39.1 or under section 250D of the Corporations Act.

Seal means the Company's common seal (if any).

Secretary means any person appointed by the Directors to perform any of the duties of a secretary of the Company.

Shares means shares of the Company.

1.2 In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

2. Interpretation

2.1 In this Constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;

- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency; and
- (f) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.

2.2 Headings are for ease of reference only and do not affect interpretation.

3. Replaceable rules

To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

Shares

4. Rights

- 4.1 Subject to this Constitution and to the terms of issue of Shares, all Shares attract the following rights, privileges and conditions:
- (a) the right to receive notice of and to attend and vote at all general meetings of the Company at one vote per Share;
 - (b) the right to receive dividends;
 - (c) in a winding up, the right to participate equally in the distribution of the assets of the Company (both capital and surplus), subject only to any amounts unpaid on the Share.

5. Issue of Shares and other securities

- 5.1 Subject to this Constitution and the Corporations Act, the Directors may issue or dispose of Shares or other securities to persons:
- (a) on terms determined by the Directors;
 - (b) at the issue price that the Directors determine; and
 - (c) at the time that the Directors determine.
- 5.2 The Directors' power under clause 5.1 includes the power to:
- (a) grant options to have Shares or other securities issued; and
 - (b) issue Shares or other securities with:
 - (i) any preferential, deferred or special rights, privileges or conditions;
 - (ii) any restrictions in regard to dividend, voting, return of capital or otherwise; or
 - (c) issue preference shares or other securities that are liable to be redeemed.

6. Buy-backs

Subject to the Corporations Act, the Company may buy-back Shares on terms and at times determined by the Directors in their discretion.

7. Commission and brokerage

Any brokerage or commission which may be paid by the Company may be made in cash, by the issue of Shares, by the grant of options over Shares, or by a combination of any of those methods or otherwise.

8. Trusts not recognised

- 8.1 Except as required by law or as otherwise provided by this Constitution, the Company will not recognise any person as holding a Share on trust and the Company will not recognise any equitable, contingent, future or partial interest or any other right in respect of a Share except the registered holder's absolute right of ownership.
- 8.2 Subject to the other clauses, this clause applies even if the Company has notice of the relevant trust, interest or right.

9. Joint holders

- 9.1 If two or more persons are registered as the holders of a Share, they are taken to hold the Share as joint tenants with benefits of survivorship and the person whose name appears first on the Register is the only joint holder entitled to receive notices from the Company.
- 9.2 Any one of the joint holders of a Share may give effectual receipts for any dividend or return of capital payable to the joint holders.

10. Right to certificate

- 10.1 Subject to the conditions of issue of any Shares or any class of Shares:
 - (a) every Member is entitled free of charge to one certificate for all Shares registered in its name; and
 - (b) a Member may request several certificates in reasonable denominations for different portions of its holding.
- 10.2 Subject to the conditions of issue of any Shares or any class of Shares, joint holders are entitled to a single certificate in their joint names in respect of each portion of their holding. The certificate will be sent to the joint holder whose name appears first in the Register.
- 10.3 The Company must issue a replacement certificate for Shares in accordance with the Corporations Act if:
 - (a) the holder of the Shares is entitled to a certificate for those Shares;
 - (b) satisfactory evidence has been received by the Company that the certificate for Shares previously issued has been stolen, lost or destroyed and has not been pledged, charged, sold or otherwise disposed of; and
 - (c) the Member has undertaken in writing to the Company to return the certificate to the Company if it is found or received by the Member.

- 10.4 Every certificate for Shares must be issued and despatched in accordance with the Corporations Act.

11. Replacement of certificate

The Directors may order worn out or defaced certificates to be cancelled and replaced by new certificates.

12. Variation of class rights

- 12.1 The rights attached to any Shares in a class of Shares may, unless their terms of issue state otherwise, be varied or cancelled by a special resolution of the Company and:
- (a) with the written consent of the holders of 75% of the Shares of the class; or
 - (b) with the sanction of a special resolution and passed at a separate meeting of the holders of Shares of the class.
- 12.2 The provisions of this Constitution relating to general meetings apply, with necessary changes, to separate class meetings as if they were general meetings except that:
- (a) a quorum is two persons holding or representing by proxy, attorney or Representative at least one-third of the Shares of the class or, if there is one holder of Shares in a class, that holder or person representing by proxy, attorney or Representative that holder; and
 - (b) any holder of Shares of the class, present in person or by proxy, attorney or Representative may demand a poll.
- 12.3 The rights conferred on the holders of Shares of any class will not be taken to be varied by:
- (a) the issue of more Shares; or
 - (b) the conversion of securities to new securities,
- which rank equally with or in priority to those Shares, unless expressly provided by their respective terms of issue or the Corporations Act.

13. Differentiation

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.

Transfer of Shares

14. Transfer

- 14.1 Subject to this Constitution, a Member may transfer the Shares held by that Member.
- 14.2 Shares may be transferred by:
- (a) a written transfer instrument in any usual or common form; or
 - (b) any other form approved by the Directors.
- 14.3 A written transfer instrument referred to in clause 14.2 must be executed by or on behalf of the transferor and the transferee.

- 14.4 A transferor of Shares remains the holder of the Shares transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Shares.
- 14.5 A transfer of Shares does not pass the right to any unpaid dividends or dividends declared on the Shares until such registration.

15. Transfer procedure

- 15.1 Subject to clause 16, the Directors are not required to register a transfer of Shares unless:
- (a) the transfer is left at the Company's registered office or the office of the Register;
 - (b) the transfer is accompanied by a certificate for the Shares dealt with in the transfer, unless the Directors waive production of the certificate on receiving satisfactory evidence of the loss or destruction of the certificate; and
 - (c) the Directors have been provided with any further information they reasonably require to establish the right of the person transferring the Shares to make the transfer.
- 15.2 Except where the issue of a certificate is to replace a lost or destroyed certificate, the Company must register all registrable transfer forms and issue certificates without charge.

16. Right to refuse registration

- 16.1 The Directors may in their absolute discretion and without assigning any reason decline to register any transfer of Shares or other securities.
- 16.2 The Directors may in their absolute discretion refuse to register any transfer of Shares or other securities on which stamp duty or other taxes of a similar nature are payable but unpaid.

17. Closure of Register

The transfer books and the Register may be closed for up to 30 days in each year.

Transmission of Shares

18. Title on death

- 18.1 The legal personal representative of a deceased Member who was the sole holder of Shares is the only person whom the Company will recognise as having any title to the deceased Member's Shares.
- 18.2 If a deceased Member was a joint holder of Shares, the other joint holder is the only person whom the Company will recognise as having any title to the deceased Member's Shares.
- 18.3 The estate of the deceased Member will not be released from any liability to the Company in respect of the Shares.
- 18.4 The Company may register a transfer to a transferee who dies before the transfer is registered.

19. Transmission

- 19.1 A person who becomes entitled to a Share in consequence of the death, lunacy or bankruptcy of a Member may, subject to producing to the Directors evidence of its entitlement which is satisfactory to the Directors, elect to:
- (a) be registered as the holder of the Share; or
 - (b) transfer the Share to some other person nominated by it.
- 19.2 If the person who has become entitled to a Share:
- (a) elects to be registered as the holder, then the person must deliver or send to the Company a written notice of election signed by it; or
 - (b) elects to transfer the Share, then the person must execute a transfer of the Share.
- 19.3 An election to be registered as a holder of a Share under clause 19.1(a) or a transfer of a Share from a Member or deceased Member under this clause is subject to the same limitations, restrictions and provisions of this Constitution as would apply if the election were a transfer or the transfer were made by the Member or deceased Member itself.
- 19.4 A person who:
- (a) has become entitled to a Share by operation of law; and
 - (b) has produced evidence of its entitlement which is satisfactory to the Directors,
- is entitled to the dividends and other rights of the registered holder of the Share.
- 19.5 Where two or more persons are jointly entitled to any Share in consequence of the death of the registered holder, they will be considered to be joint holders of the Share.
- 19.6 Any person who is registered under this clause must indemnify the Company against all liabilities, costs, losses and expenses incurred by the Company as a result of registering the person.

Changes to share capital

20. Dealing with share fractions

For the purpose of giving effect to a conversion of all or any of the Shares into a larger or smaller number of Shares, the Directors may settle any difficulty which arises with respect to fractions of Shares as they think expedient

General meetings

21. Calling general meeting

- 21.1 Any Director may, at any time, call a general meeting.
- 21.2 A Member may only request the Directors to call and arrange to hold a general meeting in accordance with section 249D of the Corporations Act.
- 21.3 A Member may not call or arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.

22. Notice of general meeting

- 22.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.
- 22.2 A notice calling a general meeting:
- (a) must specify the place, date and time of the meeting and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
 - (b) must state the general nature of the business to be transacted at the meeting;
 - (c) must specify a place and facsimile number and may specify an electronic address or other electronic means for the purposes of proxy appointment or proxy appointment authorities;
 - (d) if a special resolution is to be proposed at the meeting, must specify an intention to propose the special resolution and state the resolution; and
 - (e) must comply with the Corporations Act.
- 22.3 A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:
- (a) the consideration of the annual financial report, Directors' report and Auditor's report;
 - (b) the election of directors; or
 - (c) the appointment and fixing of the remuneration of the Auditor.
- 22.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 21.2). The Directors must give notice of the postponement or cancellation to all persons referred to in clause 78.1 entitled to receive notices from the Company.
- 22.5 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

Proceedings at general meetings

23. Member

In clauses 24, 25, 27 and 29, **Member** includes a Member present in person or by proxy, attorney or Representative.

24. Quorum

- 24.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 24.2 A quorum of Members is three Members including at least one representative from either of Hills Equity and Steppe Investments.

- 24.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:
- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
 - (b) in any other case:
 - (i) it will stand adjourned to the same time and place seven days after the general meeting, or to another day, time and place determined by the Directors; and
 - (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, it is automatically dissolved.

25. Chairperson

25.1 The chairperson, or in the chairperson's absence the deputy chairperson, of Directors' meetings will be the chairperson at every general meeting of Members.

25.2 If:

- (a) there is no chairperson or deputy chairperson; or
- (b) neither the chairperson nor deputy chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
- (c) the chairperson and deputy chairperson are unwilling to act as chairperson of the general meeting,

the Directors present may elect a chairperson of the general meeting of Members.

25.3 If no election is made under clause 25.2, then:

- (a) the Members may elect one of the Directors present as chairperson; or
- (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.

25.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

26. Adjournment

26.1 The chairperson of a general meeting at which a quorum is present:

- (a) in his or her discretion may adjourn the meeting with the meeting's consent; and
- (b) must adjourn the meeting if the meeting directs him or her to do so.

26.2 An adjourned general meeting may take place at a different venue to the initial general meeting.

26.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.

26.4 If a general meeting has been adjourned for more than 21 days, at least 3 days written notice (exclusive of the day on which the notice is served or taken to be served and of the day for which notice is given) of the adjourned meeting must be given to Members.

27. Decision on questions

- 27.1 Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 27.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.
- 27.3 The chairperson does not have a casting vote in addition to the chairperson's votes as a Member, proxy, attorney or Representative.
- 27.4 Unless a poll is demanded:
- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
 - (b) an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 27.5 The demand for a poll may be withdrawn.
- 27.6 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the meeting was not entitled to do so.

28. Taking a poll

- 28.1 A poll will be taken when and in the manner that the chairperson directs.
- 28.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 28.3 The chairperson may determine any dispute about the admission or rejection of a vote.
- 28.4 The chairperson's determination, if made in good faith, will be final and conclusive.
- 28.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.
- 28.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

Votes of Members

29. Entitlement to vote

- 29.1 Subject to this Constitution and to any rights or restrictions attaching to any class of Shares:
- (a) every Member may vote;
 - (b) subject to clause 34.3, on a show of hands every Member has one vote; and
 - (c) on a poll every Member has:
 - (i) one vote for each fully paid Share; and
 - (ii) voting rights pro rata to the issue price of a Share on each partly paid Share held by the Member.

- 29.2 If a Member is of unsound mind or is a person whose estate or property has had a personal representative, trustee or other person appointed to administer it, the Member's personal representative, trustee or other person with the management of the Member's estate or property may exercise any rights of the Member in relation to a meeting of Members as if the personal representative, trustee or other person was a Member.

30. Unpaid calls

A Member is not entitled to vote or to be counted in a quorum unless all calls and other sums payable by the Member in respect of Shares have been paid.

31. Joint holders

- 31.1 If two or more joint holders purport to vote, the vote of the joint holder whose name appears first in the Register will be accepted, to the exclusion of the other joint holder or holders.
- 31.2 For the purposes of this clause, several executors or administrators of a deceased Member in whose sole name any Shares are registered will be taken to be joint holders of those Shares.

32. Objections

- 32.1 An objection to the qualification of a voter may only be raised at the meeting or adjourned general meeting at which the voter tendered its vote.
- 32.2 An objection must be referred to the chairperson of the meeting, whose decision made in good faith is final.
- 32.3 A vote which the chairperson does not disallow under an objection is valid for all purposes.

33. Votes by operation of law

A person who has satisfied the Directors not less than 24 hours before a general meeting that it is entitled to a Share by operation of law may exercise all rights attached to the Share in relation to a general meeting, as if the person were the registered holder of the Share.

34. Votes by proxy

- 34.1 A Member who is entitled to vote at a general meeting of the Company may appoint not more than two proxies to attend and vote at the meeting on that Member's behalf.
- 34.2 A proxy need not be a Member.
- 34.3 If a Member appoints one proxy, that proxy may, subject to the Corporations Act, vote on a show of hands.
- 34.4 If a Member appoints two proxies and the appointment does not specify the proportion or number of the Member's votes, each proxy may exercise half the votes. However, neither proxy may vote on a show of hands.
- 34.5 A proxy may demand or join in demanding a poll.
- 34.6 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If an appointment directs the way the proxy is to vote on a particular resolution:

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

35. Document appointing proxy

- 35.1 An appointment of a proxy is valid if it is signed or authenticated in accordance with the Corporations Act by the Member making the appointment and contains the information required by subsection 250A(1) of the Corporations Act. The Directors may determine that an appointment of a proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 35.2 The Company may send a proxy appointment form to Members in a form which has been approved by the Directors or by the chairperson and the Managing Director.
- 35.3 A proxy's appointment is valid at an adjourned general meeting.
- 35.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 35.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
- (a) to vote on:
 - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and
 - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,

even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
 - (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.

36. Proxy in blank

If a proxy appointment is signed or authenticated by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either act as proxy or complete the proxy appointment by inserting the name or names of one or more Directors or the Secretary.

37. Lodgement of proxy

- 37.1 Subject to clause 37.3, the appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless reduced in the notice of meeting to which the appointment relates) before the general meeting (or the resumption of an adjourned general meeting) at which the appointee is to attend and vote.

- 37.2 If the appointment purports to be executed under a power of attorney or other authority, the original document or a certified copy of it must be forwarded with the appointment.
- 37.3 The Company receives an appointment of a proxy or attorney or other authority under which it was signed when they are:
- (a) received at:
 - (i) the Company's registered office;
 - (ii) a facsimile number at the Company's registered office; or
 - (iii) a place, facsimile number or electronic address specified for that purpose in the notice of general meeting; or
 - (b) if the notice of general meeting specifies other electronic means by which a Member may give an appointment, received by the Company in accordance with the Corporations Act.

38. Validity

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became mentally incapacitated;
- (c) revoked the proxy or power; or
- (d) transferred the Shares in respect of which the vote was cast,

unless any written notification of the death, unsoundness of mind, revocation or transfer was received by the Company before the relevant general meeting or adjourned general meeting.

39. Representatives of corporations

- 39.1 Any Member, or Member's proxy appointed under section 249X(1) of the Corporations Act, that is a corporation may appoint an individual as its representative as provided by the Corporations Act. If a Member corporation does so:
- (a) its representative may exercise at the relevant general meeting all the powers which the Member corporation could exercise if it were a natural person; and
 - (b) when its representative is present at a meeting, the Member corporation is considered to be personally present at the meeting.
- 39.2 The appointment of a Representative may set out restrictions on the Representative's powers.

Written resolutions

40. Written resolutions

- 40.1 The Company may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Member signs.

- 40.2 For the purposes of clause 40.1, separate copies of a document may be used for signing by Members if the wording is identical in each copy.
- 40.3 Any document referred to in this clause may be in the form of a facsimile transmission, or electronic notification provided it has clear evidence of being signed, or electronically authorised by the Member.
- 40.4 Any written resolution passed in accordance with this clause satisfies any requirement in the Constitution or in the Corporations Act (to the extent permitted by the Corporations Act) that the resolution be passed at a general meeting.

Appointment and removal of Directors

41. Number of Directors

- 41.1 Subject to the Corporations Act, the Company may by resolution passed at a general meeting increase the number of Directors.
- 41.2 Until the Company resolves otherwise there will be:
- (a) a minimum of three Directors, including at least one representative from each of Hills Equity and Steppe Investments; and
 - (b) a maximum of ten Directors.

42. Qualification

Neither a Director nor an Alternate Director has to hold any Shares.

43. Appointment and removal of Directors

- 43.1 The initial Directors of the Company are the persons who have consented to act as directors and are set out in the Company's application for registration as a company. Those persons hold office subject to this Constitution.
- 43.2 The Company may by resolution passed in general meeting:
- (a) remove any Director; and
 - (b) appoint another person to be a Director.
- 43.3 If the conduct or position of any Director is such that continuance in office appears to the majority of the Directors to be prejudicial to the interests of the Company, a majority of Directors at a meeting of the Directors specifically called for that purpose may suspend that Director.
- 43.4 Within 14 days of any suspension under clause 43.3, the Directors must call a general meeting, at which the Members may either confirm the suspension and remove the Director from office in accordance with clause 43.3 or annul the suspension and reinstate the Director.

44. Additional and casual Directors

Subject to clause 41, the Directors may appoint any person as a Director to fill a casual vacancy or as an addition to the existing Directors.

45. Period of office

A Director will continue to hold office until he or she dies or until his or her office is vacated under clause 46.

46. Vacation of office

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

- (a) is prohibited by the Corporations Act from holding office or continuing as a Director;
- (b) cannot manage the Company because of his or her mental incapacity and is a person whose estate or property has had a personal representative or trustee appointed to administer it;
- (c) resigns by notice in writing to the Company; or
- (d) is removed by a resolution of the Company.

Remuneration of Directors

47. Remuneration of non-Executive Directors

- 47.1 The Directors (other than the Managing Director or an Executive Director) may be paid as remuneration for their services up to the aggregate maximum sum from time to time determined by the Company by ordinary resolution, or, if no such aggregate maximum sum has been so determined, up to \$50,000 per annum.
- 47.2 The remuneration will be divided between the non-Executive Directors in such proportion and manner as the Directors agree and, in default of agreement, equally.

48. Remuneration of Executive Directors

The remuneration of a Managing Director or of an Executive Director may from time to time be fixed by the Directors.

49. Other payments to Directors

- 49.1 If a Director is required to perform services for the Company which in the opinion of the Directors are outside the scope of the ordinary duties of a Director, then the Company may pay the Director a fixed sum determined by the Directors in addition to or instead of the Director's remuneration under clause 47.1.
- 49.2 The Directors may also be paid all travelling, hotel 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 Company's business.
- 49.3 The Company may also pay a premium in respect of a contract insuring a person who is or has been a Director against a liability incurred by the person as a Director, except in circumstances prohibited by the Corporations Act.

50. Payments to former Directors

Subject to the Corporations Act, the Company may give a person a benefit in connection with a Director's retirement from a board or managerial office in the Company.

Powers and duties of Directors

51. Directors to manage Company

51.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution or the Corporations Act do not require to be exercised by the Company in general meeting.

51.2 Without limiting the generality of clause 51.1, the Directors may exercise all the powers of the Company to:

- (a) borrow money;
- (b) charge any property or business of the Company or all or any of its uncalled capital;
- (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
- (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

51.3 Each Director is authorised and required to act in the best interests of the Company.

Proceedings of Directors

52. Directors' meetings

52.1 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.

52.2 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.

52.3 The Directors need not all be physically present in the same place for a Directors' meeting to be held.

52.4 A Director who participates in a meeting held in accordance with clause 52.2 is taken to be present and entitled to vote at the meeting.

52.5 A Director can only withdraw his or her consent to the means of communication under clause 52.2 between Directors proposed for a Directors' meeting if the Director does so at least 48 hours before the meeting.

52.6 This clause applies to meetings of Directors' committees as if all committee members were Directors.

52.7 The Directors may meet together, adjourn and regulate their meetings as they think fit.

52.8 At a meeting of Directors, a quorum is three Directors, including at least one representative from each of Hills Equity and Steppe Investments.

- 52.9 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson or the Managing Director may call a general meeting of Members to deal with the matter.
- 52.10 Directors are to be given seven days' notice of a Directors meeting taking place, unless all Directors consent to a Directors meeting taking place at short notice. Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors. The Notice of meeting is to be accompanied by an agenda listing the key matters to be discussed.

53. Decision on questions

- 53.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 54, each Director has one vote.
- 53.2 The chairperson of a meeting does not have a casting vote in addition to his or her deliberative vote if there is an equality of votes.
- 53.3 An Alternate Director has one vote for each Director for whom he or she is an alternate. If the Alternate Director is a Director, he or she also has a vote as a Director.

54. Directors' interests

- 54.1 As required by the Corporations Act, a Director must give the Directors notice of any material personal interest in a matter that relates to the affairs of the Company.
- 54.2 A Director or a body or entity in which a Director has a direct or indirect interest may:
- (a) enter into any agreement or arrangement with the Company;
 - (b) hold any office or place of profit (other than auditor) in the Company; and
 - (c) act in a professional capacity (other than as auditor) for the Company,
- and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.
- 54.3 The fact that a Director holds office as a director, and has fiduciary obligations arising out of that office:
- (a) will not void or render voidable a contract made by a Director with the Company;
 - (b) will not void or render voidable a contract or arrangement entered into by or on behalf of the Company and in which the Director may have any interest; and
 - (c) will not require the Director to account to the Company for any profit realised by or under any contract or arrangement entered into by or on behalf of the Company and in which the Director may have any interest.
- 54.4 A Director may be or become a director or other officer of, or otherwise be interested in:
- (a) any related body corporate; or
 - (b) any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise,

and is not accountable to the Company for any remuneration or other benefits received by the director or officer of, or from having an interest in, that body corporate.

54.5 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter,

unless permitted to do so by the Corporations Act, in which case the Director may:

- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or a proposed contract or arrangement;
- (d) sign or countersign any document relating to that contract or arrangement or a proposed contract or arrangement; and
- (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

55. Remaining Directors

55.1 The Directors may act even if there are vacancies on the board.

55.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:

- (a) appoint a Director; or
- (b) call a general meeting.

56. Chairperson

56.1 The Directors may elect a Director as chairperson of Directors' meetings and may determine the period for which the chairperson will hold office.

56.2 If no chairperson is elected or if the chairperson is not present at any Directors' meeting within 10 minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of the meeting.

56.3 The Directors may elect a Director as deputy chairperson to act as chairperson in the chairperson's absence.

57. Directors' committees

57.1 The Directors may delegate any of their powers to:

- (a) a committee of Directors;
- (b) a Director;
- (c) an employee of the Company; or
- (d) any other person.

57.2 A committee or person to which any powers have been delegated must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.

- 57.3 A committee or person to which any powers have been delegated may be authorised to sub-delegate all or any of the powers for the time being vested in it.
- 57.4 The Directors may at any time revoke any delegation of power.
- 57.5 Meetings of any committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors.

58. Written resolutions

- 58.1 The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director entitled to vote on the resolution signs.
- 58.2 For the purposes of clause 58.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 58.3 Any document referred to in this clause may be in the form of a facsimile transmission or electronic notification.
- 58.4 This clause applies to meetings of Directors' committees as if all members of the committee were Directors.

59. Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director, Alternate Director or member of a Directors' committee; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Directors or any Directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

60. Minutes and Registers

- 60.1 The Directors must cause minutes to be made of:
- (a) the names of the Directors present at all general meetings, Directors' meetings and meetings of Directors' committees;
 - (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
 - (c) all resolutions passed by Directors in accordance with clause 58;
 - (d) all orders made by the Directors and Directors' committees; and
 - (e) all disclosures of interests made under clause 54.
- 60.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body, and if so signed will as between the Directors be conclusive evidence of the matters stated in such minutes.

Managing Director or Executive Director

61. Appointment of Managing Director or Executive Director

- 61.1 The Directors may appoint a Director to the office of Managing Director or any other office (other than auditor) or employment under the Company for any period (but not for life) and on any terms as they think fit.
- 61.2 A Director (other than a Managing Director) appointed under clause 61.1 is referred to in this Constitution as an Executive Director.
- 61.3 The Directors may, subject to the terms of a Managing Director's or Executive Director's employment contract, suspend, remove or dismiss him or her from that office and appoint another Director in that place.
- 61.4 If a Managing Director or Executive Director ceases to be a Director, his or her appointment as Managing Director or Executive Director terminates automatically.
- 61.5 If a Managing Director or Executive Director is suspended from office, he or she will not be entitled to attend or vote at any meeting of Directors.

62. Powers

- 62.1 The Directors may confer on a Managing Director or Executive Director any powers exercisable by the Directors, subject to any terms and restrictions determined by the Directors.
- 62.2 The Managing Director and other Executive Directors are authorised to sub-delegate all or any of the powers vested in them.
- 62.3 Any power conferred under this clause may be concurrent with or to the exclusion of the Directors' powers.
- 62.4 The Directors may at any time withdraw or vary any of the powers conferred on a Managing Director or Executive Director.

63. Appointment of attorneys and agents

- 63.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the agent or attorney of the Company:
- (a) for the purposes;
 - (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
 - (c) for the period; and
 - (d) subject to the conditions,
- determined by the Directors.
- 63.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:
- (a) any member of any local board established under this Constitution;
 - (b) any company;

- (c) the members, directors, nominees or managers of any company or firm; or
 - (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 63.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 63.4 The Directors may appoint attorneys or agents by facsimile transmission, telegraph or cable to act for and on behalf of the Company.
- 63.5 An attorney or agent appointed under this clause may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

Secretary

64. Secretary

- 64.1 There must be at least one secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.
- 64.2 The Secretary (if any) is entitled to attend and be heard on any matter at all Directors' and general meetings.
- 64.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

Seals

65. Common Seal

If the Company has a Seal:

- (a) the Directors must provide for the safe custody of the Seal;
- (b) the Seal must not be used without the authority of the Directors or a Directors' committee authorised to use the Seal;
- (c) subject to clause 65(d), every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document; and
- (d) if the Company has only one Director who is also the only secretary of the Company, or if there is no Secretary, every document to which the Seal is affixed must be signed by the Director but need not be countersigned.

66. Duplicate Seal

If the Company has a Seal, the Company may have one or more duplicate Seals of the Seal each of which:

- (a) must be a facsimile of the Seal with 'Duplicate Seal' on its face;
- (b) must only be used with the authority of the Directors or a Directors' committee.

67. Share Seal

- 67.1 If the Company has a Seal the Company may have a Share Seal which may be affixed to Share certificates.
- 67.2 The Share Seal (if any):
- (a) must be a facsimile of the Seal with 'Share Seal' or 'Certificate Seal' on its face; and
 - (b) must only be used with the authority of the Directors or a Directors' committee.

Inspection of records

68. Times for inspection

- 68.1 Except as otherwise required by the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 68.2 A Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

Dividends and reserves

69. Payment of dividends

- 69.1 The Directors may:
- (a) declare that the Company pay interim or final dividends; or
 - (b) determine that dividends are payable by the Company and fix the amount and time for and method of payment.
- 69.2 Subject to the Corporations Act, if the Directors determine that a dividend is payable under clause 69.1(b), they may amend or revoke the resolution to pay the dividend at any time before the date fixed for payment.

70. Interest

The Company must not pay interest on a dividend.

71. Reserves

- 71.1 The Directors may set aside out of profits an amount by way of reserves as they think appropriate to pay a dividend.
- 71.2 The Directors may apply the reserves for any purpose for which profits may be properly applied.
- 71.3 Pending any such application, the Directors may invest or use the reserves in the business of the Company or in other investments as they think fit.
- 71.4 The Directors may carry forward any undistributed profits without transferring them to a reserve.

72. Dividend entitlement

- 72.1 Subject to the rights of persons (if any) entitled to Shares with special rights as to dividend, any dividend must be paid according to the amounts paid or credited as paid on the Shares in respect of which the dividend is paid.
- 72.2 All dividends must be apportioned and paid proportionately to the amounts paid or credited as paid on the Shares during any portion or portions of the period in respect of which the dividend is paid, but if a Share is issued on terms providing that it will rank for dividend as from a particular date, that Share ranks for dividend accordingly.
- 72.3 An amount paid or credited as paid on a Share in advance of a call is not to be taken as paid or credited as paid for the purposes of clauses 72.1 and 72.2.
- 72.4 A transfer of Shares does not pass the right to any dividend declared or determined to be payable in respect of those Shares before the registration of a transfer.

73. Deductions from dividends

The Directors may deduct from a dividend payable to a Member all sums presently payable by the Member to the Company on account of calls or otherwise in relation to Shares in the Company.

74. Distribution of assets

- 74.1 The Directors may resolve that a dividend (interim or final) will be paid wholly or partly by the transfer or distribution of specific assets, including fully paid shares in, or debentures of, any other corporation.
- 74.2 If a difficulty arises in making a transfer or distribution of specific assets, the Directors may:
- (a) deal with the difficulty as they consider expedient;
 - (b) fix the value of all or any part of the specific assets for the purposes of the distribution;
 - (c) determine that cash will be paid to any Members on the basis of the fixed value in order to adjust the rights of all the Members; and
 - (d) vest any such specific assets in trustees as the Directors consider expedient.
- 74.3 If a transfer or distribution of specific assets to a particular Member or Members is illegal or, in the Directors' opinion, impracticable, the Directors may make a cash payment to the Member or Members on the basis of the cash amount of the dividend instead of the transfer or distribution of specific assets.

75. Payment

- 75.1 Any dividend or other money payable in respect of Shares may be paid by:
- (a) cheque sent through the mail directed to:
 - (i) the address of the Member shown in the Register or to the address of the joint holder of Shares shown first in the Register; or
 - (ii) an address which the Member or joint holders has in writing notified the Company as the address to which dividends should be sent;

- (b) electronic funds transfer to an account with a bank or other financial institution nominated by the Member and acceptable to the Company; or
 - (c) any other means determined by the Directors.
- 75.2 Any joint holder may give an effectual receipt for any dividend or other money paid in respect of Shares held by holders jointly.

76. Capitalisation of profits

76.1 The Directors may resolve:

- (a) to capitalise profits and apply the sum capitalised; and
- (b) that the sum be applied, in any of the ways mentioned in clause 76.2, for the benefit of Members, or persons who have applied for Shares, in the proportions determined by the Directors.

76.2 The ways in which a sum may be applied for the benefit of Members under clause 76.1 are:

- (a) in paying up any amounts unpaid on Shares held or to be held by Members;
- (b) in paying up in full Shares or debentures to be issued to Members as fully paid; or
- (c) partly as mentioned in clause 76.2(a) and partly as mentioned in clause 76.2(b).

76.3 The Directors must do all things necessary to give effect to a resolution under clause 76.1 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 a benefit on the capitalisation, an agreement with the Company providing for:
 - (i) the issue to them, credited as fully paid up, of any such further Shares or debentures; or
 - (ii) the payment by the Company on their behalf of the amount or any part of the amount remaining unpaid on their existing Shares by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement made under the authority of clause 76.3(b) is effective and binding on all the Members concerned.

Notices

77. Service of notices

77.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution by:

- (a) serving it on the person;
- (b) sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person;

- (c) if it is a notice of meeting, giving it in accordance with section 249J(3) of the Corporations Act; or
 - (d) if the notice is to a Member and the Member whose address is not recorded in the Register, posting it on a noticeboard at the Company's registered office.
- 77.2 A notice sent by post is taken to be served:
- (a) by properly addressing, prepaying and posting a letter containing the notice; and
 - (b) on the day after the day on which it was posted.
- 77.3 Subject to the Corporations Act, a notice sent by facsimile transmission or electronic notification is taken to be served:
- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
 - (b) on the day after its despatch.
- 77.4 A notice posted on a noticeboard at the Company's registered office is taken to be served 24 hours after it is posted on the board.
- 77.5 A notice may be given by the Company to joint holders by giving the notice to the joint holder whose name appears first in the Register.
- 77.6 Every person who is entitled to a Share by operation of law and who is not registered as the holder of the Share is taken to receive any notice served in accordance with this clause on the person from whom it derives its title.
- 77.7 A Share certificate, cheque, warrant or other document may be delivered by the Company either personally or by sending it:
- (a) in the case of a Member whose address recorded in the Register is not in Australia, by airmail post; and
 - (b) in any other case, by ordinary post,
- and is at the risk of the addressee as soon as it is given or posted.
- 77.8 A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia for the purposes of clause 77.
- 77.9 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 77.10 Subject to the Corporations Act, the signature to a written notice given by the Company may be written or printed.
- 77.11 All notices sent by post outside Australia must be sent by prepaid airmail post.

78. Persons entitled to notice

- 78.1 Notice of every general meeting must be given to:
- (a) every Member;
 - (b) every Director and Alternate Director; and
 - (c) any Auditor.

78.2 No other person is entitled to receive notice of a general meeting.

Accounts

79. Company to keep accounts

The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act.

Winding up

80. Winding up

80.1 Nothing in this clause prejudices the rights of the holders of Shares issued on special terms and conditions.

80.2 If the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company:

- (a) divide among the Members in kind all or any of the Company's assets; and
- (b) for that purpose, determine how he or she will carry out the division between the different classes of Members,

but may not require a Member to accept any Shares or other securities in respect of which there is any liability.

80.3 The liquidator may, with the sanction of a special resolution of the Company, vest all or any of the Company's assets in a trustee on trusts determined by the liquidator for the benefit of the contributories.

Payments by the Company

81. Indemnity

81.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an officer of the Company or a subsidiary of the Company against:

- (a) any liability (other than a liability for legal costs); or
- (b) reasonable legal costs incurred in defending an action for a liability,

incurred by that person as an officer of the Company or subsidiary.

81.2 The amount of any indemnity payable under clause 81.1 will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of any input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.

81.3 For the purposes of this clause, **officer** means:

- (a) a Director; or
- (b) a Secretary.

Execution of documents

82. Execution of documents

The Company may execute a document:

- (a) in accordance with section 127(1) of the Corporations Act;
- (b) if the Company has a Seal, in accordance with section 127(2) of the Corporations Act and clauses 65, 66 and 67; or
- (c) in any other way approved by the Directors and permitted by law.