

# COMPANY CONSTITUTION

## PK TOVA PTY LTD ACN 634 443 897

Our ref: 7407:193300 (DBA COVI)



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**SPECIAL RESOLUTION**

DATED: ..... (insert date)

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ADOPTION OF  
CONSTITUTION

RESOLVED that each member of the Company agrees to adopt the attached constitution as the constitution of the Company, and that this special resolution is passed by signature of each member below.

SIGNED by each member:

.....  
*Signature of* PETER ANTHONY WILLIAMS

.....  
*Signature of* KAMOLNIT WILLIAMS



## COMPANY CONSTITUTION

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This documentation is prepared by DBA Lawyers Pty Ltd subject to the disclaimer after Part A.

## **PART A: RULES**

### **1. Company's powers**

1.1 The Company has the legal capacity and powers of an individual. The Company also has all the powers of a body corporate referred to in s 124 of the CA.

1.2 Without limiting rule 1.1, to the extent that the law (including any law of a jurisdiction outside of Australia) empowers the Company or the Directors to do something that the Company or the Directors would not otherwise have power to do, the Company or the Directors are so empowered except to the extent expressly prohibited by this Constitution or by the CA.

### **2. Proprietary company**

2.1 The Company is a proprietary company and accordingly:

- (a) the right to transfer shares in the Company is restricted under this Constitution;
- (b) the number of Members of the Company (excluding any employee of the Company or one of its subsidiaries, or a former employee of the Company or one of its subsidiaries, who has continued to be a Member of the Company) is limited to 50 and joint holders of a share are counted as one person; and
- (c) the Company must not make any issue, invitation or offer to the public or persons in respect of Securities or deposit taking, or engage in any other activity that would require the lodgement of a disclosure document under the CA, except as permitted under the CA.

### **3. Share capital**

#### **3.1 Power to issue Securities (including shares)**

- (a) With the approval of a Special Resolution of the Members:
  - (i) the Directors may redeem, cancel and issue Securities in the Company, including, shares, options or other securities; and
  - (ii) Securities may be issued with preferred, deferred or other special rights or with restrictions, whether the rights or restrictions are in regard to dividends or other distributions, voting, return of capital, payment of calls, redemption or otherwise, subject to the CA.
- (b) Rule 3.1(a) applies without prejudice to any special rights conferred on the Members of any issued shares.
- (c) The consideration payable for the issue of a Security will be the consideration determined by the Directors at the time of issue or such other consideration as the recipient of that Security and the Company from time to time agree.

### 3.2 **Power to reduce capital**

The Company may by Special Resolution:

- (a) reduce its capital as permitted by law; or
- (b) buy back its shares as permitted by the CA.

### 3.3 **Recognition of interests in shares**

Except as required by law or as otherwise provided in this Constitution, the Company will only recognise legal ownership of the registered holder of a share, even if the Company has received notice that a share is held by a Member on trust or has recorded shares in the register as being held on trust.

## 4. **Share classes and Member rights**

### 4.1 **Different classes of shares**

- (a) Classes of shares may include:
  - (i) SMSF;
  - (ii) Ordinary;
  - (iii) Limited;
  - (iv) Guardian;
  - (v) Capital;
  - (vi) AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN, OO, PP, QQ, RR, SS and TT; and
  - (vii) such other classes approved from time to time by a Special Resolution.
- (b) Where a share is issued without reference to a particular class of share or the rights attaching to the share are not set out, then that share is an Ordinary Share unless the Members determine otherwise by Special Resolution within 30 days of the issue date.

### 4.2 **Rights and limitations of each share class**

- (a) An **SMSF Share** means a share that:
  - (i) confers on a Member holding it:
    - (A) the right to exercise one vote on a resolution for each share held; and
    - (B) on the winding up or a capital reduction of the Company, the right to the repayment of the issue price paid on each share and
  - (ii) excludes:
    - (A) the right to Dividends; and
    - (B) on the winding up or a capital reduction of the Company, the right to participate in the distribution of surplus profits or assets.

- (b) An **Ordinary Share** means a share that confers on a Member holding it:
- (i) the right to exercise one vote on a resolution for each share held;
  - (ii) the right to Dividends; and
  - (iii) on the winding up or a capital reduction of the Company, the right to repayment of the issue price paid on each share and the right to participate in the distribution of surplus profits or assets.
- (c) A **Limited Share** means a share that:
- (i) confers on a Member holding it:
    - (A) the right to exercise one vote on a resolution for each share held;
    - (B) the right to Dividends;
    - (C) on the winding up or a capital reduction of the Company, the right to repayment of the issue price paid on each share; and
  - (ii) excludes the right to participate in the distribution of surplus profits or assets.
- (d) A **Guardian Share** means a share that:
- (i) confers on the Member holding it:
    - (A) the right to exercise one vote on a resolution for each share held;
    - (B) the rights in relation to resolutions provided for in rules 12.10(a);
    - (C) the right to exercise one vote on a resolution of other share classes (in addition to any vote the Member may have as a member of that other class);
    - (D) the right to Dividends; and
    - (E) on the winding up or capital reduction of the Company, the right to repayment of the issue price of each share; and
  - (ii) excludes the right to participate in the distribution of surplus profits or assets.
- (e) A **Capital Share** means a share that:
- (i) confers on a Member holding it:
    - (A) the right to Dividends; and
    - (B) on the winding up or a capital reduction of the Company, confers the right to repayment of the issue price paid on each share and the right to participate in the distribution of surplus profits or assets; and

- (ii) excludes all other rights or entitlements including the right to vote on amendments to this Constitution, unless the amendment relates to the rights or entitlements of a Capital Share.
- (f) Each of the following share classes confers the same rights as an Ordinary Share: AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN, OO, PP, QQ, RR, SS and TT.

#### 4.3 **General rules — share classes**

- (a) The general rules in this rule 4.3 apply to each class of shares unless expressly provided otherwise in this Constitution.
- (b) Where the particular share class confers a right to one vote on a resolution for each share held, the Member holding the share also has the right to:
  - (i) where the resolution is put to a vote at a meeting in accordance with rule 12, receive notice of, attend and vote at a meeting of the Company, and exercise one vote for each share held on a show of hands and one vote for each share held on a Poll;
  - (ii) where the resolution is made in accordance with rule 11.1, vote on a circulating resolution; or
  - (iii) where rule 11.2 is applicable, make a resolution of a single member in accordance with that rule.
- (c) Dividends are to be distributed on a pro-rated basis reflecting the number of shares held as a proportion of the total number of issued shares in that class.
- (d) Subject to any contrary provision in this Constitution including rule 12.14, Dividends, voting and other entitlements in respect of issued shares that are partly paid only entitle the holder to a pro-rated distribution or entitlement reflecting the extent they are paid up as a proportion of the total amount payable in respect of those shares.

#### 4.4 **Variation of rights of share classes**

- (a) Unless otherwise provided by the terms of issue of shares of that class or by this Constitution, the rights attaching to any class of share may be varied or cancelled by:
  - (i) Special Resolution of the Company; and
  - (ii) either:
    - (A) the written consent of the Members with at least 75% of the issued shares of that class of shares; or
    - (B) a Special Resolution of the Members of that class of shares.

#### 4.5 **Meetings and resolutions of classes of shares**

- (a) The provisions of this Constitution relating to resolutions of the Members (including the rights of any Guardian Shareholder) also apply to resolutions of the Members of each separate class of shares to the extent that they can apply, except that, subject to rule 4.5(b), a quorum for a meeting is two Members of that class and any Member present may demand a Poll.
- (b) Where a share class has only one Member, that Member may pass a resolution of that share class by recording the resolution and Signing it, and the resolution constitutes a minute.



#### 4.6 **Legal personal representative may exercise Member rights**

The LPR of a Member may exercise all rights of the Member, including voting, transferring shares and making Member resolutions, subject to any restriction in any instrument of appointment.

### **5. Special purpose company — superannuation trustee**

#### 5.1 **Superannuation trustee**

Despite any other provision contained in this Constitution, during any period in which both:

- (a) the Company acts solely as a trustee of a regulated superannuation fund under the SISA, and
- (b) in order to constitute a special purpose company under the *Corporations (Review Fees) Regulations 2003* (Cth), it is necessary for, among other things, this Constitution to prohibit the distribution of the Company's income or property to its Members;

the Company's income or property is prohibited from being distributed to its Members. For the avoidance of all doubt, this rule 5 does not apply during any time when the Company does not act solely as a trustee of a regulated superannuation fund.

### **6. Directors — appointment and retirement**

#### 6.1 **Appointment**

- (a) In the application for registration of the Company, the persons named as Members are taken to appoint the Directors specified in the application.
- (b) Subject to the CA and this Constitution, a natural person may at any time be appointed as a Director, whether as an addition to the existing Directors or to fill a vacancy, by:
  - (i) a resolution of the Members; or
  - (ii) a resolution of the Directors, but only if the Members by resolution approve any such proposed appointment.
- (c) Despite rule 6.1(b), the appointment of a Successor Director made in accordance with this Constitution does not require approval of the Members.
- (d) Without limiting other ways a Director can be appointed, following the death or mental incapacity of a Director who is the only Director and the only Member of the Company, a new Director of the Company may be appointed by that Director's LPR in accordance with the CA.

## 6.2 **Vacation of office**

Subject to the CA, in addition to the circumstances in which the office of a Director becomes vacant under the CA or under rule 6.5(f), the office of a Director becomes vacant if a Director:

- (a) is mentally incapacitated or becomes of unsound mind, loses legal capacity or becomes, or whose estate becomes, liable to be dealt with in any way under the law relating to mental health;
- (b) dies;
- (c) is removed from office by a resolution of the Members;
- (d) resigns by notice in writing to the Company, and the resignation is taken to occur at the time the Company first receives notice in writing of the resignation, unless the Members otherwise resolve; or
- (e) has consented (including prospectively) to be removed upon the occurrence of a specified event, or at a specified time, and that event occurs or that time arrives.

## 6.3 **Directors — general**

- (a) The minimum number of Directors is one.
- (b) The maximum number of Directors is 10 unless the Members resolve otherwise.
- (c) Directors are not required to hold shares in the Company.

## 6.4 **Alternate directors**

- (a) Any Director may by notice in writing to the Company appoint a natural person (whether or not a Member of the Company, including another Director) to be an alternate director in the Director's place during any period that the Director thinks fit.
- (b) An alternate director is entitled to notice of meetings of the Directors and, if the appointing Director is not present at such a meeting, is entitled to attend and vote on behalf of the appointing Director (in addition, where the alternate director is a Director, to his or her own vote).
- (c) An alternate director may exercise any powers that the appointing Director may exercise, including signing circulating resolutions, subject to any restrictions in the appointment, but is responsible to the Company for his or her own acts and defaults and is not to be taken to be the agent of the appointing Director. Nothing in this rule 6.4 gives the alternate director a vote in addition to the appointing Director, whether in a meeting or when signing a circulating resolution.
- (d) The appointment of an alternate director may be terminated at any time if the appointing Director gives notice in writing to the Company or the alternate director and the appointment terminates automatically if the appointing Director vacates office as a Director for any reason.
- (e) The Company is not responsible for remunerating the alternate director but the alternate director is entitled to be reimbursed as a Director under rule 6.7(c).

## 6.5 **Successor Directors**

- (a) Subject to the CA, a Director ('**Appointing Director**') may appoint one or more natural persons (each person is referred to as a **Successor Director**) to

succeed the office of the Appointing Director in the event of the Appointing Director's death or mental incapacity, or specified event occurring, subject to any conditions specified in the appointment.

- (b) A Successor Director appointment:
  - (i) must be in writing;
  - (ii) must be Signed by the Appointing Director in the presence of at least one adult witness;
  - (iii) need not be given to the Company or any Director; and
  - (iv) may appoint one or more natural persons by name or by reference to an office (including the office of LPR), profession or role within any organisation even if the office, profession or role comprises more than one person (whether they act jointly, jointly and severally or some other method) in which case all persons are appointed, except to the extent one or more of those persons cannot or refuses to act.
- (c) An appointment is revoked if:
  - (i) the Appointing Director revokes the appointment in writing;
  - (ii) the Appointing Director gives written notice of revocation to the Company; or
  - (iii) the Appointing Director ceases to be a Director, apart from death or mental incapacity.
- (d) Subject to any conditions in the appointment, each Successor Director takes office immediately upon the death or mental incapacity of the Appointing Director, or upon the specified event for the appointment occurring, provided the Successor Director is not mentally incapacitated.
- (e) For the avoidance of doubt:
  - (i) if a Successor Director already holds office as a Director at the time of a purported appointment, the purported appointment as a Successor Director has no effect;
  - (ii) where one person appointed to be a Successor Director does not become a Director (for whatever reason), this does not in itself affect the appointment of any other Successor Director, subject to any conditions in the appointment;
  - (iii) if a Successor Director dies or becomes mentally incapacitated before the death or mental incapacity of the Appointing Director, the deceased or mentally incapacitated Successor Director's LPR is not entitled to act as a Director, unless otherwise appointed under this constitution or the CA; and
  - (iv) if an Appointing Director who is the only director and the only shareholder of the Company ceases to be a Director because of death, mental incapacity or by being disqualified under s 206B(3) or (4) of the CA, the Appointing Director's appointment of a Successor Director remains effective and s 201F of the CA does not apply as no vacancy in the office of the Appointing Director occurs.
- (f) Where a Successor Director holds office as a Director because of the mental incapacity of the Appointing Director, the Appointing Director may remove the Successor Director from office by notice in writing if the Appointing Director has

ceased to be mentally incapacitated, at which time the Appointing Director resumes office as a Director.

## 6.6 **Decisions of Directors acting in place of another**

Unless the Members pass a resolution to the contrary:

- (a) one or more persons who are Directors in place of another person (including an SMSF Interestholder) ('Other Person'); or
- (b) one or more Successor Directors of an Appointing Director appointed in accordance with rule 6.5;

must act based on majority decision and have the same voting rights as the relevant Appointing Director or Other Person would have had as a Director under the CA and this Constitution, and this is the case whether or not any Successor Director or Director is the LPR of the Appointing Director or the Other Person.

## 6.7 **Director remuneration**

- (a) During any period in which the Company acts as an SMSF trustee, whether solely in that capacity or in addition to any other capacity in which it acts, then, despite any powers contained in this Constitution, Directors may only receive remuneration for duties or services they perform as a Director of the corporate trustee of the SMSF to the extent that such remuneration is not prohibited by the SISA and would not cause the fund to cease to meet the definition of an SMSF.
- (b) Subject to rule 6.7(a), the Directors' remuneration is determined by the Directors, until the Members resolve otherwise.
- (c) In addition to remuneration for services as Directors, the Directors are entitled to be paid or reimbursed for all reasonable travelling, accommodation and other expenses properly incurred by them in connection with the Company.
- (d) A Director may be engaged by the Company in any other capacity (except as auditor) on such terms including remuneration and tenure as may be agreed by the Directors.

# 7. **Directors — duties and powers**

## 7.1 **Duties of Directors**

Without limiting any other duty or obligation arising under this Constitution, the CA or at law, the Directors are responsible for managing the business of the Company.

## 7.2 **Powers of Directors**

- (a) The Directors may exercise all powers of the Company that are not, whether by the CA or this Constitution, required to be exercised by the Company in a general meeting.
- (b) In exercising the powers of the Company, all acts undertaken by Directors must first be approved by a resolution of Directors in accordance with rules 8.1, 8.2 or 9.5, except in the following cases:
  - (i) where the Directors have appointed or employed a person to be an agent or attorney of the Company for the purposes of exercising a particular power, including an authorisation for an agent or attorney to delegate the exercise of that power, in accordance with rule 7.3;

- (ii) where the Directors have delegated a particular power in accordance with rule 7.4; or
  - (iii) where the Directors have authorised a Managing Director to exercise a particular power in accordance with rule 10.1(b).
- (c) Without limiting the generality of rule 7.2(a), the Directors may:
- (i) subject to rule 7.2(f), exercise all the powers of the Company to borrow or otherwise raise 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; and
  - (ii) determine how any negotiable instrument is to be executed on behalf of the Company.
- (d) Where the Company is a wholly-owned subsidiary of a body corporate as defined in the CA, the Directors are authorised to act in the best interests of the said body corporate.
- (e) During any period in which the Company acts as a trustee of a trust, SMSF or similar arrangement, the Directors must have regard to the terms or governing rules of the trust, fund or arrangement.
- (f) During any period in which the Company acts as a trustee of an SMSF, the Directors must not give a charge over any asset of the Company which is held on trust for that fund unless otherwise expressly or implicitly permitted by the SISA.

### **7.3 Appointment of agents and attorneys**

- (a) The Directors may:
- (i) appoint or employ any person to be an agent or attorney of the Company for the purposes and with the powers, discretions and authorities vested in or exercisable by the Directors, for any period and upon any conditions as they think fit; and
  - (ii) authorise an agent or attorney to delegate all or any of the powers, discretions and authorities vested in that agent or attorney.
- (b) An appointment under rule 7.3(a) may contain such provisions for the protection and convenience of the Company, the attorney or persons dealing with the attorney as the Directors think fit.

### **7.4 Delegation and committees**

- (a) The Directors may delegate any of their powers in accordance with the CA, including by delegating to a committee of directors, a director, an employee or any other person. Any delegate must exercise the powers delegated in accordance with any directions of the Directors. The Directors may specify or change any terms or conditions for the delegation and terminate a delegation as they see fit.
- (b) The provisions of this Constitution applying to meetings and resolutions of Directors apply, so far as they can and with such changes as are necessary, to meetings and resolutions of a committee of Directors.

### **7.5 Appointment of a Representative for the Company**

- (a) The Directors of the Company may appoint a natural person to act as a Representative of the Company.

- (b) A Representative means a body corporate representative as contemplated by section 250D of the CA. The appointment may set out the powers and restrictions on the powers of the Representative and any terms or conditions precedent to the appointment. The Company may appoint the Representative to exercise any or all of the powers a body corporate may exercise:
  - (i) at meetings of a company's members;
  - (ii) at meetings of creditors or debenture holders;
  - (iii) relating to resolutions to be passed without meetings;
  - (iv) in the capacity of a member's Proxy; and
  - (v) in any other area provided under this Constitution or the CA.
- (c) The Company may appoint more than one Representative but only one Representative may exercise the Company's powers at any one time.
- (d) The instrument appointing a Representative need not be in any particular form, however Form 3 in Part B of this Constitution is an acceptable form to appoint a Representative.

#### 7.6 **Directors' interests**

- (a) A Director is not disqualified from holding the office of Director by reason of:
  - (i) receiving any direct or indirect benefit including by contracting with the Company or any related body corporate or related trust, fund or similar arrangement, in any capacity;
  - (ii) holding any other office or place of profit in the Company or any related body corporate, or in respect of any related trust, fund or similar arrangement by reason of holding the office of Director;
  - (iii) being an SMSF Interestholder of an SMSF or having any interest, contingent or otherwise, in any related trust, fund or similar arrangement; or
  - (iv) having a family member, relative or related entity obtain a direct or indirect benefit.
- (b) In relation to a contract, arrangement or interest in which a Director has a material personal interest:
  - (i) the fact that the Director signed the contract or document evidencing the arrangement on behalf of the Company will not affect its validity in any way;
  - (ii) a contract, arrangement or interest made by the Company or any related body corporate with a Director cannot be avoided or rendered voidable merely because the Director is a party to the contract, arrangement or interest or in any other way interested in it; and
  - (iii) the Director will not be liable to account to the Company for any profit realised by or from the contract, arrangement or interest as a whole merely because of the Director's office or the fiduciary relationship that arises in that office.
- (c) Without limiting rule 7.6(b), if a Director has a material personal interest in a matter that relates to the affairs of the Company and that interest has been disclosed in accordance with the CA or is of a type that does not require disclosure:

- (i) the Director may Sign, be counted for a quorum and vote on any resolution that relates to the interest and any transactions that relate to the interest may proceed; and
- (ii) where disclosure is required and is made before the transaction is entered into, the Director can retain personal benefits from the transaction despite having the interest and the Company cannot avoid the transaction to the extent of the Director's personal interest merely because of the existence of the interest.

## **8. Directors — resolutions without meetings**

### **8.1 Circulating resolutions**

- (a) The Directors may pass a resolution without a meeting being held if:
  - (i) a document is Signed or consented to by a sufficient number and composition of Directors (including, where applicable, the votes of any Directors who are Guardian Shareholders) that would, if a meeting of all Directors had been held, constitute a resolution reached in accordance with rule 9; and
  - (ii) the document contains a statement to the effect that those Directors are in favour of the resolution set out in the document.
- (b) Separate copies of the document may be used for Signing by Directors if the wording of the resolution is the same in each copy.
- (c) The resolution is passed when the last Director required by rule 8.1(a) Signs or consents, and the document then constitutes a minute of the resolution passed.

### **8.2 Single Director resolutions**

Where the Company has only a single Director or a committee formed under rule 7.4 consists of only one person, the Director or committee may pass a resolution by recording the resolution and Signing it, and the resolution constitutes a minute of that resolution, and a meeting is taken to have been held at the place that the single Director made the resolution.

### **8.3 Oral resolutions**

The Directors, or the sole Director, may pass a resolution orally without a meeting or a document, if a sufficient number of directors to make a resolution under rules 8.1 or 8.2 make the resolution orally. Such an oral resolution can be facilitated by Technology. This does not displace any requirement to record or minute a resolution.

## **9. Directors — meetings**

### **9.1 Convening meetings and 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 Director may at any time, convene a meeting of the Directors.
- (c) A secretary must, on the request of a Director, convene a meeting of the Directors.

- (d) Unless notice is waived (whether expressly or implicitly), reasonable notice must be given to every Director of the place, date and time and general nature of business of every meeting of the Directors. In respect of a Director who is outside Australia at that time and who has not appointed an alternate director, notice need only be given where the Director has provided contact details.
- (e) Unless otherwise agreed by the Directors, all meetings of Directors must be held at a place within Australia.

## 9.2 Meetings — use of Technology

- (a) Each Director is taken to consent to the use of any Technology for calling or holding a meeting of the Directors.
- (b) A Director may withdraw the consent to the use of Technology by notifying the other Directors in writing within a reasonable period before a given meeting, but Technology may be used for all Director meetings until a majority of Directors have withdrawn consent.
- (c) The use of Technology to link together a sufficient number of Directors to constitute a quorum will constitute a meeting of the Directors, and the provisions of this Constitution regarding meetings of Directors apply as if those Directors were present together. Subject to rule 8.2, the meeting is taken to have been held at the place determined by the chairperson provided that at least one of the Directors present was at that place during the meeting.

## 9.3 Quorum

- (a) No business may be transacted at a meeting of Directors unless a quorum of Directors is present (including by way of Technology) at the time the business is dealt with.
- (b) Where one or more Guardian Shares have been issued, a quorum of Directors is not present unless every Director who is also a Guardian Shareholder, and every Director who has written authorisation from a Guardian Shareholder that the Director may, in respect of that Guardian Share, exercise voting rights as a Director, is present, unless that Director who is a Guardian Shareholder (or the Guardian Shareholder who has authorised a Director to vote) has provided prior written authorisation in the form of notice to all other Directors that a quorum may be present, in respect of a particular meeting of Directors, despite the failure of the Director or Directors to attend.
- (c) Subject to rules 9.3(b), a quorum consists of more than 50% of the Directors of the Company or another proportion or number fixed by the Directors, except where the Company has a single Director, in which case it consists of that Director.
- (d) Where there are insufficient Directors to constitute a quorum because of a vacancy in the Directors, the continuing Directors may act only to appoint further Directors (subject to rule 6.1(b)) so that a quorum can be formed.

## 9.4 Chairperson of Directors

- (a) Where there is more than one Director, the Directors may elect a Director to be chairperson of Directors, and also may elect a Director to be deputy chairperson, and may determine the period for which that Director is to be chairperson, or deputy chairperson of Directors.
- (b) The chairperson, or in their absence or where they are not willing to act, the deputy chairperson must preside as chairperson at each meeting of Directors.
- (c) Where at a meeting of Directors:



- (i) there is no chairperson or deputy chairperson of Directors; or
- (ii) the chairperson or deputy chairperson of Directors is not present within 15 minutes after the time appointed for the meeting or is not willing to chair the meeting;

the Directors present must elect one of their number to be chairperson of the meeting and in the absence of such election, the Director named first in the register is deemed to be the chairperson.

## 9.5 Resolutions at meetings

- (a) Subject to this Constitution including rules 6.4(b) and 6.6, a resolution of the Directors can only be passed if a majority of all Directors of the Company (excluding alternate directors in that capacity from the number of all Directors) are in favour of passing the resolution, regardless of how many Directors are present at the meeting, and each Director present (including by way of Technology) has one vote.
- (b) Where one or more Guardian Shares have been issued, each resolution arising requires the consent of each person who is:
  - (i) a Guardian Shareholder, or
  - (ii) the person authorised in writing to exercise the Guardian Shareholder's voting rights;

before the matter can constitute a resolution of the Directors.

## 9.6 Irregularities and validity of acts

All acts done by any Director, committee of Directors, or persons acting as a Director are as valid as if each person was duly appointed and qualified to be a Director or a member of the committee even if it is afterwards discovered that there was some defect in the appointment of a person or that a person appointed was disqualified or not entitled to vote.

# 10. Executives

## 10.1 Managing Director

- (a) The Directors may appoint one or more of the Directors to the office of managing director (**'Managing Director'**) and determine what period of appointment, duties and roles the Managing Director is to have.
- (b) The Directors may authorise a Managing Director to exercise any powers of the Directors subject to such conditions as the Directors consider appropriate.
- (c) A Managing Director's appointment as managing director automatically terminates if the Managing Director ceases to be a Director.

## 10.2 Executive Directors

- (a) A Director may also be an officer or employee of the Company or of a related body corporate in a capacity other than director or Managing Director (**'Executive Director'**).
- (b) The Directors may authorise an Executive Director to exercise any powers of the Directors subject to such conditions as the Directors consider appropriate, and may confer on an Executive Director such title as they think fit.

- (c) The Directors may determine what period of appointment, duties and roles the Executive Director is to have.

### 10.3 Secretaries

- (a) One or more secretaries may be appointed by the initial Members that were set out in the application for registration of the Company under the CA, provided each secretary has given a Signed, written consent to act as secretary before being appointed.
- (b) The Directors may at any time appoint and remove one or more secretaries and may appoint and remove one or more assistant secretaries, provided each secretary or assistant secretary has given a Signed, written consent to act as secretary or assistant secretary before being appointed.
- (c) An office of secretary becomes vacant in all the ways described in rule 6.2 as if the rule applied to secretaries instead of Directors.

### 10.4 Public officer

- (a) Subject to rule 10.4(b), the Company may from time to time appoint, retain, remunerate, remove or replace a public officer, in the manner and for the purposes allowed under the law.
- (b) During any period in which the Company acts as a trustee of an SMSF, whether solely in that capacity or in addition to any other capacity in which it acts, the Company may remunerate a public officer to the extent that:
  - (i) the SISA permits; and
  - (ii) such remuneration would not cause the SMSF to cease to meet the definition of an SMSF.

### 10.5 Payment, term and powers

- (a) This rule 10.5 applies to a Managing Director, Executive Director, secretary, assistant secretary or public officer (**'Executive Officer'**).
- (b) The appointment of an Executive Officer may be for such duties, roles, period and, subject to rule 6.7(a), at such remuneration, if any, and upon such conditions as the Directors think fit.
- (c) Subject to the CA and the terms of any agreement between the Executive Officer and the Company, the Executive Officer may, subject to rule 6.7(a), receive remuneration (whether by way of salary, commission, non-cash benefits, superannuation or participation in profits and as otherwise permitted by law, or partly in one way and partly in another) as the Directors decide.
- (d) Subject to the terms of any agreement between the Company and the relevant Executive Officer, any Executive Officer may be removed or dismissed by the Directors at any time, with or without cause.
- (e) The Directors may:
  - (i) confer on an Executive Officer such powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the Directors) as they think fit;
  - (ii) withdraw, suspend or vary any of the powers, discretions and duties conferred on an Executive Officer; and
  - (iii) authorise the Executive Officer to delegate all or any of the powers, discretions and duties conferred on the Executive Officer.

## **11. Members — resolutions without meetings**

### **11.1 Circulating resolutions of Members**

- (a) The Members may pass a resolution without a meeting being held if:
  - (i) a document is Signed or consented to by a sufficient number and composition of Members (including, where applicable, the votes of any Members who are Guardian Shareholders) that would, if a meeting of all Members had been held, constitute a resolution made under rule 12; and
  - (ii) the document contains a statement to the effect that those Members are in favour of the resolution set out in the document.
- (b) Where a share is held jointly, Signing or consenting to a document requires:
  - (i) in the case of a share held jointly by two persons — the Signature or consent of either joint holder; or
  - (ii) in the case of a share held jointly by more than two persons — the Signature or consent of the majority of joint holders.
- (c) Separate copies of a document may be used for Signing or consenting by Members if the wording of the resolution is identical or substantially identical in each copy.
- (d) The resolution is passed at the time that the last Member required under rule 11.1(a) Signs or consents, and the document constitutes a minute of the resolution.

### **11.2 Single Member resolutions**

Where the Company has only one Member, that Member may pass a resolution by recording the resolution and Signing it, without the need for a meeting, and the document constitutes a minute of the resolution.

### **11.3 Oral resolutions**

The Members, or the sole Member, may pass a resolution orally without a meeting or a document, if a sufficient number of Members to make a resolution under rules 11.1 or 11.2 make the resolution orally. Such an oral resolution can be facilitated by Technology. This does not displace any requirement to record or minute a resolution.

### **11.4 Unanimous consent of the Members**

- (a) Subject to the general law and the CA, where all Members of the Company who have a right to attend and vote at a general meeting of the Company assent to some matter which a general meeting of the Company could carry into effect, that assent is as binding as a resolution in a general meeting would be, despite the Members not assenting while present together.
- (b) Rule 11.4(a) also applies with the necessary modification to Members of a particular share class assenting to resolutions of that share class.

## **12. Members — general meetings**

### **12.1 Convening of general meetings**

- (a) A general meeting may only be convened under this rule 12.1 or as provided for by the CA.
- (b) The Directors must convene a general meeting if requested by the Members in accordance with the CA.
- (c) The Members may convene a general meeting in any way authorised by the CA, including that Members with at least 5% of the votes that may be cast at a general meeting of the Company may call, and arrange to hold, a general meeting. The Members calling a meeting in this way must pay the expenses of calling and holding the meeting.

### **12.2 Giving of notice of meeting**

- (a) Subject to the CA and to rule 12.2(b), at least 21 days notice must be given of a meeting of the Members.
- (b) A shorter period of notice may be given:
  - (i) for an annual general meeting, if all the Members entitled to attend agree beforehand; and
  - (ii) for any other general meeting, if Members with at least 95% of the votes that may be cast at the meeting agree beforehand.

### **12.3 Contents of notice of meeting**

- (a) A notice of general meeting of the Members must:
  - (i) set out:
    - (A) the place, date and time for the meeting; and
    - (B) if applicable, the Technology which will be used to host or facilitate the meeting and the details to access the Technology;
  - (ii) state the general nature of the meeting's business;
  - (iii) where a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and state the resolution; and
  - (iv) where a Member is entitled to appoint a Proxy, contain a statement setting out the following information:
    - (A) that the Member has a right to appoint a Proxy;
    - (B) whether or not under this Constitution the Proxy needs to be a Member of the Company; and
    - (C) that a Member who is entitled to cast two or more votes may appoint two Proxies and may specify the proportion or number of votes each Proxy is appointed to exercise.
- (b) Without limiting rule 12.3(a), each notice of a general meeting must contain the information required by the CA.

- (c) The non-receipt of notice of a general meeting or Proxy form by, or the accidental failure to give notice of a general meeting or a Proxy form to, any person entitled to receive notice will not invalidate the proceedings of, or any resolution passed at, the meeting.
- (d) A person's attendance at a general meeting waives any objection that the person may have as to a failure to give notice, or the giving of a defective notice, of the meeting except if the person at the beginning of the meeting objects to the holding of the meeting.

#### 12.4 **Business at general meetings**

Except where all Members are present as Members Present (excluding proxies in favour of the chairperson) and agree otherwise, no business can be transacted at any general meeting except as set out in the notice of the meeting. For the avoidance of doubt, if new items of business that have not been set out in the notice of the meeting are to be transacted, all Members must be present as Members Present before voting on any new items of business (excluding proxies in favour of the chairperson).

#### 12.5 **Meetings — use of Technology**

- (a) Subject to the CA, each Member is taken to consent to the use of any Technology for:
  - (i) calling or holding a meeting of the Members;
  - (ii) giving notice of a meeting of the Members; and
  - (iii) providing a communications medium for a meeting of the Members.
- (b) A Member may withdraw the consent to use Technology by notifying the other Members in writing within a reasonable period before a given meeting, but Technology may be used for all Member meetings until a majority of Members have withdrawn consent.
- (c) Where the use of a particular Technology is consented to by the Members, the use of that Technology to link together a sufficient number of Members to constitute a quorum will constitute a meeting of the Members, and the provisions of this Constitution regarding meetings of Members apply (with any necessary modification) as if all the Members were present together. The meeting is taken to have been held at the place determined by the chairperson provided that at least one of the Members Present was at that place during the meeting.

#### 12.6 **Quorum**

- (a) No business may be transacted at any general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of Members is present when the meeting proceeds to business. A quorum does not necessarily mean that any resolutions can be passed, having regard to rule 12.10.
- (b) Where one or more Guardian Shares have been issued, a quorum of Members is not present unless every Guardian Shareholder or their Proxy or Representative is a Member Present, unless that Guardian Shareholder has provided prior written authorisation in the form of notice to all other Members that a quorum may be present, in respect of a particular general meeting, despite the failure of the Guardian Shareholder or their Proxy or Representative to attend.
- (c) Subject to rule 12.6(b), a quorum consists of:
  - (i) any two Members Present; or

- (ii) where only one Member is entitled to vote, that Member.

#### 12.7 **Where quorum not present**

- (a) Subject to rule 12.8(b), where a quorum is not present within 30 minutes after the time appointed for a general meeting:
  - (i) where the meeting was convened upon the requisition of Members, the proposed meeting must be dissolved; or
  - (ii) in any other case, the meeting stands adjourned to a day and at a time and place as the Directors decide or, where no decision is made by the Directors, to the same day in the next week at the same time and place.
- (b) Where, at an adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

#### 12.8 **Chairperson of general meetings — appointment and responsibilities**

- (a) The chairperson of Directors, or in the chairperson's absence, the deputy chairperson (if any) must preside as chairperson at each general meeting.
- (b) Where at a general meeting:
  - (i) there is no chairperson or deputy chairperson of Directors; or
  - (ii) the chairperson or deputy chairperson of Directors is not present within 15 minutes after the time appointed for the meeting or is not willing to chair the meeting;

the Directors present must elect one of their number or, in the absence of any Directors or if none of the Directors present are willing to act, the Members Present must elect one of their number who is willing to act to be chairperson of the meeting.

- (c) The chairperson of a general meeting is responsible for the general conduct of the meeting and may require the adoption of any procedures which are in his or her opinion necessary or desirable, including for the:
  - (i) proper and orderly debate or discussion, including limiting the time that a person may speak on a motion or other item of business before the meeting, if the other agenda items so require; and
  - (ii) proper and orderly casting or recording of votes at the general meeting, whether on a show of hands or on a Poll, including the appointment of scrutineers.

#### 12.9 **Adjournment of general meetings**

- (a) The chairperson of a general meeting may, in his or her discretion, and must if directed by all Members Present, at any time during the course of the meeting adjourn the meeting or any business, motion or resolution being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting.
- (b) Unless all Members are present as Members Present, no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given in the same manner as for the original meeting, otherwise no notice of the adjourned meeting needs to be given.

- (d) The Directors may confirm or change the venue, time or Technology for the adjourned meeting by giving written notice of the amended details to Members entitled to receive notice.

#### 12.10 Resolutions at general meetings

- (a) Where one or more Guardian Shares have been issued and subject to rule 12.6(b), each resolution requires the consenting vote of every Guardian Shareholder (whether or not they are a Member Present) before it can constitute a resolution of the Members.
- (b) Subject to this Constitution including rule 12.10(a) (the overarching requirement to obtain the consent of each Guardian Shareholder), a general resolution can only be passed if a majority of all votes are in favour of passing the resolution, regardless of how many Members are Members Present. The votes of every Member who is a not a Member Present are counted as being against any proposed resolution.
- (c) Subject to this Constitution including rule 12.10(a) (the overarching requirement to obtain the consent of each Guardian Shareholder), a special resolution can only be passed if at least 75% of all votes are in favour of passing the resolution, regardless of how many Members are Members Present. The votes of every Member who is a not a Member Present are counted as being against any proposed resolution.
- (d) The number of votes each Member can exercise under rules 12.10(b) and (c) is provided for at rule 12.11.
- (e) A resolution put to the vote of a general meeting must be decided, subject to rule 12.11, on a show of hands unless a Poll is demanded before or immediately after the declaration of the result of the show of hands:
  - (i) by the chairperson of the meeting; or
  - (ii) by any Member Present entitled to vote at the meeting.
- (f) A Poll cannot be demanded at a general meeting regarding the election of a chairperson or on the adjournment of the meeting.
- (g) The demand for a Poll may be withdrawn.
- (h) Except if a Poll is duly demanded, a declaration by the chairperson of a meeting that a resolution has on a show of hands (or using an effective and contemporaneous method utilising Technology) been carried or lost, and an entry to that effect in the minutes of the meeting, is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (i) A demand for a Poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the Poll has been demanded.
- (j) Where a Poll is duly demanded at a general meeting, it will be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairperson of the meeting directs.
- (k) The result of the Poll will be the resolution of the question on which the Poll has been demanded.

#### 12.11 Voting rights

Subject to this Constitution, any rights or restrictions attached to any shares or class of shares, at a general meeting, every Member Present has one vote for each fully paid

share with voting rights they hold or represent in respect of which the Member is presently entitled to vote. This applies whether the vote takes place by a show of hands or by a Poll.

#### 12.12 **Voting of Members, Proxies and Representatives of a body corporate**

- (a) At a meeting of Members, or a meeting of a class of Members, each Member entitled to attend and vote may attend and vote in person, by Proxy, and where the Member is a body corporate, by Representative, and where Technology is being used to facilitate the meeting, voting can occur using Technology.
- (b) A Proxy or Representative may be appointed for all general meetings, for any number of general meetings, or for a particular general meeting.
- (c) A Proxy or Representative does not need to be a Member.

#### 12.13 **Joint holders of shares**

Where more than one joint holder tenders a vote, whether in person, by Proxy or Representative, the vote of the holder named first in the register must be accepted to the exclusion of the other or others.

#### 12.14 **Restrictions on voting — unpaid amounts**

A Member is not entitled to attend or vote at a general meeting unless all calls and other amounts due and payable by the Member in respect of shares in the Company have been paid, except if the Member also holds fully paid shares in which case the Member may attend and vote in respect of those other shares upon which no amounts are then due and payable.

#### 12.15 **Member dies, is bankrupt, is of unsound mind or is a minor**

- (a) Where either:
  - (i) a Transmission Event occurs in relation to a Member; or
  - (ii) the Member is a minor,the person entitled to the Member's shares or the Member's LPR or guardian may exercise any rights of the Member in relation to a general meeting as if the person, LPR or guardian were the Member.

#### 12.16 **Objections to voting or resolutions**

- (a) An objection to the qualification of a person to vote at a general meeting:
  - (i) must be raised before or at the meeting at which the vote objected to is given or tendered; and
  - (ii) must be referred to the chairperson of the meeting, whose decision is final.
- (b) A vote allowed by the chairperson after an objection is finalised is valid for all purposes.

#### 12.17 **Appointment of Proxies**

- (a) A Member may appoint a Proxy, provided they appoint not more than two Proxies.
- (b) An appointment of two Proxies to vote at the same general meeting is of no effect where the authority of one is not conditional on the other failing to attend or vote, except if each Proxy is appointed to represent a specified proportion of the Member's voting rights.



- (c) A single Proxy is entitled to vote on a show of hands, or subject to the CA, can Sign a circulating resolution on behalf of the Member that the Proxy represents.

#### 12.18 **Form and effect of Proxies**

- (a) An instrument that a Member uses to appoint a Proxy need not be in any particular form provided its intention is clear, it is in writing, it is legally valid and:
  - (i) where the Member is a natural person, the instrument is Signed by the Member; or
  - (ii) where the Member is a company, the instrument is executed by the Member in accordance with its constitution or as the CA otherwise permits a company to execute.
- (b) The Directors may stipulate the form of an instrument appointing a Proxy. Form 2 in Part B is an acceptable form.
- (c) An instrument appointing a Proxy may direct the manner in which the Proxy is to vote in respect of a particular resolution and, where such a direction is specified, the Proxy is not entitled to vote except as directed in the instrument.
- (d) A Proxy may vote as the Proxy thinks fit on any motion or resolution in respect of which no direction of voting is indicated in the appointing instrument.
- (e) Subject to rule 12.18(c) and except as otherwise provided in the instrument, an instrument appointing a Proxy or Representative will be taken to confer authority to act and communicate generally at the meeting or, in respect of a resolution, vote on any procedural motion, any amendment to a resolution or a similar motion.
- (f) A Proxy may be given in favour of the chairperson of the meeting and, where the instrument does not specify the name of a Proxy, the Proxy is taken to be given in favour of the chairperson.

#### 12.19 **Lodgement of Proxies**

- (a) To be effective, an instrument appointing the Proxy, and the original or an attested copy of the power of attorney or other authority (if any) under which the instrument is Signed, must be received by the Company at least 48 hours before the meeting commences or resumes (as the case may be), or such shorter period that the Directors accept.
- (b) For the purposes of this rule 12.19, the Company receives these documents when they are received by mail at the registered office, fax, email or any other means including Technology as may be otherwise specified as acceptable by the company.

#### 12.20 **Validity of Proxies**

- (a) A vote given in accordance with the terms of an instrument appointing a Proxy is valid despite:
  - (i) a Transmission Event occurring in relation to the appointor;
  - (ii) the revocation of the instrument or of the authority under which the instrument was Signed; or
  - (iii) the transfer of the share in respect of which the instrument or power is given,

if notice in writing of the Transmission Event, revocation or share transfer has not been received by the Company by the time the instrument appointing the Proxy is required to be given to the Company.

- (b) The appointment of a Proxy is not revoked by the appointor attending and taking part in the general meeting except to the extent the appointor actually votes on any resolution.

#### 12.21 **Representatives of Members**

- (a) Subject to the CA, a Member of the Company that is itself a body corporate may attend meetings of the Company's members by way of a Representative appointed in accordance with section 250D of the CA.
- (b) The appointment of such a Representative by a Member is a matter between the Member and the Representative, but the appointment must be in accordance with the Member's constituent documents.

#### 12.22 **Rights to attend of non-Members**

At any general meeting:

- (a) a Director who is not a Member is entitled to be present and to speak and give input;
- (b) a secretary of the Company who is not a Member is entitled to be present and, at the request of the chairperson, to speak and give input;
- (c) an auditor of the Company is entitled to be present and, at the request of the chairperson, to speak and give input; and
- (d) any other person requested by the Directors to attend is entitled to be present and, at the request of the chairperson, to speak and give input.

## 13. **Dividends**

### 13.1 **Paying Dividends**

- (a) Subject to the CA, this Constitution and any special rights or restrictions attached to any shares or class of shares, the Directors may from time to time resolve, declare and pay Dividends to the holders of shares of such class or classes as the Directors determine, provided that either:
  - (i) all of the following apply:
    - (A) the Company's assets exceed its liabilities immediately before the dividend is declared and the excess is sufficient for the dividend payment (assets and liabilities will be calculated in accordance with the accounting standards in force at the relevant time the dividend is declared even if the standards do not otherwise apply to the financial year);
    - (B) the payment of the dividend is fair and reasonable to the Company's Members as a whole; and
    - (C) the payment of the dividend does not materially prejudice the Company's ability to pay its creditors; or
  - (ii) the Dividend otherwise complies with the law (including any relevant provisions of the CA).

- (b) The Directors may fix the amount, time and method of payment of any Dividend (whether by payment of money, transfer of an asset or by other means).
- (c) Interest is not payable on a Dividend.
- (d) The Directors may pay any Dividend required to be paid under the terms of any share issue.
- (e) Subject to any rights or restrictions attached to any shares or class of shares:
  - (i) all Dividends in respect of shares must be declared and paid in proportion to the amounts paid or credited as paid on the shares;
  - (ii) all Dividends must be apportioned and paid proportionately to the amounts so paid or credited during any portion or portions of the period in respect of which the Dividend is paid; and
  - (iii) an amount paid or credited as paid on a share in advance of a call is not to be taken as having been credited or paid for Dividend rights.
- (f) The Directors may pay all or any amount of a Dividend:
  - (i) by the distribution of specific assets, including paid-up shares, options, debentures or other securities of the Company or of another body corporate; and
  - (ii) out of any particular fund or reserve or out of profits derived from any particular source,

so long as where a Dividend is provided other than in the form of money, the stated amount of the Dividend is equal to the value attributable to that Dividend as determined by the Directors.
- (g) Unless the rights of a particular share class otherwise provide, the Directors have absolute discretion in deciding the division or allocation of any Dividend (including any related franking taxation offsets or benefits) between the classes entitled to be considered, including the discretion to allocate Dividends (including any related franking taxation offsets or benefits) to any one or more classes to the exclusion of others and to allocate different rates to different classes. The Directors may deduct from any Dividend payable to a Member any amount presently payable by the Member to the Company and apply the amount deducted in or towards satisfaction of the amount owing.
- (h) The Directors may credit an account on behalf of a Member with the amount of a Dividend or offset an amount otherwise payable by the Company to a Member by way of set off.
- (i) Where the Directors direct that payment of a Dividend be satisfied by different forms of payment as between specific Members, the Members must first approve the payment either by resolution under rule 11 or by resolution in a general meeting under rule 12.
- (j) Where a difficulty arises in regard to a distribution under rules 13.1(f) or 13.1(i), the Directors may:
  - (i) settle the matter as they think expedient and fix the value for distribution of the specific assets or any part of those assets to or between different Members;
  - (ii) decide 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

- (iii) transfer or vest any cash, Securities or specific assets for the Members as they think fit.

### 13.2 **Company reserves**

- (a) The Directors may at any time, including before declaring a Dividend, set aside any sums they think proper as reserves that will, at the discretion of the Directors, be applied for any purpose to which the profits of the Company may be properly applied.
- (b) The setting aside of any amount as a reserve does not require the Directors to keep the amount separate from the other assets of the Company or prevent the amount being used by the Company for any purpose or being invested in such investments as the Directors think fit.
- (c) The Directors may, without placing them in reserve, carry forward any remaining profits that they determine not to distribute as Dividends or capitalise.
- (d) The Directors may also transfer reserves back into retained earnings or apply reserves for any other purpose referred to in rule 13.2(a).

### 13.3 **Capitalisation of profits**

- (a) The Company may resolve to capitalise and distribute among such of the Members as would be entitled to receive Dividends and in the same proportions that they would be entitled to, all or any of the amount for the time being standing to the credit of any reserve account, profit and loss account or otherwise available for distribution to Members.
- (b) The amount capitalised may be applied for a Member's benefit in satisfaction of each Member's interest in the amount by:
  - (i) paying up any amounts unpaid on shares held by Members;
  - (ii) paying up unissued shares to be issued to Members;
  - (iii) a combination of the applications in rules 13.3(b)(i) and 13.3(b)(ii); or
  - (iv) any other application permitted by law.
- (c) The Directors must do all things necessary to give effect to the resolution and settle as they think expedient any difficulty that may arise. In particular, to the extent necessary to adjust the rights of the Members among each other, the Directors may:
  - (i) fix the value for distribution of the specific assets or any part of those assets to or between different Members;
  - (ii) issue fractional certificates or pay cash in cases where shares become issuable in fractions or determine that fractions may be disregarded; and
  - (iii) vest any cash, shares or specific assets in trustees on trust for the Members entitled as they think fit.

### 13.4 **Dividend reinvestment plans**

The Members, by resolution either under rule 11 or by way of general meeting under rule 12, or alternatively the Directors, may:

- (a) implement a Dividend reinvestment plan on such terms as they think fit under which all or any part of any Dividend due on shares to Members who elect to

participate in the plan may be applied in subscribing for shares of the Company or of a related body corporate;

- (b) amend, suspend or terminate any Dividend reinvestment plan; and
- (c) determine the best way of managing any Dividend reinvestment plan and providing appropriate disclosures and notifications to Members.

## 14. Voluntary transfer of shares

### 14.1 Transfer of shares

- (a) Unless the Members waive the process, any sale or assignment of any shares in the Company can only be made with the approval of a Special Resolution of the Members, unless it is made in accordance with the procedure in rule 14.1(c).
- (b) Any sale or assignment of shares in the Company must first be offered to the existing Members in accordance with the procedure in this rule 14 before any offer to a non-Member third party occurs.
- (c) Subject to rule 14.1(d) (which deals with where there is more than one class of shares on issue), a Member proposing to sell or assign all or any of their shares in the Company (**'Proposing Transferor'**) must first give notice in writing (**'Transfer Notice'**) to the other Members (**'Remaining Shareholders'**), by way of a Transfer Notice set out in Form 1 of this Constitution or such other form approved by the Directors, specifying the number and class of total shares offered for transfer and the price at which the Proposing Transferor's shares are offered for transfer (**'Transferor's Price'**). For the avoidance of doubt, the Transferor's Price is the total consideration for all the shares offered, rather than denoting the price of each share. The Proposing Transferor may only revoke that offer within the Offer Period with the consent of all of the Remaining Shareholders. Any offer to the Remaining Shareholders must, unless agreed otherwise by all the Members, be subject to the following conditions:
  - (i) Each Remaining Shareholder is deemed to be offered a portion of the total shares specified as being offered for sale by the Proposing Transferor in the Transfer Notice that is in proportion to that Remaining Shareholder's shares in the Company, immediately before the Transfer Notice is given, in respect of the total shares held by all of the Remaining Shareholders.
  - (ii) The Proposing Transferor's shares are deemed to be offered to each Remaining Shareholder at the Transferor's Price, pro-rated for the portion offered to each Remaining Shareholder.
  - (iii) A Remaining Shareholder may:
    - (A) accept an offer within the Offer Period by completing the acceptance at the bottom of the Transfer Notice and returning the Transfer Notice to the Proposing Transferor;
    - (B) reject an offer (and a Remaining Shareholder who fails to accept within the Offer Period is treated as having rejected their offer); or
    - (C) reject the Transferor's Price at any time within the Offer Period by giving written notice to the Proposing Transferor and all Remaining Shareholders, and if the Transferor's

Price is rejected, the Value determined in accordance with rule 14.2 (pro-rated for the number of shares on offer) is the substituted Transferor's Price for all offers to the Remaining Shareholders. If rule 14.2 is invoked, the Members agree that the Offer Period is extended for a further 30 days to allow a valuation to take place and for the Remaining Shareholders to consider whether to accept the offer.

- (iv) At the end of the Offer Period, if any Remaining Shareholder has rejected any portion of the Proposing Transferor's shares that they were offered ('**Rejected Portion**'), the Proposing Transferor may then offer the Rejected Portion to the other Remaining Shareholders who did not reject the shares offered to them under the previous offer ('**Residual Remaining Shareholders**'), by giving notice to the Residual Remaining Shareholders in a new Transfer Notice. Each of the Residual Remaining Shareholders is deemed to be offered a portion of the Rejected Portion that is in proportion to that Residual Remaining Shareholder's shares in the Company, immediately before the offer of the Rejected Portion, in respect of the total shares held by all of the Residual Remaining Shareholders.
- (v) The Transferor's Price for any second or subsequent offer is deemed to be the same as the Transferor's Price under the first offer made pursuant to rule 14.1(c)(i), pro-rated for the number of shares in the Rejected Portion, or, if the Transferor's Price was rejected during the first Offer Period and this resulted in a substituted price, the pro-rated Value.
- (vi) A Residual Remaining Shareholder may accept or reject a second or subsequent offer as described in rules 14.1(c)(iii)(A) and 14.1(c)(iii)(B) during the relevant Offer Period but may not reject the Transferor's Price.
- (vii) The process described in rules 14.1(c)(iv) to 14.1(c)(vi) repeats until the earliest of the following occurs:
  - (A) all Rejected Portions have been acquired;
  - (B) there are no Residual Remaining Shareholders who were offered shares pursuant to the most recent offer who accepted the offer; or
  - (C) the expiration of 120 days since the giving of the first Transfer Notice, or such longer period as agreed by all the Members.
- (viii) The giving of a Transfer Notice to the Remaining Shareholders is taken to be an irrevocable offer by the Proposing Transferor to sell all or part of the Proposing Transferor's shares and authority to the relevant Remaining Shareholders to finalise and sell the shares in accordance with this Constitution.
- (ix) The purchase price for any Proposing Transferor's shares, unless agreed otherwise by the Proposing Transferor and the relevant purchaser, is payable within 30 days of the acceptance of the offer for those shares. Interest compounds at the Benchmark Interest Rate from the date each instalment is due for payment and is payable with the instalment.
- (x) Where, after the full operation of rule 14.1(c)(vii), there is still any Rejected Portion that has not been accepted, then the Proposing Transferor is free to sell all or part of the Rejected Portion to a third

party ('Third Party Purchaser') on such terms as may be agreed between the Transferor and such Third Party Purchaser, provided that the Proposing Transferor may not offer any of their shares to a third party at any price that is lower than the Transferor's Price (including a substituted price where a Value has been adopted) or on more favourable terms or conditions without again first offering same to the Remaining Shareholders at such lower price or more favourable terms or conditions.

- (d) If there is more than one class of shares on issue, the procedure for the sale or assignment of shares under rule 14.1(c) must be modified as follows:
- (i) Firstly, the Proposing Transferor must follow rule 14.1(c) but only offer shares proportionately to any Guardian shareholders.
  - (ii) Secondly, the Proposing Transferor must follow rule 14.1(c) but only offer shares proportionately to any Ordinary shareholders.
  - (iii) Thirdly, the Proposing Transferor must follow rule 14.1(c) but only offer shares proportionately to any Members who have shares other than Guardian Shares and Ordinary Shares, as if the shares in these other classes were one undifferentiated group of shares.
  - (iv) Lastly, if any of the Proposing Transferor's shares have still not been accepted, an offer to the Third Party Purchaser can be made in accordance with rule 14.1(c)(x).

#### 14.2 Value defined

- (a) Where the Transferor's Price is rejected in accordance with rule 14.1(c)(iii)(C), the value of the shares must then be fixed by an independent accountant ('Accountant') nominated by the Members as an expert having at least 10 years' public accounting practice experience.
- (b) Where the Members cannot agree on a suitable Accountant, the Australian Disputes Centre must be requested to appoint or facilitate the appointment of a suitable accountant to act as the Accountant. Unless the Members agree otherwise, the Accountant has one month from the date they are instructed to produce a valuation report and the instructions to the Accountant must all be in writing and the other Members must not make submissions to the Accountant (in written or oral form) unless requested by the Accountant. All submissions that are made following a request by the Accountant must be available for inspection by all Members unless the Accountant determines otherwise. The Accountant must, as they deem appropriate, set any other rules which are to apply for completing their valuation report that binds the Members.
- (c) Where the Value so fixed by the Accountant does not differ by more than 10% from the Transferor's Price, the original Transferor's Price will remain. Where the Accountant's Value so fixed differs by more than 10% from the original Transferor's Price, then the Accountant's value must be used.
- (d) The Accountant's costs of determining the Value must be payable equally by all the Members who are party to any shares transfer. In any other case, if no agreement as to the sharing of costs is reached, the Accountant's costs may be apportioned among all the Members as the Accountant sees fit.

#### 14.3 Registration on transfer

- (a) The Directors must register any transfer of shares that complies with this Constitution.

- (b) To register a transfer, the following documents must, unless the Directors waive compliance, be provided for registration:
  - (i) a solution referred to in rule 14.1(a) or a completed Transfer Notice referred to in rule 14.1(c) or such other evidence as the Directors may require; and
  - (ii) the certificates for the shares, and such other evidence as the Directors may require to prove the title of the transferor or the transferor's right to the shares and to prove the right of the transferee to be registered as the holder of the shares.
- (c) The Company must not charge a fee for the registration of a transfer of shares.
- (d) Where a transfer referred to in rule 14.3(a) is required by law to be stamped, it must be duly stamped to comply with that rule.
- (e) The Directors may suspend the registration of transfers of shares at such times and for such periods, not exceeding in total 30 days in any year, as they think fit.

## **15. Transmission of shares**

### **15.1 Transmission of shares on death**

- (a) In the case of the death of a Member who is a natural person:
  - (i) the only persons the Company will recognise as having any title to the Member's interest in the Member's shares are:
    - (A) the LPR of the deceased, where the Member was a sole holder or the Member held shares as a tenant in common; and
    - (B) the survivor or survivors, where the deceased held shares as a joint tenant; and
  - (ii) the transfer process in rule 14 does not apply, and this rule 15 applies instead; and
- (b) Nothing in rule 15.1(a) releases the legal personal representative or estate of a deceased Member from any liability in respect of shares, whether those shares were held by the deceased solely or jointly with other persons.

### **15.2 Registration of person entitled**

- (a) A person who becomes entitled to a share as a consequence of a Transmission Event may, upon producing such information as the Directors may require to prove that person's entitlement to the share, elect in writing:
  - (i) to be registered personally as the shareholder of the share; or
  - (ii) to have some other person nominated by the first person or their LPR registered as the shareholder of the share.
- (b) The provisions of this Constitution relating to the right to transfer, the registration of transfers and the issue of certificates for shares, apply, so far as they can and with such changes as are necessary, to any transfer under rule 15.2(a) and the transfer were Signed by the registered shareholder of the share.



- (c) Where two or more persons are jointly entitled to any share in consequence of a Transmission Event they will, upon being registered as the shareholders of the share, be taken to hold the share as joint tenants under this Constitution unless the Directors approve otherwise.

## **16. Minutes and records**

### **16.1 Minutes**

- (a) The Company must cause minutes of all proceedings and resolutions of general meetings and of meetings of the Directors and of committees of the Directors, and all resolutions of Members, Directors and of committees of the Directors passed without a meeting, to be duly recorded within one month (or such other period permitted by the CA), in books kept for that purpose.
- (b) Minutes must be Signed within a reasonable time by the chairperson of the relevant meeting or by the chairperson of the next meeting. A resolution made without a meeting must be Signed by a Director within a reasonable time.

### **16.2 Minutes as evidence**

Except where the contrary is proved, minutes of a meeting properly recorded and Signed are sufficient evidence of the proceedings, resolutions and other matters stated in the minutes.

### **16.3 Inspection of records**

- (a) A Member other than a Director does not have the right to inspect any books, records or documents of the Company except as provided by the CA, by law or as authorised by the Directors.
- (b) The Directors may determine if and to what extent, what time and place and under what conditions the minute books, accounting records and other documents of the Company will be open for inspection by Members other than Directors.

## **17. Execution of documents**

### **17.1 Execution of documents**

- (a) The Company may execute a document without using a common seal if the document is Signed by:
  - (i) two Directors of the Company;
  - (ii) one Director and one secretary of the Company (or another person appointed by the Directors to countersign that document or a class of documents in which that document is included); or
  - (iii) where the Company has one Director — that Director, regardless of whether or not that Director is a secretary of the Company.
- (b) The Company, if it has a common seal, may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:
  - (i) two Directors of the Company;

- (ii) a Director and a secretary (or another person appointed by the Directors to countersign that document or a class of documents in which that document is included); or
  - (iii) where the Company has one Director — that Director, regardless of whether or not that Director is a secretary of the Company.
- (c) This rule 17.1 enhances and does not limit the manner in which the Company may execute a document under the CA.

## 17.2 **Common seal**

The Company is not required to have a common seal. If the Company has a common seal, it may execute documents and make contracts with or without using it. The Directors must provide for the safe custody of any common seal, and it must only be used by the authority of the Directors.

# 18. **Indemnity and insurance**

## 18.1 **Indemnity**

To the maximum extent permitted by law, the Company must indemnify each person who is, or has been a Director, secretary or officer of the Company or any of its subsidiaries against any liability arising directly or indirectly from the person serving or having served in that capacity:

- (a) to any person, except for:
  - (i) a liability owed to the Company or a related body corporate;
  - (ii) a liability for a monetary penalty or compensation order made under the CA;
  - (iii) a liability that is owed to someone (other than the Company or a related body corporate) and did not arise out of conduct in good faith;
  - (iv) where the Company acts as trustee of an SMSF, a liability arising because the person failed to act honestly in a matter concerning the fund, a liability arising because the person intentionally or recklessly failed to exercise, in relation to a matter affecting the fund, the degree of care and diligence that a director is required to exercise or a liability for a monetary penalty under a civil penalty order made under section 196 of the SISA; or
  - (v) where the Company acts as trustee of an SMSF, a liability arising under the SISA where the SISA requires one or more Directors or other officeholders to pay the fine personally or jointly; and
- (b) for legal costs incurred in defending an action for liability incurred as a Director or a secretary of the Company or any of its subsidiaries, if the costs are not incurred:
  - (i) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under rule 18.1(a);
  - (ii) in defending or resisting criminal proceedings in which the person is found guilty;

- (iii) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to be established; or
  - (iv) in connection with proceedings for relief to the person under the CA in which the court denies the relief.
- (c) Rule 18.1(b)(iii) does not apply to costs incurred in responding to actions brought by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order.

## 18.2 Insurance

The Company may, to the extent permitted by law, purchase and maintain insurance or pay or agree to pay a premium for insurance, for a person who is, or has been, a Director, secretary or other officer of the Company (including in respect of the officer's duties and liabilities as an officer of a trustee company) or any of its subsidiaries against any liability:

- (a) arising directly or indirectly from the person serving or having served in that capacity, including a liability for negligence except where the liability arises out of:
  - (i) conduct involving a wilful breach of duty in relation to the Company or any of its subsidiaries; or
  - (ii) a contravention of sections 182 or 183 of the CA dealing with improper use of position or information; or
- (b) for such other reasonable costs and liabilities such as legal costs and expenses incurred in defending proceedings, whether civil or criminal and whatever the outcome.

## 18.3 Document containing indemnity or insurance

- (a) The Directors may authorise the Company to, and the Company may, enter into any arrangement containing an indemnity in favour of, or insurance policy for the benefit of, a person who may be indemnified or insured by the Company, on such terms as the Directors approve and, in particular, that applies to acts or omissions prior to or after the time of entering into the indemnity or policy.
- (b) The benefit of any indemnity continues according to the terms agreed by the Company, even after the terms of this rule are amended or deleted, in respect of a liability arising out of acts or omissions occurring prior to the amendment or deletion.

## 19. Winding up

19.1 Where the Company is wound up, the liquidator may, subject to rule 19.3, with the approval of a Special Resolution of the Members:

- (a) divide among the Members in kind all or any part of the assets of the Company;
- (b) for that purpose, set a value as the liquidator considers fair on any property to be so divided; and
- (c) decide how the division is to be carried out as between the Members or different classes of Members.

- 19.2 The liquidator may, with the sanction of a Special Resolution of the Company, vest all or any part of any property in trustees on any trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Member is compelled to accept any property, shares or other securities in respect of which there is any liability.
- 19.3 During any period in which the Company acts solely as a trustee of an SMSF, then no Member in the Company is entitled to participate in the surplus profits or assets of the Company upon a winding-up of the Company unless permitted by the CA, the SISA, or such other applicable legislation or regulations as may be in force from time to time.
- 19.4 The Company may be placed into administration, deregistered or otherwise wound up or terminated in accordance with the CA.

## **20. Calls**

### **20.1 Calls on shares**

- (a) The Directors may make calls on the Members in respect of any amount unpaid on the shares held by the Members that has not been made payable at fixed times by the terms of issue of those shares.
- (b) Each Member must, on receiving at least 14 days' notice specifying the amount of the call, pay the amount to the Company at the time specified.
- (c) Where a sum that is called or payable to the Company in respect of a share is not fully paid on or before the required payment day, the person liable for the payment must pay interest on the amount unpaid from the required payment day to the time of actual payment at the Benchmark Interest Rate.
- (d) Any reasonable expenses incurred by the Company because of non-payment must also be paid by the person liable for the payment.
- (e) The Directors may waive payment of interest and expenses incurred in respect of a call, wholly or in part.
- (f) A call must be paid in the manner determined by the Directors.

## **21. Lien**

- 21.1 The Company has a first and paramount lien on every share for:
- (a) all unpaid calls and instalments due in respect of the share; and
- (b) all amounts (if any) that the Company may be required by law to pay in respect of the shares.
- 21.2 Any lien of the Company on a share extends to all Dividends payable and other entitlements arising or accruing in respect of the share, including the sale proceeds. The Directors may apply any such entitlements, including sale proceeds, towards payment of all amounts due to the Company in respect of which the lien exists.
- 21.3 Until the Member has paid all calls and other amounts (including interest and expenses) owing to the Company, the Member is not entitled to exercise any rights or privileges as a Member.

## **22. Forfeiture**

### **22.1 Notice of forfeiture**

- (a) Where a Member fails to pay the whole of a call or instalment of a call by the time appointed for payment of the call or instalment, the Directors may serve a notice on that Member requiring payment of so much of the call or instalment as is outstanding, together with any interest that has accrued and all expenses that may have been incurred by the Company as a result of the non-payment or late payment.
- (b) The notice must:
  - (i) specify the amount payable and a further period (at least 14 days after the date of service of the notice) by which, the amount payable is to be paid; and
  - (ii) state that, in the event that the whole of the amount payable is not paid by the time or a satisfactory payment plan agreed, the shares in respect of which the call was made will be liable to be forfeited.

### **22.2 Forfeiture**

- (a) Where the requirements of a notice served under rule 22.1 are not complied with, at any time after service but before the payment required is made, the Directors may by resolution forfeit any shares in respect of which the notice was given.
- (b) A forfeiture under rule 22.2(a) will include all Dividends, interest and other amounts payable by the Company in respect of the forfeited share and not actually paid before the forfeiture.
- (c) Where a share has been forfeited:
  - (i) a notice of the resolution of forfeiture is to be given to the Member who held the share immediately before the forfeiture; and
  - (ii) an entry of the forfeiture, with the date, must be made in the register of Members.
- (d) Failure to give the notice or to make the entry required under rule 22.2(c) does not affect the validity of the forfeiture.

### **22.3 Consequences of forfeiture**

A person whose shares have been forfeited:

- (a) ceases to be a Member in respect of the forfeited shares and has no interest in, or claims or demands against the Company in respect of those shares; and
- (b) remains liable for, and must pay to the Company all amounts that, at the time of forfeiture, were payable in respect of the shares including, if the Directors think fit, interest from the date of forfeiture on the amount for the time being unpaid. The interest rate is that determined by the Directors but must not exceed the Benchmark Interest Rate.

## 22.4 Sale of forfeited shares

A forfeited share becomes the property of the Company and may be cancelled, sold, reissued or otherwise disposed of on the terms and in the manner that the Directors think fit.

## 23. Share certificates

### 23.1 Issue of share certificates

- (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 Member's shares in accordance with the CA.
- (b) The Company's shares and other registers and records are conclusive evidence of all shares issued, cancelled or otherwise transacted, and all Members are bound by the Company's records. If a certificate in respect of a share or shares is lost or destroyed, the Company's records will be conclusive evidence to prove the status of any share or shares.

## 24. Notices and payments

### 24.1 Notices generally

- (a) A notice may be given by the Company to any Member by:
  - (i) serving it on the Member personally;
  - (ii) sending it by post to, or leaving it at, the Member's address as shown in the register or another address supplied by the Member to the Company for the giving of notices; or
  - (iii) transmitting it electronically to the address, number or identifier in relation to email, fax or other Technology, which is given by the Member to the Company for giving notices,provided that a transmission or similar report to the sender that indicates failure of delivery is not received by the earlier of 48 hours after transmission and the time of the meeting or relevant event as applicable.
- (b) Where a notice is given by post, service of the notice is taken 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.
- (c) Where a notice is given by electronic transmission or Technology, service of the notice is taken to be effected on the day and time it is transmitted or sent to the correct address.
- (d) The Company may give a notice in any manner provided under rule 24.1(a) despite a Member having provided to the Company an address, number or identifier in relation to email, fax or other Technology.

### 24.2 Joint holders

- (a) Except where joint holders of a share give notice to the Company of a single address for all notices and payments, the Company may provide all

communications and payments to the address of the joint holder whose name first appears in the register.

- (b) Any of the joint holders of a share may give effective receipts for all payments in respect of a share and the Directors are under no obligation to see to the application of any such payments.

#### 24.3 **Guardians and other persons**

- (a) The Company may provide all communications and payments to the parent or guardian of a Member who is a minor or the LPR of a Member who is under a legal disability.
- (b) The Company may provide all communications and payments to a person entitled to a share in consequence of the Transmission Event of a Member, by addressing it to the person by name or by the title of representative of the deceased, or assignee of the Insolvent Under Administration or by any like description at the address supplied for the purpose by the person, and if no address has been provided, to the Member's address as if the Transmission Event had not occurred.
- (c) The persons receiving any payments under rules 24.3(a) or (b) may give effective receipts for such payments in respect of a share and the Directors are under no obligation to see to the application of any such payments.

#### 24.4 **Notice of general meetings**

- (a) Notice of every general meeting must be given in the manner provided by rules 24.1, 24.2 and 24.3 to:
  - (i) each Member entitled to vote at the meeting and to each Director;
  - (ii) each person entitled to a share with voting entitlements in consequence of a Transmission Event of a Member who, but for that event, would be entitled to receive notice of the meeting; and
  - (iii) the auditor of the Company (if any).
- (b) No other person is entitled to receive notice of general meetings.

### **25. Loans to Members or associates**

25.1 Where the Company makes a loan to a Member (which has an extended definition for the purposes of this rule), the terms and conditions of the loan (unless and except to the extent otherwise agreed in writing between the Member and the Company) are deemed to be made under this rule and are as follows:

- (a) the maximum term of the loan is seven years from the end of the financial year in which the loan is made, unless:
  - (i) the full value of the loan is secured by a registered mortgage over real property;
  - (ii) 100% of the value of the loan is secured; and
  - (iii) when the loan is first made, the market value of that real property (less the amounts of any other liabilities secured over that property in priority to the loan) is at least 110% of the amount of the loan;

in which case the maximum term is 25 years from the end of the financial year in which the loan is made;

- (b) the Member must pay interest on the outstanding loan amount for each year that the loan amount is outstanding at the Benchmark Interest Rate, with such interest to accrue from day to day;
- (c) the Member must on or before the 30th day of June in each year of the term of the loan after the financial year in which the loan is made, pay or otherwise effect payment to the Company instalments of the loan amount and the interest payable on such instalments to be not less than the minimum repayments of principal and interest as required by Division 7A of the ITAA 1936, the intention being that the Member may make repayments in such amounts as the Member in their discretion decides but such repayments must not be less than the minimum repayments of principal and interest as required by Division 7A of the ITAA 1936;
- (d) until the loan amount is repaid in full by the Member to the Company, each of the following events will constitute an event of default:
  - (i) a default is made in the payment of any interest or other amount due pursuant to the agreement constituted by this rule 25 on the day upon which that payment becomes payable;
  - (ii) the Member breaches any other term of the agreement, constituted by this rule 25;
  - (iii) the Member commits any act of bankruptcy; or
  - (iv) a sequestration order is made against the estate or assets of the Member; and
- (e) if an event of default occurs, the loan amount outstanding at that time and any accrued interest and costs may at the option of the Company become immediately due and payable and the Company may make an immediate demand for payment.

25.2 This rule is deemed to comply with the minimum terms and conditions of a loan agreement so as to comply with Division 7A of the ITAA 1936 unless the Company and Members agree otherwise. In the event that Division 7A of the ITAA 1936 regulating loans by private companies to shareholders and their associates is varied, replaced or suspended, the provisions of this rule 25 are adjusted accordingly so the provisions reflect the adjusted provisions so as to avoid tax disadvantage to the Company, shareholders and associates of shareholders, as the case may be.

25.3 The Company and a Member acknowledge any loan by completion of Form 4 of this Constitution or such other written evidence is satisfactory to the Company subject to obtaining a registered mortgage, charge or other security as required by the Company. The Company may also use a similar acknowledgement for loans made to other persons, including any associate of a Member as that term is defined in Division 7A of the ITAA 1936.

25.4 Where the Company acts as the trustee of an SMSF, the Company must not make loans to SMSF members, their relatives or related parties of the SMSF members unless and only to the maximum extent permitted by the SISA.

25.5 The agreement constituted by this rule 25 is to be interpreted in accordance with the laws applicable in the State or Territory in which the Company is registered. Further, stamp duty or other requirements may apply depending on the laws of the applicable State or Territory.

25.6 In the interpretation of the agreement constituted by this rule 25 the following definitions apply unless the context otherwise requires:

- (a) loan amount means the principal amount of the monies advanced to the Member by the Company from time to time. The loan amount is any payment



made to the Member as evidenced in the Company's accounts in a written acknowledgement of the loan such as that in Form 4; and

- (b) minimum repayments means the repayment calculated in accordance with the formula set out in section 109E(6) of the ITAA 1936 and any applicable provision in Division 7A of the ITAA 1936 or regulations under that Division.

## **26. Implied provisions and sundry**

26.1 Unless the Directors determine otherwise, if:

- (a) there is a provision in the CA; or
- (b) during any period that the Company acts as the trustee of an SMSF — there is a provision in the SISA;

requiring the insertion of a provision into this Constitution in order to obtain a more favourable treatment for the Company, then that provision is implied as part of this Constitution and to the extent of any inconsistency that provision will prevail over the express provisions of this Constitution.

26.2 If rule 26.1 no longer requires a provision to override the provisions of this Constitution, then that provision ceases to have effect to that extent.

26.3 Rule 26.1 applies from the date of commencement of this Constitution or, for any law that applies after that time, the date the relevant law commences to operate, as the case may be. However, the Directors may determine that anything implied applies on a retrospective basis or in an amended way, either in whole or in part.

26.4 For the avoidance of doubt, where the CA empowers the Company, its officers or Members to do a thing (including performing any act or making any resolution or decision by any means), the Company, its officers or the Members are empowered accordingly, in addition to the provisions of this Constitution.

26.5 Where the law (including the CA) requires or contemplates that a:

- (a) meeting or resolution is held or made;
- (b) proceeding or action occurs;
- (c) financial or other transaction occurs; or
- (d) document, minute, certificate (including share certificate) record or book is created, issued, transferred, signed, executed, kept, stored, recorded, varied, verified, identified or otherwise dealt with;

this can occur by the use of Technology.

26.6 Any resolution or document made or executed (whether by Directors or Members and whether by way of meeting, circulating resolution or otherwise) can be made or executed at a specific time of day, in addition to a specific date.

## **27. Variation**

Subject to rule 4.4, the Company may vary this Constitution, in whole or in part, by Special Resolution, and such variation will apply on the date of variation or on a prospective or retrospective basis as specified in that variation (including any provisions deemed to be included under rule 26).

## 28. Interpretation

In this Constitution, any table of contents, headings, highlighting and italics are for convenience only and do not affect the interpretation of this Constitution and, unless the context requires otherwise or the Members and Directors unanimously determine otherwise:

- 28.1 words importing the singular include the plural and vice versa and words importing a gender include any gender;
- 28.2 a reference to a share includes a reference to a Security and a reference to a Member, shareholder or holder in respect of a share or a Security is construed accordingly;
- 28.3 a reference to a rule is a reference to a rule of this Constitution, and a reference to a rule can be a reference to a distinct rule, sub-rule, paragraph, sub-paragraph or the like to simplify references throughout this Constitution;
- 28.4 a reference to any thing (including any right) includes a part of that thing but this does not mean that performance of part of an obligation is performance of the obligation;
- 28.5 a reference to a document includes all amendments or supplements to, or replacements or novations of, that document, including a document or record that is accessed via Technology;
- 28.6 a reference to a general meeting includes meetings of the Company and Members and vice versa and includes a reference to a meeting of all Members or the relevant class of Members as the case requires;
- 28.7 a reference to any person, company, association or body includes a reference to its respective authorised officers, agents, delegates, successors, assigns, LPR, executors and administrators, and also includes any governmental body or agency;
- 28.8 a reference to a person includes a reference to a natural person, a company or other legal person or entity;
- 28.9 a reference to any provision of this Constitution and any law, regulation, regulatory guide, modification order, ruling, circular or guideline is a reference to the same as amended, consolidated, supplemented or replaced from time to time and references to legislation include any regulations issued under the same;
- 28.10 a reference to a party to any document includes that party's administrators, successors and permitted assigns;
- 28.11 a reference to the age of a Member, Director or other person must be read subject to any corresponding relevant law (including the CA), and if any stated age is inconsistent with the relevant law, then the age in the relevant law prevails;
- 28.12 other parts of speech and grammatical forms of a word, expression or phrase defined in this Constitution have a corresponding meaning;
- 28.13 the use of a list or the words include, includes or including operates without limiting any other things that are not expressly listed;
- 28.14 a reference to a payment or similar terminology (including a reference to money or cash) includes the value of any asset provided as well as a payment of money and, if the Company consents, includes a set off of amounts;
- 28.15 a reference to a meeting, document, writing, instrument, form, resolution, record, signature, show of hands, Poll or related forms of these words includes where the effect of these things is produced or replicated by alternative means, including by the use of Technology;
- 28.16 a reference to a resolution includes a declaration;

28.17 this Constitution is to be interpreted subject to the CA and where a term of this Constitution relates to or involves a particular term of the CA, it has the same meaning as that in the CA to the extent that a contrary intention does not appear in this Constitution; and

28.18 the replaceable rules in the CA are displaced and do not apply to the Company.

## 29. Definitions

In this Constitution, the following definitions apply unless the context requires otherwise:

29.1 **Appointing Director** has the meaning given by rule 6.5(a);

29.2 **ASIC** means the Australian Securities and Investments Commission;

29.3 **Benchmark Interest Rate** means the rate as defined in section 109N(2) of the ITAA 1936;

29.4 **CA** means the *Corporations Act 2001* (Cth) and any applicable regulations relating thereto;

29.5 **Company** means the company to which this constitution relates;

29.6 **Constitution** means this constitution and includes Part B;

29.7 **Director**, subject to rule 6.2 which describes cessation of the office, means a person appointed or elected as a director in accordance with this Constitution and includes any alternate director duly acting as a director and also includes a Director who is a Successor Director as contemplated by rule 6.5;

29.8 **Dividend** includes a distribution to a Member in relation to a share and includes final and interim distributions;

29.9 **Insolvent Under Administration** has the meaning given by s 9 of the CA;

29.10 **ITAA 1936** means the *Income Tax Assessment Act 1936* (Cth) or *Income Tax Assessment Act 1997* (Cth) as applicable, and any applicable regulations relating thereto;

29.11 **LPR** means the executor of the will or administrator of the estate of a deceased person, the trustee or administrator of the estate of a person under a legal disability, a person who holds a power of attorney granted by a person but an LPR can never be, in relation to a person, that person's trustee in bankruptcy or any similar administrator or controlling person in the case of an undischarged bankrupt or debt agreement, and **Legal Personal Representative** has a corresponding meaning;

29.12 **Member** means a shareholder or a person otherwise recognised as a member under the CA and, in respect of a Security other than a share, means the holder of the Security as registered by the Company and in respect of rule 25, a reference to Member includes a reference to an associate of a Member within the meaning of Division 7A of the ITAA 1936;

29.13 **Member Present** includes, in connection with a meeting, the Member present in person at the venue for the meeting, by Proxy or, where the Member is a body corporate, by a Representative. A person can also be considered present by using Technology. The presence of an LPR of any Member at a meeting is taken to be the presence of the Member, including for the purpose of quorum;

29.14 **Offer Period** means a period of 30 days commencing on the date an offer to sell shares is made by a Proposing Transferor;

- 29.15 **Poll** means an indication of choice on a question or proposed resolution where the number of votes cast for or against the resolution (rather than the number of people voting for or against it) are counted, having regard to the fact that one person may be exercising a number of votes under this Constitution or the law;
- 29.16 **Preference Rate** is the rate as a percentage per annum determined by Directors for Dividends on a preference share and set out on the certificate for the share. It may be a fixed or variable rate;
- 29.17 **Proxy** means an individual or body corporate that is authorised to pass resolutions and attend and vote at meetings in place of a Member, and a Proxy includes the donee (that is, the attorney) under a power of attorney (whether enduring or general), subject to the appointing instrument;
- 29.18 **Representative** has the meaning given in rule 7.5(b);
- 29.19 **Securities** includes shares, options, debentures and includes any other Security that is within the definition of Security in the CA and the term **Security** has a corresponding meaning;
- 29.20 **Sign** includes, without limitation:
- (a) the placing of a person's signature on a physical document to express consent; and
  - (b) subject to the CA, the use of Technology or electronic communication to express consent including by way of electronic signature, email or password identification, subject to the *Electronic Transactions Act 1999* (Cth)
- and Sign also includes the actions described where they are performed by a person at the direction and in the presence of the person who Signs, and Signs, Signed, Signing and Signature have corresponding meanings;
- 29.21 **SISA** means the *Superannuation Industry (Supervision) Act 1993* (Cth) and any applicable regulations relating thereto;
- 29.22 **SMSF** means a self managed superannuation fund as defined in the SISA;
- 29.23 **SMSF Interestholder** means a person, deceased or otherwise, who holds an interest or in respect of whom an interest is held in an SMSF, an interest being any amount, benefit or entitlement in the relevant SMSF;
- 29.24 **Special Resolution** means:
- (a) a resolution that is passed in a meeting of which notice has been given under rule 12.3(a)(iii), and where the resolution is passed by at least 75% of the votes pursuant to rule 12.10; or
  - (b) a circulating resolution passed by at least 75% of votes or a single member resolution in accordance with rules 11.1 or 11.2 (whichever is applicable);
- 29.25 **Successor Director** has the meaning given by rule 6.5(a);
- 29.26 **Technology** means any means of:
- (a) information transfer, storage, recording, verification or identification; or
  - (b) communication;
- whether electronic or otherwise, and includes without limitation:
- (c) video and/or audio means whether telephone, wireless, computer-based or otherwise; or

- (d) email or electronic or computer-based information storage or recording;

29.27 **Transmission Event** means:

- (a) in respect of a Member who is an individual:
  - (i) the death of the Member;
  - (ii) the Member becoming an Insolvent Under Administration, becoming subject to a debt agreement under Part IX of the *Bankruptcy Act 1966* (Cth) or entering into a personal insolvency agreement under Part X of the *Bankruptcy Act 1966* (Cth); or
  - (iii) the Member becoming of unsound mind, losing legal capacity or a Member who becomes, or whose estate becomes, liable to be dealt with in any way under the law relating to mental health; and
- (b) in respect of a Member that is a corporation:
  - (i) the appointment of a receiver or receiver and manager in respect of the Member's assets;
  - (ii) the appointment of an official manager, administrator or liquidator in respect of the Member;
  - (iii) the Member beginning to be wound up; or
  - (iv) the succession by another person to the assets and liabilities of the Member; and

29.28 **Value** means the value of shares as determined in accordance with rule 14.2.

## End of Part A

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### Disclaimer

The following is the disclaimer referred to in the table of contents page to this constitution. This documentation has been prepared by DBA Lawyers Pty Ltd based on the law as at 13 May 2019 and the instructions contained in the order form. DBA Lawyers provides no advice to the parties involved with the company unless it is requested to do so in writing. As corporations, superannuation and taxation laws are subject to continual change and substantial penalties can be imposed for any contravention, expert advice should be obtained wherever in doubt. Unless specifically instructed by you in writing, and subject to you entering into an ongoing client agreement and payment of a yearly fee, there is no obligation whatsoever on us to notify you in respect of any changes to the law, ASIC or ATO policies, etc, and how such changes might impact on documents or information provided.

**PART B: FORMS**

**FORM 1**

**TRANSFER NOTICE**

To the Members of the Company:

I,

<b>NAME</b>	
<b>ADDRESS</b>	

understand that I must, under the terms of the Company's constitution, notify you that I propose to transfer my shares, unless the other Members agree otherwise, for the following price:

<b>NUMBER AND CLASS OF SHARES ON OFFER</b>	
<b>TRANSFEROR'S PRICE</b>	
<b>OTHER PARTICULARS</b>	

<b>SIGNATURE OF THE PROPOSING TRANSFEROR OR ITS AUTHORISED OFFICER</b>	<b>DATE</b>

.....

**ACCEPTANCE OF OFFER TO BUY SHARES**

I,

<b>NAME</b>	
<b>ADDRESS</b>	

accept the above offer to buy shares.

*(Do not detach this section.)*

<b>SIGNATURE OF MEMBER OR ITS AUTHORISED OFFICER</b>	<b>DATE</b>

FORM 2

PROXY FORM

(use this form to appoint a proxy where a member is unable to attend a company meeting)

\*I/We

<b>NAME</b>	
<b>ADDRESS</b>	

being a \*Member/Members of [*name of Company*] hereby appoint

<b>1.</b>	
-----------	--

or, failing such person

<b>2.</b>	
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or, failing such person or if no person is named, the Chairman of the meeting, as \*my/our proxy to attend, speak and vote for \*me/us on \*my/our behalf at the\*annual general/general meeting of the Company to be held on the [*insert date*] and at any adjournment of that meeting.

If \*I/we have appointed two persons as proxies, each is entitled to vote in respect of the following proportions of \*my/our voting rights:

<b>FIRST PROXY NAME</b>	
<b>Proportion of voting rights (%)</b>	

<b>SECOND PROXY NAME</b>	
<b>Proportion of voting rights (%)</b>	

**Voting Instructions**

Should the Member wish to direct the proxy how to vote, place a mark in the appropriate box below, otherwise the proxy may vote or abstain from voting as the proxy thinks fit.

<b>Resolution</b>	<b>For</b>	<b>Against</b>
1. [Attach/insert resolution]	<input type="checkbox"/>	<input type="checkbox"/>
2. [Attach/insert resolution]	<input type="checkbox"/>	<input type="checkbox"/>

<b>SIGNATURE OF MEMBER</b>	<b>DATE</b>

\*Strike out whichever is not applicable.

**FORM 3**

**BODY CORPORATE REPRESENTATIVE FORM**

*(use this form to appoint a representative where the Company requires an individual to exercise the powers of the Company at a meeting of company members, meeting of creditors or debenture holders, in relation to resolutions to be passed without meetings or in its capacity as proxy)*

This is to certify that by a resolution of the directors of:

<b>COMPANY</b>	
<b>ACN</b>	

(Company), the Company has appointed

<b>NAME</b>	
<b>ADDRESS</b>	

in accordance with section 250D of the *Corporations Act 2001* (Cth), to act as the body corporate representative of the Company at the following meeting and any adjournment to it:

<b>NAME OF MEETING</b>	
<b>TIME OF MEETING</b>	
<b>DATE OF MEETING</b>	
<b>ADDRESS OF MEETING</b>	

\*with the following restriction(s) on the powers that may be exercised:

<b>RESTRICTION(S)</b>	
-----------------------	--

Executed by the Company in accordance with its constituent documents

Signed by an authorised representative of the Company:

<b>NAME</b>	
<b>POSITION</b>	

<b>SIGNATURE</b>	<b>DATE</b>

\*Signed by an authorised representative of the Company:

<b>NAME</b>	
<b>POSITION</b>	

<b>SIGNATURE</b>	<b>DATE</b>

\*Strike out if not applicable.



**FORM 4**

**LOAN AGREEMENT**

Between:

<b>COMPANY NAME</b>		('Lender')
---------------------	--	------------

And:

<b>NAME</b>		('Borrower')
<b>ADDRESS</b>		

1. The Lender has advanced the amounts referred to in the Lender's accounts or the Loan Amounts specified below on the dates referred to therein by way of loan to the Borrower. Unless otherwise agreed, the amount shown in the Lender's accounts will be tracking the loan in respect of each financial year.
2. The Borrower has, subject to any Special Terms and Conditions specified below, agreed to the terms and conditions of the Lender's constitution (including rule 25) as governing any loan amount.
3. The Lender and Borrower confirm that this agreement applies to any further amounts advanced by the Lender to the Borrower subject to the Maximum Loan Facility Limit.
4. The Lender and Borrower agree that, as indicated under the heading 'Security', if any property is specified as the Property, the Lender may effect security (if any) in respect of the loan, as specified by a mark (if any) in the check box below.

**Loan Amounts**

Date	Amount

**Maximum loan facility limit**

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## Special Terms and Conditions

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### Security

*Complete this section if security is required in respect of the Loan Amounts. Note that if a term of greater than 7 years is proposed, refer to rule 25.1(a) of the Constitution.*

<b>Property:</b>	
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The Lender takes the following security (if any) in respect of the Loan Amounts:

- a registered mortgage or charge in respect of the Property
- a caveat in respect of title to the Property
- other (please specify): \_\_\_\_\_

Signed by the parties on    /    /

**Lender**

**Borrower**

FORM 5

**SUCCESSOR DIRECTOR APPOINTMENT**

*(only for use with the corresponding DBA Lawyers company constitution)*

**Part A and Part B must both be completed. Part B must be given to the company**

**PART A — APPOINTMENT**

This Successor Director appointment operates to revoke any prior appointments and to appoint one or more Successor Directors to take office as directors of the Company upon the death or mental incapacity of the Appointing Director. We strongly recommend that you contact your adviser and your lawyer before completing this appointment. If inappropriately or incorrectly completed, significant negative implications may arise.

**COMPANY DETAILS**

Name: ..... ('Company')

ACN/ABN: .....

**DIRECTOR MAKING THIS APPOINTMENT**

Name: ..... ('Appointing Director')

Address: .....

I, the abovenamed Appointing Director, revoke any prior Successor Director nominations and appoint one or more Successor Directors in the terms stated below. This appointment is subject to the Company's Constitution including defined terms.

**SUCCESSOR DIRECTOR(S) — TIER 1**

As authorised by the Company's constitution, I appoint the below person(s) to be my Successor Director(s) at the time of my death or my mental incapacity ('Succession Event'). Upon a Succession Event occurring, each person below will immediately become a director of the Company. If I have appointed more than one person below, I appoint all persons below to immediately become directors upon a Succession Event occurring.

If there is more than one person specified below, then, at the time of the Succession Event, if one of the persons is unable or unwilling to act ('Precluded'), this appointment still operates in relation to any person who is not Precluded. If all persons in this Tier 1 section are Precluded then this Tier 1 appointment has no effect, and this event is referred to as a 'Tier 1 Failure'.

My Successor Director(s) is/are my Legal Personal Representative (eg, attorney under enduring power of attorney or executor) (even if this comprises more than one person)

**or**

**First Tier 1 Successor Director:** .....

and

**Second Tier 1 Successor Director (optional):** .....

*(It is not mandatory to appoint a second Successor Director immediately above. If you do, both persons named within this box will become directors, unless they refuse, are disqualified or cannot act)*

The appointment within this box is referred to as the Tier 1 Appointment.

**OPTIONAL — SUCCESSOR DIRECTOR(S) — TIER 2**

*It is not mandatory to complete this section. Only complete this section if you want additional persons to step into the director role, in the case that all Successor Directors in the Tier 1 Appointment refuse, are disqualified or cannot act.*

I, the Appointing Director, make the following appointment in the event of a Tier 1 Failure. If the Successor Director fields below are blank, there is no Tier 2 appointment.

**First Tier 2 Successor Director:** .....

**Second Tier 2 Successor Director (optional):**.....

*(It is not mandatory to appoint a second Successor Director immediately above. If you do, both persons named within this box will become directors, unless they refuse, are disqualified or cannot act)*

**EXECUTION**

I have signed this appointment this ..... day of ..... 20.....

Signed by the **APPOINTING DIRECTOR** in the )  
presence of the witness named below: )  
)  
)  
)  
.....  
*Signature of **Appointing Director***

**WITNESS** (*preferably not a Successor Director*)  
I declare that I am over 18 years of age and was present when the Appointing Director signed this appointment. (*Preferably, the witness should not be a Successor Director, but the appointment will not be invalid if this is not followed.*)  
Signature of witness: .....  
Full name: .....  
Address: .....

**COMPANY'S ACCEPTANCE** (*failure to complete this box will not invalidate the appointment*)  
*If the Company has one director, that director should sign below. If there is more than one director, preferably a director who is not the Appointing Director should sign below.*  
Signed by a director on behalf of the Company )  
as confirmation that the Company has been )  
given and has accepted this appointment: ) .....  
*Signature of a director*

*Part B below should also be completed by the Successor Director(s) and given to the Company*

**Note: Succession Event**

*A Succession Event as defined in this appointment is death or mental incapacity. Should you require any other type of event to be a Succession Event to be covered you should seek legal advice regarding your particular circumstances and obtain tailored documents.*

## PART B — CONSENT TO ACT

***Under the law, each Successor Director named should complete this part and give it to the Company before becoming a director***

The Successor Director(s) below sign and consent in all relevant capacities, including consent to act as director of the Company in its own right and as trustee for any trust or superannuation fund.

<p><b>CONSENT — FIRST TIER 1 SUCCESSOR DIRECTOR</b></p> <p>I declare that I am named as a Successor Director in the appointment made by the Appointing Director, and I consent to so act.</p> <p>Signature: .....</p> <p>Date: .....</p> <p>Full name: .....</p> <p>Address: .....</p>	<p><b>CONSENT — SECOND TIER 1 SUCCESSOR DIRECTOR (if any)</b></p> <p>I declare that I am named as a Successor Director in the appointment made by the Appointing Director, and I consent to so act.</p> <p>Signature: .....</p> <p>Date: .....</p> <p>Full name: .....</p> <p>Address: .....</p>
<p><b>CONSENT — FIRST TIER 2 SUCCESSOR DIRECTOR (if any)</b></p> <p>I declare that I am named as a Successor Director in the appointment made by the Appointing Director, and I consent to so act.</p> <p>Signature: .....</p> <p>Date: .....</p> <p>Full name: .....</p> <p>Address: .....</p>	<p><b>CONSENT — SECOND TIER 2 SUCCESSOR DIRECTOR (if any)</b></p> <p>I declare that I am named as a Successor Director in the appointment made by the Appointing Director, and I consent to so act.</p> <p>Signature: .....</p> <p>Date: .....</p> <p>Full name: .....</p> <p>Address: .....</p>

**Note: immediately upon becoming a director**

*You should consider what regulatory bodies must then be notified (and any time limits for this) and what other obligations may apply. For example, a notification to ASIC of a change of directors is required.*

**Note: SMSF definition and other information**

*If the Company is the trustee of a superannuation fund, the appointment of one or more Successor Directors does not necessarily mean the fund will continue to meet the 'self managed*

*superannuation fund' ('SMSF') definition. Substantial adverse consequences can arise from a failure to adhere to the rules. Expert advice should be obtained.*

*Changes to the directors of an SMSF trustee company must be notified to the ATO.*

*For more information, each Successor Director should seek their own independent advice. The company memo provided with the constitution also provides some guidance.*

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