



L A W Y E R S

Constitution

TELSTRA SUPER PTY LTD

Date: 20 December 2021

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Contents

Contents	i	
Details	1	
1. DEFINITIONS AND INTERPRETATION	2	
2. REFERENCES TO THE LAW	4	
3. HEADINGS AND TABLE OF CONTENTS	5	
4. REPLACEABLE RULES	5	
5. SHARES	5	
6. ISSUE OF SHARES	5	
7. MODIFICATION OF RIGHTS	5	
8. EQUITABLE AND OTHER INTERESTS NOT TO BE RECOGNISED	5	
9. TRANSFER OF SHARES	6	
10. TRANSMISSION OF SHARES	7	
11. COMPANY TO HAVE LIEN ON SHARES AND DIVIDENDS	7	
12. AS TO ENFORCING LIEN BY SALE	8	
13. APPLICATION OF PROCEEDS OF SALE	8	
14. VALIDITY OF SALES	8	
15. MEMBERS TO INDEMNIFY AGAINST PAYMENT OF CERTAIN TAXES BY THE COMPANY	8	8
16. MEMBER'S ESTATE LIABLE	9	
17. ALTERATION OF SHARE CAPITAL	9	
18. CONSTITUTION APPLIES TO NEW SHARES	9	
19. GENERAL MEETING	10	
20. USE OF TECHNOLOGY AT GENERAL MEETINGS	10	
21. NOTICE OF GENERAL MEETINGS	10	
22. NON-RECEIPT OF OR DEFECTIVE NOTICE	10	
23. QUORUM AT GENERAL MEETINGS	11	
24. CHAIR OF GENERAL MEETINGS	11	
25. CONDUCT OF GENERAL MEETINGS	11	
26. DECISIONS AT GENERAL MEETINGS	12	
27. VOTING RIGHTS	13	

CONSTITUTION

28.	DECISIONS WITHOUT GENERAL MEETINGS	14
29.	RESOLUTION OF SINGLE MEMBER	14
30.	REPRESENTATION AT GENERAL MEETINGS	14
31.	APPOINTMENT OF ATTORNEY	16
32.	NUMBER OF DIRECTORS.....	16
33.	CLASSES OF DIRECTORS.....	16
34.	QUALIFICATION OF DIRECTORS	17
35.	TENURE OF OFFICE	17
36.	APPOINTMENT AND REMOVAL OF DIRECTORS.....	17
37.	RE-APPOINTMENT.....	18
38.	VACATION OF OFFICE	18
39.	FILLING VACANCIES	19
40.	DIRECTORS MAY CONTRACT ETC. WITH COMPANY OR HOLD OTHER OFFICES	19
41.	DIRECTORS' INTERESTS AND CONFLICTS	19
42.	REMUNERATION.....	20
43.	APPOINTMENT OF ALTERNATE DIRECTORS.....	20
44.	COMPLIANCE WITH RELEVANT LAW	22
45.	BOARD TO MANAGE BUSINESS AND EXERCISE POWERS OF COMPANY	22
46.	POWERS TO BORROW MONEY	22
47.	ACTS VALID NOTWITHSTANDING DEFECT IN APPOINTMENT.....	22
48.	MINUTES.....	23
49.	BOARD MAY REGULATE MEETINGS AS it SEES FIT	23
50.	BOARD MAY MEET USING TECHNOLOGY	23
51.	BOARD DECISIONS	23
52.	VOTE OF CHAIR.....	24
53.	SUMMONING MEETINGS.....	24
54.	QUORUM.....	24
55.	CONTINUING DIRECTORS MAY ACT	24
56.	CHAIR OF BOARD.....	24
57.	ACTING CHAIR	25
58.	VALIDITY OF RESOLUTION WITHOUT MEETING	25

CONSTITUTION

59.	COMMITTEES.....	25
60.	COMMITTEE CHAIR.....	26
61.	ACTING COMMITTEE CHAIR.....	26
62.	COMMITTEE MEETING QUORUM.....	26
63.	PROCEEDINGS OF COMMITTEE MEETINGS.....	26
64.	VOTE OF COMMITTEE CHAIR.....	27
65.	APPOINTMENT OF SECRETARIES.....	27
66.	APPOINTMENT OF ACTING SECRETARY.....	27
67.	NEGOTIABLE INSTRUMENTS.....	27
68.	ACCOUNTS.....	27
69.	APPOINTMENT OF AUDITOR.....	27
70.	CONCLUSIVENESS OF ACCOUNTS.....	27
71.	PAYMENT OF DIVIDENDS.....	28
72.	DIVIDENDS DIVISIBLE AMONG HOLDERS OF ORDINARY SHARES.....	28
73.	PAYMENTS OF DIVIDENDS IN SPECIE.....	28
74.	RECEIPTS BY JOINT HOLDERS.....	28
75.	ELECTRONIC PAYMENT OF DIVIDENDS.....	28
76.	NO INTEREST ON DIVIDENDS.....	28
77.	DEDUCTIONS FROM DIVIDENDS.....	28
78.	RESERVES.....	29
79.	CAPITALISATION OF UNDIVIDED PROFITS.....	29
80.	FRACTIONS.....	30
81.	NOTICE TO MEMBERS.....	30
82.	WHEN DEEMED SERVED.....	30
83.	JOINT HOLDERS.....	31
84.	PERSONS ENTITLED BY TRANSMISSION.....	31
85.	DISTRIBUTION OF ASSETS ON WIND-UP.....	31
86.	JURISDICTION.....	31
87.	INDEMNITY TO DIRECTORS AND OFFICERS.....	31
88.	INSURANCE OF OFFICERS.....	32
89.	AMENDMENT OF CONSTITUTION.....	32

CONSTITUTION

Details

Resolved to be adopted: 20 December 2021

Parties

Name	Telstra Super Pty Ltd
ACN	007 422 522
Address	Level 10, 130 Lonsdale Street, Melbourne (Company)

1. DEFINITIONS AND INTERPRETATION

1.1 In this Constitution, unless otherwise indicated by the context:

Act means the *Corporations Act 2001 (Cth)*.

Alternate Director means a person appointed by the Director as an alternate or substitute for that Director in accordance with Clause 43.

Auditor means the person appointed to the office as auditor of the Company in accordance with Clause 69.

Board means the Directors for the time being of the Company or those of them who are present at a meeting at which there is a quorum.

Chair of the Board or **Chair** means the Director presiding for the time being as chair of Board meetings in accordance with Clause 56.

Committee means a committee to which powers have been delegated by the Board under Clause 59.

Commonwealth means the Commonwealth of Australia including the external territories of the Commonwealth of Australia.

Company means Telstra Super Pty Ltd under whatever name it subsequently comes to be known.

Constitution means this Constitution of the Company and includes all alterations of and additions to the Constitution from time to time in force.

Director includes a person duly appointed and for the time being acting as an Alternate Director.

Dividend includes bonus and interim dividend.

Dollars or \$ means Australian dollars.

Employer Director means a person appointed as an Employer Director in accordance with Clause 36(b).

Fund means:

- (a) the Telstra Superannuation Scheme, established under a Deed dated 13 June 1990 as amended, varied, repealed or replaced from time to time, under whatever name it subsequently comes to be known; and
- (b) any other superannuation fund, within the meaning of any Relevant Law, nominated by the Principal Employer from time to time by notice in writing to the Company.

Independent Director means a person appointed as an Independent Director in accordance with Clause 36(e).

Member means any person who for the time being is a member of the Company in accordance with the provisions of the Act.

Member Director means a person appointed as a Member Director in accordance with Clause 36(b).

Nominating Body means, in respect of:

- (a) Member Directors, at the relevant time, a body as determined by the Board as a nominating body for the purposes of Clauses 36 and 37; and
- (b) Employer Directors, the Principal Employer.

Office of the Company means the registered office of the Company for the time being.

Officer includes any person acting for the time being as an officer of the Company, as that term is defined in the Act.

Person Entitled by Transmission means any person, trustee, executor, committee, legal personal representative or persons jointly, who, in accordance with Clause 10, is entitled to a share, and includes any person nominated by such person, trustee, executor, committee, legal personal representative or persons in accordance with Clause 10.

present means:

- (a) in relation to a general meeting, a Member present in person, by proxy, attorney or, where the Member is a body corporate, by Representative (and includes where such a person attends through the use of technology); and
- (b) in relation to a Director, means present in person, or by any person acting as an Alternate Director of the Director concerned (and includes where such a person attends through the use of technology).

Principal Employer has the same meaning as in the Trust Deed.

proxy means a proxy of a Member appointed pursuant to Clause 30.

Register means the register of Members kept pursuant to the Act.

Registered Address of a Member means the address of a Member stated in the Register, or any other address of which the Member notifies the Company as a place at which the Member is willing to accept service of notices.

Relevant Law means:

- (a) the Act;
- (b) the SIS Act;
- (c) the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth); and
- (d) any other present or future law of the Commonwealth or any State or Territory of Australia which applies to a Fund, the Company or the Principal Employer with the force of law.

Representative in relation to a body corporate which is a Member of the Company, means a representative appointed pursuant to Clause 30.

Secretary means any person or persons appointed to perform the duties of a secretary of the Company.

Shares means shares in the share capital of the Company.

SIS Act means the *Superannuation Industry (Supervision) Act 1993* (Cth).

Tax means a governmental impost (including without limitation a tax or duty) which is or might become payable in connection with the Fund, income of the Fund, payment or transfer of money or

CONSTITUTION

property to or from the Fund, the Trust Deed governing the Fund for the time being or anything done or which may be done under that Trust Deed.

Transmission Event means:

- (a) for a Member who is an individual – the Member’s death, the Member’s bankruptcy or the Member becoming of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; and
- (b) for a Member who is a body corporate – the dissolution of the Member or the succession by another body corporate to the assets and liabilities of the Member.

Trust Deed means the trust deed for the Fund, as amended from time to time.

1.2 In the interpretation of this Constitution the following rules of interpretation apply, unless the contrary intention is apparent:

- (a) references to 'person' and words importing a person include natural persons, partnerships, associations (whether incorporated or unincorporated), corporations, companies, bodies corporate and other such corporate entities;
- (b) references to 'month' mean a calendar month;
- (c) expressions referring to writing shall be construed as including references to printing, photography and other modes (either mechanical or electronic) of representing or reproducing words in a visible form;
- (d) words importing the singular or plural number shall be deemed to include the plural or singular number respectively;
- (e) words importing any gender include all genders;
- (f) references to 'notices' in Clauses 81 to 84 (both inclusive) include not only formal notices of a meeting but also all documents and other communications from the Company to its Members, but do not include cheques;
- (g) references to a Clause shall be deemed to be a reference to a clause of this Constitution;
- (h) a reference to the Act or any other statute or regulation or any section or clause includes all statutes, regulations, sections or clauses varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
- (i) a reference to a document being 'signed' or to 'signature' includes that document being executed under hand or under seal or by any other method and, in the case of a communication in electronic form, includes the document being authenticated in accordance with the Act or any other method approved by the Board.

2. REFERENCES TO THE LAW

Except so far as the contrary intention appears in this Constitution:

- (a) a word or expression that is given a special meaning or interpretation by the Act or by the *Acts Interpretation Act 1901* (Cth) shall have the same meaning in this Constitution unless the context implies a contrary intention;

CONSTITUTION

- (b) if any of the provisions of this Constitution are, at any time, in conflict with the provisions of Relevant Law then, while the conflict subsists, the provisions of this Constitution conflicting with Relevant Law shall not apply to the Company, and the Board shall not be bound to comply with such provisions.

3. HEADINGS AND TABLE OF CONTENTS

Headings and the table of contents have been inserted for guidance only and shall not be deemed to form part of this Constitution.

4. REPLACEABLE RULES

The replaceable rules contained in the Act shall not apply to the Company except in so far as they are repeated or contained in this Constitution.

5. SHARES

Except as otherwise specifically provided in this Constitution, all ordinary Shares will rank equally in all respects.

6. ISSUE OF SHARES

Without prejudice to any special rights conferred on the holders of any Shares or class of Shares or any requirements in the Act or this Constitution, the Board may, with the agreement of the Principal Employer:

- (a) issue, allot or grant options for, or otherwise dispose of, shares in the company; and
- (b) decide:
- (i) the persons to whom shares are issued or options are granted;
 - (ii) the terms on which shares are issued or options are granted; and
 - (iii) the rights and restrictions attached to those shares and options.

7. MODIFICATION OF RIGHTS

If at any time the share capital is divided into different classes of Shares, the rights attached to any class (unless otherwise provided by the terms of issue of the Shares of that class) may, whether or not the Company is being wound up, be varied:

- (a) with the consent in writing of the holders of 75% of the issued Shares of that class; or
- (b) with the sanction of a special resolution passed at a separate general meeting of the holders of the Shares of the class which is held in accordance with Clause 19 (to the extent possible and with such changes as are necessary for a separate meeting of the holders of the issued Shares of that class).

8. EQUITABLE AND OTHER INTERESTS NOT TO BE RECOGNISED

- (a) Except as required by law, the Company shall not be required to recognise a person as holding a Share upon any trust.

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

9. TRANSFER OF SHARES

- (a) The Board shall only register a transfer of Shares as previously agreed with the Principal Employer, such agreement to be evidenced in writing.
- (b) The Board and the Principal Employer may agree, in writing, to decline to register any transfer of Shares.
- (c) Subject to Clauses 9(a) and 9(b), this Constitution, and to the rights or restrictions attached to any Shares or class of Shares, a Member may transfer any of the Member's shares by an instrument in writing in any usual form or in any other form approved by the Board.
- (d) An instrument of transfer referred to in Clause 9(c) must:
 - (i) be signed by or on behalf of both the transferor and the transferee unless the instrument of transfer relates only to fully paid shares and the Board has dispensed with signature by the transferee or the transfer of the shares is effected by a document which is, or documents which together are, a sufficient transfer of those shares under the Act;
 - (ii) if required by law to be stamped, be duly stamped;
 - (iii) in the case of a transfer of partly paid shares, be endorsed by, or accompanied by an instrument executed by, the transferee to the effect that the transferee agrees to accept the shares subject to the terms and conditions on which the transferor held them and to become a Member and to be bound by the Company's Constitution; and
 - (iv) be left for registration at the Company's registered office, or at such other place as the Board decides, with any other evidence the Board requires to prove the transferor's title or right to the shares and the transferee's right to be registered as the owner of the shares.
- (e) If the Board refuses to register any Share transfer, notice of such refusal shall be given as required by the Act.
- (f) A transferor of shares remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of Members as the holder of the shares.
- (g) The Company may retain a registered instrument of transfer for any period the Board decides.
- (h) Except in the case of fraud, the Company must return any instrument of transfer which the Board declines to register to the person who deposited it with the Company.
- (i) Subject to Clauses 9(a) and 9(b), the Board may, to the extent permitted by law, waive all or any part of the requirements of this Clause 9.

10. TRANSMISSION OF SHARES

- (a) Where a Member dies, the only persons the Company will recognise as having any title to the Member's shares or any benefits accruing on those shares are:
 - (i) the legal personal representative of the deceased, where the deceased was a sole holder; and
 - (ii) the survivor or survivors, where the deceased was a joint holder.
- (b) Clause 10(a) does not release the estate of a deceased Member from any liability on a share, whether that share was held by the deceased solely or jointly with other persons.
- (c) A person who becomes entitled to a share because of a Transmission Event may, on producing any evidence the Board requires to prove that person's entitlement to the share, choose:
 - (i) to be registered as the holder of the share by signing and giving the Company a written notice stating that choice; or
 - (ii) to nominate some other person to be registered as the transferee of the share by executing or effecting in some other way a transfer of the share to that other person.
- (d) The provisions of this Constitution concerning the right to transfer shares, and the registration of transfers of shares apply, so far as they can and with any necessary changes, to any transfer under Clause 10(c) as if the relevant Transmission Event had not occurred and the transfer were signed by the registered holder of the share.
- (e) For the purpose of this Constitution, where 2 or more persons are jointly entitled to a share because of a Transmission Event they will, on being registered as the holders of the share, be taken to hold the share as joint tenants.
- (f) Despite Clause 10(a), and subject to Clauses 9(a) and 9(b), the Board may register a transfer of shares signed by a Member before a Transmission Event even though the Company has notice of the Transmission Event.

11. COMPANY TO HAVE LIEN ON SHARES AND DIVIDENDS

- (a) The Company shall have a first and paramount lien and charge upon:
 - (i) all Shares (other than fully paid Shares) registered in the name of a Member (whether solely or jointly with others);
 - (ii) all Dividends declared from time to time in respect of such Shares; and
 - (iii) the proceeds of sale of such Shares.
- (b) The Company's lien referred to in Clause 11(a) shall be for all money (whether presently payable or not):
 - (i) payable at a fixed time in respect of that Share;
 - (ii) paid or to be paid by the Company in respect of such Shares or on such Member's account; or
 - (iii) payable by such Member or the Member's estate to the Company.

CONSTITUTION

- (c) The Board may at any time declare any Share to be wholly or in part exempt from the provisions of this Clause 11.
- (d) Unless otherwise agreed, the registration of a transfer of a Share pursuant to this Constitution shall operate as a waiver of the Company's lien, if any, on that share.

12. AS TO ENFORCING LIEN BY SALE

- (a) Subject to Clause 12(b), the Company may sell, in such manner as the Board think fit, any Shares on which the Company has a lien.
- (b) A Share on which the Company has a lien shall not be sold unless:
 - (i) a sum in respect of which the lien exists is presently payable; and
 - (ii) the Company has, not less than 14 days before the date of the sale, given to the registered holder for the time being of the Share, or the person entitled to the Share by reason of the death or bankruptcy of the registered holder, a notice in writing setting out, and demanding payment of, such part of the amount in respect of which the lien exists as is presently payable.
- (c) The Company shall not sell any Shares on which it has a lien if the sum in respect of which the lien exists is less than one cent.

13. APPLICATION OF PROCEEDS OF SALE

The net proceeds of a sale mentioned in Clause 12, after payment of the costs of the sale, shall be applied in or towards satisfaction of the debts, liabilities or engagements of the Member solely or jointly with any other person, to or with the Company, whether the period for the payment, fulfilment or discharge thereof has actually arrived or not, and the residue (if any) shall be paid to the Member or the Member's executors, administrators or assigns.

14. VALIDITY OF SALES

- (a) Upon any sale for enforcing a lien in purported exercise of the powers hereinbefore given, the Board may appoint some person to execute an instrument of transfer of the Shares sold.
- (b) The Board may cause the purchaser's name to be entered in the Register in respect of the Shares sold, and the purchaser shall not be bound to see to the regularity or validity of the proceedings, or to the application of the purchase money.
- (c) After the purchaser's name has been entered in the Register in respect of the Shares, the regularity or validity of the sale shall not be impeached by any person, and the remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.

15. MEMBERS TO INDEMNIFY AGAINST PAYMENT OF CERTAIN TAXES BY THE COMPANY

Whenever in respect of any Shares registered as held either jointly or solely by any Member, or otherwise in connection with the holding whether joint or sole of any Member, and whether in consequence of the Member's death or for any reason any law for the time being of the Commonwealth or of any state or territory or of any other country or place imposes or purports to impose any immediate or future possible liability upon the Company to make any payments to any

CONSTITUTION

Government or taxing authority (other than any income tax or compensatory tax payable to the Commonwealth in respect of any Dividends paid or declared on any such Shares):

- (a) the Company shall, in respect of any such liability, be fully indemnified by the Member and the Member's executors or administrators wheresoever constituted;
- (b) any moneys paid by the Company in respect of any such liability imposed or purported to be imposed on the Company may be recovered by action from the Member or the Member's executors or administrators wheresoever constituted as a debt due by the Member or the Member's estate to the Company with interest at such rate not exceeding 20% per annum as the Board may determine from the date when the moneys were paid until repayment;
- (c) any such moneys and interest may be deducted by the Company from any Dividend or other moneys payable by it to the Member or the Member's executors or administrators;
- (d) the provisions of Clauses 11 to 14 (both inclusive) with respect to the Company's lien for debts of a Member, and sales to enforce any such lien, shall apply with respect to moneys paid by the Company in respect of any liability to which this Clause 15 relates;
- (e) nothing herein contained shall prejudice or affect any right or remedy which in respect of any such payment by the Company any such law may confer or purport to confer upon the Company.

16. MEMBER'S ESTATE LIABLE

It is hereby expressly declared that, as between the Company and the Member, or the Member's estate, executors, or administrators wheresoever constituted, any right or remedy arising under Clause 15 shall be enforceable by the Company, and as between a Member of the Company and the Company, every Member shall hereby be deemed to agree to and to bind the Member's executors, administrators and estate to submit to the legislative power and jurisdiction of the state, territory or country imposing such liability upon the Company.

17. ALTERATION OF SHARE CAPITAL

- (a) The Company may alter its share capital in any manner permitted by law.
- (b) Where fractions of shares are or would otherwise be created by an alteration of share capital under Clause 17(a), the Board may:
 - (i) make cash payments;
 - (ii) decide that fractions of shares are to be disregarded or rounded down to the nearest whole share; or
 - (iii) decide that fractions of shares are to be rounded up to the nearest whole share by capitalising any amount available for capitalisation under Clause 79 even though some only of the Members may participate in that capitalisation.

18. CONSTITUTION APPLIES TO NEW SHARES

Except so far as otherwise provided by the conditions of issue or by this Constitution, any capital raised by the creation of new Shares shall carry the rights conferred by and be subject to the provisions of this Constitution in the same manner as the Shares in the original authorised share capital of the Company.

CONSTITUTION

19. GENERAL MEETING

- (a) The Board may, whenever they think fit, call and arrange to hold a general meeting.
- (b) A general meeting may be convened only as provided by this Clause 19 or as otherwise required by the Act.
- (c) Subject to Clause 19(d), the Board may postpone, cancel or change the place (if any) for a general meeting.
- (d) Clause 19(c) does not apply to a meeting convened in accordance with the Act by a single Director, by Members, by the Board on the request of Members or to a meeting convened by a court, without the prior written consent of the person who called or requisitioned the meeting.

20. USE OF TECHNOLOGY AT GENERAL MEETINGS

- (a) Subject to any applicable law:
 - (i) the Company may hold a meeting of Members using any technology approved by the Board and the Principal Employer that gives the Members as a whole a reasonable opportunity to participate; and
 - (ii) a meeting conducted using such technology may be held at multiple places or not held at any specified place,and participation in such a meeting will constitute presence as if in person at such a meeting.
- (b) If, before or during a meeting of Members, any technical difficulty occurs, such that the Members as a whole do not have a reasonable opportunity to participate, the chair of the general meeting may:
 - (i) adjourn the meeting until the difficulty is remedied; or
 - (ii) where a quorum remains present (either at the place at which the chair of the general meeting is present or by technology as contemplated by this Clause 20) and able to participate, subject to the Act, continue the meeting.

21. NOTICE OF GENERAL MEETINGS

- (a) Subject to this Constitution and to the rights or restrictions attached to any shares or class of shares, notice of a general meeting must be given within the time limits prescribed by the Act.
- (b) The content of a notice of a general meeting called by the Board is to be decided by the Board, but must state the general nature of the business to be transacted at the meeting and any other matters required by the Act or this Constitution.

22. NON-RECEIPT OF OR DEFECTIVE NOTICE

- (a) If a person entitled to receive a notice of general meeting, a proxy form, or a notice of the cancellation, postponement or re-location of a general meeting:
 - (i) does not receive it; or

- (ii) is not given it due to an accidental omission,
that failure does not invalidate any resolution passed at the general meeting, or at the postponed or relocated meeting.
- (b) A person who attends a general meeting waives any objection the person may have to:
 - (i) any failure to give notice, or the giving of a defective notice, of the meeting unless at the start of the meeting the person objects to the holding of the meeting;
 - (ii) any failure to give a proxy form, or the giving of a defective proxy form; and
 - (iii) the consideration of a particular matter which is not within the business referred to in the notice of meeting, unless the person objects to the consideration of the matter when first presented.

23. QUORUM AT GENERAL MEETINGS

- (a) No business may be transacted at any general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum of Members is present when the meeting proceeds to business.
- (b) A quorum consists of:
 - (i) if the number of Members entitled to vote is 2 or more – 2 of those Members; or
 - (ii) if only one Member is entitled to vote – that Member,
present at the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (i) where the meeting was convened on the requisition of Members, the meeting must be dissolved; or
 - (ii) in any other case, the meeting stands adjourned to the day, and at the time and place, the Board decides or, if they do not make a decision, to the same day in the next week at the same time and place and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

24. CHAIR OF GENERAL MEETINGS

- (a) The Chair of the Board must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chair at each general meeting.
- (b) If at a general meeting there is no Chair of the Board or the Chair of the Board is not present or not willing to act as chair of the general meeting, one of the other Board must act as chair.

25. CONDUCT OF GENERAL MEETINGS

- (a) The chair of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in his or her opinion necessary or desirable for:

- (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; and
 - (ii) the 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.
- (b) The chair of a general meeting may at their sole discretion at any time during the course of the meeting adjourn from time to time and place to place the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion and may adjourn any business, motion, question or resolution, debate or discussion either to a later time at the same meeting or to an adjourned meeting. In exercising this discretion, the chair need not seek the approval of the Members present in person or by proxy, attorney or Representative.
- (c) No business may be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (d) Where a meeting is adjourned or postponed, notice need not be given to any person unless the meeting is adjourned or postponed for more than 30 days.
- (e) Where a meeting is adjourned or postponed, the Board may postpone, cancel or change the place (if any) of the adjourned or postponed meeting.

26. DECISIONS AT GENERAL MEETINGS

- (a) Except in the case of any resolution which as a matter of law requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the Members present at the meeting. A decision made in this way is for all purposes a decision of the Members.
- (b) Without prejudice to any right of the chair to vote as a Member or as a proxy, attorney or Representative of a Member, in the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting at which the show of hands takes place or at which the poll is demanded, shall not by virtue of the position as chair be entitled to a second or casting vote.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands, unless a poll is demanded by:
- (i) the chair of the meeting; or
 - (ii) any Member present and having the right to vote at the meeting,
- before a show of hands is held or before the result of the show of hands is declared or immediately after the result of the show of hands is declared.
- (d) A demand for a poll does not prevent a general meeting continuing to transact any business except the question on which the poll is demanded.
- (e) Unless a poll is duly demanded, a declaration by the chair of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded for or against the resolution.

CONSTITUTION

- (f) If a poll is duly demanded at a general meeting, it is to be taken in a way and subject to Clause 26(g) either at once or after an interval or adjournment or otherwise as the chair of the meeting directs. The result of the poll as declared by the chair is the resolution of the meeting at which the poll was demanded.
- (g) A poll demanded at a general meeting on the election of a chair of the meeting or on a question of adjournment must be taken immediately.
- (h) The demand for a poll may be withdrawn with the chair's consent.

27. VOTING RIGHTS

- (a) Subject to this Constitution and to any rights or restrictions attached to any shares or class of shares, at a general meeting:
 - (i) on a show of hands, every Member present has one vote; and
 - (ii) on a poll, every Member present has one vote for each share held by the Member and in respect of which the Member is entitled to vote.
- (b) If a person present at a general meeting represents personally or by proxy, attorney or Representative more than one Member:
 - (i) on a show of hands the person is entitled to one vote only, even though he or she represents more than one Member;
 - (ii) that vote will be taken as having been cast for all the Members the person represents; and
 - (iii) the person must not exercise that vote in a way which would contravene any directions given to the person in accordance with Clause 30(g) in any instrument appointing the person as a proxy or attorney.
- (c) A joint holder may vote at any meeting in person or by proxy, attorney or Representative as if that person were the sole holder. If more than one joint holder tenders a vote, the vote of the holder named first in the register must be accepted to the exclusion of the other or others.
- (d) A person entitled to a share because of an Transmission Event may vote at any general meeting in respect of that share in the same way as if that person were the registered holder of the share if, before the meeting, the Board have:
 - (i) admitted that person's right to vote at that meeting in respect of the share; or
 - (ii) been satisfied of that person's right to be registered as the holder of, or to transfer, the share under Clause 10(c),and any vote so tendered by that person must be accepted to the exclusion of the vote of the registered holder of the share.
- (e) A Member is not entitled to vote at a general meeting unless all calls and other amounts presently payable by that Member in respect of shares in the Company have been paid.
- (f) An objection to the qualification of a person to vote at a general meeting must be:
 - (i) raised before or at the meeting at which the vote objected to is given or tendered; and

CONSTITUTION

- (ii) referred to the chair of the meeting, whose decision is final.
- (g) A vote not disallowed by the chair of a meeting under Clause 27(f) is valid for all purposes.

28. DECISIONS WITHOUT GENERAL MEETINGS

- (a) When the Company has more than one Member, the Company may pass a resolution (except a resolution to remove an auditor) without a general meeting being held:
 - (i) if all of the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of a resolution set out in the document; and
 - (ii) otherwise in accordance with the Act.
- (b) If a share is held jointly, each of the joint Members must sign the document.
- (c) For the purposes of Clause 28(a):
 - (i) the resolution is passed when the last person signs the document; and
 - (ii) separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- (d) The passage of the resolution satisfies any requirement in the Act, or in this Constitution, that the resolution be passed at a general meeting.

29. RESOLUTION OF SINGLE MEMBER

When the Company has only one Member, the Company may pass a resolution by the Member recording it and signing the record.

30. REPRESENTATION AT GENERAL MEETINGS

- (a) Subject to this Constitution, each Member entitled to vote at a meeting of Members may vote:
 - (i) in person or, where a Member is a body corporate, by its Representatives;
 - (ii) by not more than 2 proxies; or
 - (iii) by not more than 2 attorneys.
- (b) A proxy, attorney or Representative may, but need not, be a Member of the Company.
- (c) A proxy, attorney or Representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.
- (d) Unless otherwise provided in the instrument, an instrument appointing a proxy, attorney or Representative is to be taken to confer authority:
 - (i) to agree to a meeting being convened by shorter notice than is required by the Act or by this Constitution;
 - (ii) to agree to a resolution being proposed and passed as a special resolution at a meeting of which less than the period of notice required by the Act has been given; and

- (iii) even though the instrument may refer to specific resolutions and may direct the proxy, attorney or Representative how to vote on those resolutions to do any of the acts specified in Clause 30(e).
- (e) The acts referred to in Clause 30(d)(iii) are:
 - (i) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (ii) to vote on any procedural motion, including any motion to elect the chair, to vacate the chair or to adjourn the meeting; and
 - (iii) to act generally at the meeting.
- (f) Where a Member appoints 2 proxies or attorneys to vote at the same general meeting, the following rules apply:
 - (i) subject to Clause 30(f)(ii), the appointment is of no effect and a proxy or attorney may not vote unless each proxy or attorney (as applicable) is appointed to represent a specified proportion of the Member's voting rights;
 - (ii) if the Act precludes the Company from treating as invalid the appointment of 2 proxies which fails to specify the proportion or number of votes that each may exercise, each person appointed may exercise half the Member's votes;
 - (iii) on a show of hands, neither proxy or attorney may vote;
 - (iv) on a poll, each proxy or attorney may only exercise the voting rights the proxy or attorney represents; and
 - (v) if both appointments cannot be validly exercised at the meeting, the later appointment revokes the earlier appointment of a proxy or attorney.
- (g) An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- (h) Subject to Clause 30(i), an instrument appointing a proxy or attorney need not be in any particular form as long as it is in writing, legally valid and signed by or on behalf of the appointer or the appointer's attorney.
- (i) A proxy or attorney may not vote at a general meeting or adjourned or postponed meeting or on a poll unless the instrument appointing the proxy or attorney, and the authority under which the instrument is signed or a certified copy of the authority, are:
 - (i) received at the registered office of the Company, a fax number at the Company's registered office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting before the time specified in the notice;
 - (ii) in the case of a meeting or an adjourned or postponed meeting, tabled at the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
 - (iii) in the case of a poll, produced when the poll is taken.

CONSTITUTION

- (j) The Board may waive all or any of the requirements of Clauses 30(h) and 30(i) and in particular may, on the production of such other evidence as the Board requires to prove the validity of the appointment of a proxy or attorney, accept:
 - (i) an oral appointment of a proxy or attorney;
 - (ii) an appointment of a proxy or attorney which is not signed in the manner required by Clause 30(h); and
 - (iii) the deposit, tabling or production of a copy (including a copy sent by fax) of an instrument appointing a proxy or attorney or of the power of attorney or other authority under which the instrument is signed.
- (k) A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite:
 - (i) an Transmission Event occurring in relation to the appointer; or
 - (ii) the revocation of the instrument or of the authority under which the instrument was executed,if no written notice of the Transmission Event or revocation has been received by the Company by the time and at one of the places at which the instrument appointing the proxy or attorney is required to be deposited, tabled or produced under Clause 30(i).
- (l) A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite the transfer of the share in respect of which the instrument was given, if the transfer is not registered by the time at which the instrument appointing the proxy or attorney is required to be deposited, tabled or produced under Clause 30(i).
- (m) The appointment of a proxy or attorney is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on a resolution, the person acting as proxy or attorney for the appointer is not entitled to vote, and must not vote, as the appointer's proxy or attorney on the resolution.

31. APPOINTMENT OF ATTORNEY

The Board may by revocable or irrevocable Power of Attorney executed in accordance with section 127 of the Act appoint a person to be the Attorney of the Company for such purposes and with such powers (not exceeding those conferred on the Board by this Constitution) and for such period and subject to such conditions as the Board thinks fit. Any such Power of Attorney may contain such provisions for the protection of convenience of persons dealing with the attorney as the Board thinks fit.

32. NUMBER OF DIRECTORS

The number of Directors shall be not more than nine and not less than six unless otherwise determined in accordance with Clause 36 or as agreed between the Board and the Principal Employer from time to time.

33. CLASSES OF DIRECTORS

The Directors of the Company shall comprise:

CONSTITUTION

- (a) an equal number of Employer Directors and Member Directors appointed as provided in Clause 36; and
- (b) not more than one Independent Director (if any) appointed as provided in Clause 36.

34. QUALIFICATION OF DIRECTORS

- (a) All the Directors of the Company shall be natural persons.
- (b) A person is not entitled to be appointed as a Director of the Company if the person is under the age of 18 years.
- (c) A person shall not be eligible to be appointed as a Director of the Company if that person is a disqualified person in terms of any Relevant Law and any purported appointment of such a person shall be null and of no legal effect.
- (d) Despite anything else in this Clause 34, a person is not eligible to hold office as a Director unless they are 'fit and proper' within the meaning of any Relevant Law or any Board approved policy maintained by the Company in accordance with a requirement of any Relevant Law.

35. TENURE OF OFFICE

- (a) A Director (other than an Independent Director or an Alternate Director) will hold office for an initial term of 3 years following their appointment, subject to Clauses 35(c), 36, 37 and 39.
- (b) An Independent Director will hold office for the term that is determined by the Board from time to time, subject to Clauses 36(e) and 37, but the initial term will not exceed 3 years.
- (c) The initial term of a Director appointed to fill a vacancy under Clause 38 commences on the day the Director is appointed and ends on the day that is the last day of the term that the Director who created the vacancy would have served but for the vacancy.

36. APPOINTMENT AND REMOVAL OF DIRECTORS

- (a) Subject to Clause 36(e), the Board shall comprise an equal number of -
 - (i) Employer Directors; and
 - (ii) Member Directors.
- (b) Whenever there is an Employer Director or Member Director vacancy on the Board, the appropriate Nominating Body must nominate a person in writing for appointment to fill the vacancy. If the Board is satisfied that the nominated person is not a "disqualified person" for the purposes of the Relevant Law and is otherwise eligible for appointment under Relevant Law and satisfies such criteria and requirements as may be specified in policies adopted by the Board from time to time, the Board must appoint the nominated person as a Director.
- (c) If the Board receives a written request from the Nominating Body who nominated for appointment the Employer Director or the Member Director, as the case may be, to remove that Director, the Board must remove the person from office.
- (d) The Board may remove an Employer Director or Member Director from office if the Board is satisfied that the Director has ceased to satisfy such eligibility criteria and requirements as

CONSTITUTION

may be specified in relevant policies adopted by the Board from time to time, including with respect to fitness and proprietary.

- (e) By resolution, the Board may -
 - (i) appoint as an Independent Director a person who is eligible to hold that office in accordance with the SIS Act; and
 - (ii) remove such a person from office,but there shall be no more than one Independent Director at any particular time.

37. RE-APPOINTMENT

- (a) Any Director whose term has expired may, with their consent and following re-nomination by their Nominating Body, be re-appointed by the Board, or by the Board in respect of an Independent Director.
- (b) A Director may be re-appointed for one or more additional terms as determined by the Board (each term to be no more than three years), but, subject to Clause 37(c), may only serve a maximum of nine years.
- (c) Where the Board determines that exceptional circumstances justify the re-appointment, a Director may be re-appointed by the Board in accordance with Clause 37(a) for an additional term that, in whole or part, exceeds the maximum period specified in Clause 37(b), subject to the following conditions:
 - (i) the period of the additional term that exceeds the maximum period specified in Clause 37(b) must be approved by the Board; and
 - (ii) the approval must be in accordance with such rules and conditions as may be determined by the Board from time to time either generally or in any particular case, including under any applicable board renewal policy.
- (d) A Director may serve consecutive or non-consecutive terms as determined by the Board.

38. VACATION OF OFFICE

In addition to the circumstances in which the office of a Director becomes vacant by virtue of Clause 35 or the Act, the office of a Director becomes vacant if the Director:

- (a) dies;
- (b) becomes prohibited from being a Director by reason of, or a disqualified person in terms of, any Relevant Law;
- (c) becomes prohibited from being a Director by reason of an order made under the Act;
- (d) suffers any mental or physical incapacity or is a person whose person or estate is liable to be dealt with in any way under the laws relating to mental health, and in respect of whom the Board has passed a resolution declaring the office of that person to become vacant;
- (e) resigns by notice in writing to the Company;
- (f) in the case of an Employer Director or Member Director, the Director is removed from office under Clause 36(c) or 36(d);

CONSTITUTION

- (g) in the case of an Independent Director, the Director is removed from office under Clause 36 (e)(ii).

39. FILLING VACANCIES

If the office of a Director (other than an Independent Director) becomes vacant, a Director must, within 90 days, be appointed in accordance with Clause 36 to fill the vacancy.

40. DIRECTORS MAY CONTRACT ETC. WITH COMPANY OR HOLD OTHER OFFICES

- (a) No Director or intending Director shall be disqualified from:
- (i) holding any other office or place of profit in the Company in conjunction with the office of Director and any such other office or place of profit may be on such terms as to remuneration and otherwise as the Board or the Company in general meeting may determine;
 - (ii) becoming a Director or other Officer of or otherwise interested in any company promoted by the Company or in which the Company may be interested as shareholder or which holds any Shares in the Company or otherwise, and no such Director shall be accountable to the Company for any remuneration or other benefit received as a Director or Officer of or from the interest in such company; or
 - (iii) contracting with the Company either as vendor, purchaser or otherwise, including but without in any way limiting the generality of the foregoing, lending money to the Company at interest with or without security, purchasing or subscribing for any debentures, debenture stock or notes (whether secured or unsecured or convertible or otherwise) of the Company, for a commission or profit guaranteeing the repayment of any moneys so borrowed by the Company or the redemption or payment of any debentures, debenture stock or notes issued by the Company, or underwriting the subscription of Shares, securities, debentures, debenture stock or notes of the Company or any corporation in which the Company may be interested, nor shall any such contract or any contract or arrangement entered into by or on behalf of the Company in which any Director shall be in any way directly or indirectly interested be avoided, nor shall any Director be liable to account to the Company for any profit arising from any such office or place of profit or realised by any such contract or arrangement by reason only of such Director holding the office of Director or of the fiduciary obligations thereby established.
- (b) Should a Director or intending Director have any interests to which Clause 40(a) applies, that Director shall in every case disclose the nature of the Director's interest in the manner required by the Act.

41. DIRECTORS' INTERESTS AND CONFLICTS

- (a) Clauses 41(b), (c) and (d) are subject to any policy adopted by the Board to manage conflicts of interest, as it applies from time to time.
- (b) Subject to any relevant limitations and qualifications set out in any Relevant Law, a Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of the interest.

CONSTITUTION

- (c) If a Director has a material personal interest in, or a conflicting duty in relation to, a matter that relates to the affairs of the Company then, subject to the Relevant Law and Clause 41(d):
 - (i) the Director shall be entitled to be counted in the quorum present at a meeting of the Board notwithstanding the Director's interest or conflicting duty, however the Director may not vote on matters that relate to the interest or duty;
 - (ii) any transactions that relate to the interest or duty may proceed;
 - (iii) the Director may retain any benefits under the transaction, despite the Director's interest or duty; and
 - (iv) the Company cannot avoid the transaction merely because of the existence of the interest or duty.
- (d) A Director may vote on a matter referred to in Clause 41(c) if:
 - (i) the Directors who do not have a material personal interest in, or conflicting duty in relation to, the matter, resolve that the Director may vote on the matter; or
 - (ii) in the case of a material personal interest, the interest is not required to be disclosed under Clause 41(b).

42. REMUNERATION

- (a) The Directors shall be paid such remuneration as is from time to time agreed between the Board and the Principal Employer.
- (b) That remuneration shall be deemed to accrue from day to day.
- (c) The Directors may also be paid all reasonable travelling and other expenses properly incurred by them in attending and returning from meetings of the Board, or any Committee, or general meetings of the Company, or otherwise in connection with the business of the Company.

43. APPOINTMENT OF ALTERNATE DIRECTORS

- (a) A Director other than an Independent Director (the 'Appointing Director') may appoint, by notice in writing signed by the Appointing Director and given to the Secretary:
 - (i) in the case of an Employer Director, another Employer Director or an employee of the Principal Employer (or a related company) approved by the Principal Employer for this purpose; and
 - (ii) in the case of a Member Director, another Member Director,

to be an alternate or substitute in place of the Appointing Director (in each case the 'Appointee') if the Appointee is a person who would be qualified under Clause 34 to hold the office of Director in place of the Appointing Director and so that, subject to Clause 43(g), any such appointment shall have effect and the Appointee, while holding office as an Alternate Director, shall be entitled to notice of meetings of the Board and of any Committee of which the Appointing Director is a member and to attend and vote and otherwise act as a Director in place of the Appointing Director at any meeting at which the Appointing Director is not present.
- (b) An Appointee shall vacate office as an Alternate Director if and when:

- (i) the Appointee resigns as an Alternate Director by notice in writing to the Board;
 - (ii) the Appointing Director vacates the office of Director;
 - (iii) the Appointee ceases to be qualified under Clause 34 to hold the office of Director in place of the Appointing Director; or
 - (iv) the Appointee is removed from office by notice in writing signed by the Appointing Director and given to the Secretary.
- (c) An Alternate Director shall not be taken into account in reckoning the minimum or maximum number of Directors allowed for the time being but that Alternate Director shall be counted, subject to Clause 43(g), in respect of each Director for whom the Alternate Director may act as Alternate Director, for the purpose of reckoning whether a quorum is present at any meeting of the Board attended by that Alternate Director at which that Alternate Director is entitled to vote.
- (d) An Appointing Director may appoint more than one Alternate Director. If an Appointing Director appoints more than one Alternate Director the Appointing Director shall nominate in writing to each Alternate Director and to the other Directors which of the Alternate Directors shall be entitled to vote for the Appointing Director at a meeting of the Board at which both are present and from which the Appointing Director is absent.
- (e) Where an Alternate Director attends meetings of the Board otherwise than in their own right as a Member Director or Employer Director or as an Alternate Director for another Appointing Director, the Alternate Director is not entitled to vote at the meeting.
- (f) A determination by the chair of the meeting as to whether an Alternate Director is entitled to vote at the meeting shall be conclusive for all purposes.
- (g) If more than one Alternate Director has been appointed in respect of an Appointing Director and more than one of the Alternate Directors appointed is present at a meeting from which the Appointing Director is absent, only one of the Alternate Directors shall be entitled to vote for the Appointing Director or to be counted in respect of the Appointing Director for the purpose of reckoning whether a quorum is present at any meeting of the Board, being:
- (i) the Alternate Director nominated for this purpose by the Appointing Director pursuant to Clause 43(d); or
 - (ii) if no effective nomination has been made by the Appointing Director pursuant to Clause 43(d), the most senior of the Alternate Directors and for this purpose the Alternate Director whose name appears first in the register of Directors shall be deemed to be the most senior.
- (h) One person may act as Alternate Director in respect of more than one Director and, subject to Clause 43(g), while the Alternate Director is so acting shall be entitled to a separate vote for each Director the Alternate Director is representing and, if the Alternate Director is also a Director, the Alternate Director's vote or votes as an Alternate Director shall be in addition to the Alternate Director's own vote as a Director.
- (i) Any person holding the position of Alternate Director in respect of an Appointing Director who is a Chair of the Board shall be empowered in the absence of the Chair of the Board to act as Chair of the Board or chair of general meetings (as the case may be) and exercise all the powers conferred on that chair by this Constitution.

44. COMPLIANCE WITH RELEVANT LAW

Notwithstanding anything expressed or implied to the contrary in this Constitution:

- (a) if a provision of this Constitution is void or voidable or unenforceable or illegal, but would not be void, voidable, unenforceable or illegal if it were read down and it is capable of being read down, it shall be read down accordingly;
- (b) notwithstanding paragraph (a), a provision of this Constitution is void or voidable or unenforceable or illegal and the provision would not be void or voidable or unenforceable or illegal if a word or words or the whole provision (as the case may be) were omitted, that word or those words or the whole provision (as the case may be) is or are hereby severed and the remainder of this Constitution shall continue to have full force and effect;
- (c) no person is permitted to engage in conduct which, but for this paragraph, would render the Board or the Company subject, in the exercise of any of the Board's or the Company's powers under this Constitution, to direction of another person in terms of and to an extent not permitted under the Relevant Law (where 'engage in conduct' includes refusing or failing to do an act or exercise a power), and any provision of this Constitution which contemplates a person engaging in such conduct must be construed as only permitting that person to engage in such conduct with the approval of the Board or the Company;
- (d) to the extent that the exercise of, or the ability to exercise, a power under this Constitution by a person other than the Board or the Company without the consent of the Board or the Company would, but for this paragraph (d), render a provision of this Constitution void or invalid under the Relevant Law, then that other person may only exercise that power with the consent of the Board or the Company.

45. BOARD TO MANAGE BUSINESS AND EXERCISE POWERS OF COMPANY

Subject to the Act and to any other provisions of this Constitution, the business of the Company shall be managed by the Board, who may pay all expenses incurred in promoting and forming the Company, and may exercise all the powers of the Company that are not by the Act or by this Constitution required to be exercised by the Principal Employer or by the Company in general meeting.

46. POWERS TO BORROW MONEY

The Board and the Principal Employer may agree, in addition to all other general and special powers possessed by them, to borrow in the name and for all or any of the purposes of the Company or in connection with its business any sum or sums of money for such period and at such rate or rates of interest and otherwise upon such terms and conditions as the Board may think fit.

47. ACTS VALID NOTWITHSTANDING DEFECT IN APPOINTMENT

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

CONSTITUTION

48. MINUTES

- (a) Except as otherwise provided in this Constitution, the Board shall cause minutes to be made of:
 - (i) all appointments of Directors, Alternate Directors or proxies for Directors and Officers;
 - (ii) the names of the Directors present at all meetings of the Company, all Board meetings and of any Committees;
 - (iii) all orders made by the Board and Committees;
 - (iv) all declarations made or notices given by any Director (either generally or specially) of the Director's interest in any contract or proposed contract or of the Director's holding of any office or property whereby any conflict of duty or interest may arise; and
 - (v) all resolutions and proceedings of meetings of Members and classes of Members and of the Board and Committees.
- (b) Any such minutes so entered on any meeting of the Board or of any Committee or of any general meeting of Members, or of any class or classes of Members if purporting to be signed by the Chair of the meeting, or of the next succeeding meeting of the same body, shall be receivable as prima facie evidence of the matters stated in the minutes of that meeting of the meeting having been duly held and convened and of the validity of all proceedings and appointments at such meeting.

49. BOARD MAY REGULATE MEETINGS AS IT SEES FIT

The Board may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

50. BOARD MAY MEET USING TECHNOLOGY

- (a) A meeting of the Board may be called or held using any technology consented to by all the participating Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.
- (b) Where a Director takes part in a meeting using technology, that Director is taken to be present in person at the meeting and all Directors participating in the meeting will be taken to have consented to the holding of the meeting using that technology unless there is a specific statement otherwise.
- (c) If, before or during the meeting, any technical difficulty occurs as a result of which one or more Directors may not be able to participate in a meeting, the Chair may adjourn the meeting until the difficulty is remedied or (if a quorum remains present) continue with the meeting.

51. BOARD DECISIONS

- (a) Questions arising at a meeting of the Board shall be determined by resolution and no resolution shall be effective unless carried by two thirds of the number of Directors in office

CONSTITUTION

for the time being, including at least two Employer Directors and at least two Member Directors.

- (b) Each Director present at a meeting of the Board shall have one deliberative vote on any question. No Director shall have a second or casting vote in addition to that deliberative vote.

52. VOTE OF CHAIR

Without prejudice to any right of the Chair to vote as a Director, the Chair of the meeting shall not by virtue of the position as chair have a second or casting vote.

53. SUMMONING MEETINGS

A Director may at any time, and the Secretary shall on the requisition of a Director, summon a meeting of the Board.

54. QUORUM

A quorum of a meeting of the Board shall be two-thirds of the number of Directors in office for the time being, including at least two Employer Directors and at least two Member Directors.

55. CONTINUING DIRECTORS MAY ACT

In the event of a vacancy or vacancies in the office of a Director or offices of Directors, the remaining Directors may act so long as there is a quorum of Directors.

56. CHAIR OF BOARD

- (a) The Independent Director (if any) shall be Chair of the Board and shall hold office as Chair of the Board until that office is vacated in accordance with Clause 56(c).
- (b) If there is no Independent Director, the Board shall appoint an Employer Director or a Member Director to be Chair of the Board who shall hold office as Chair of the Board until that office is vacated in accordance with Clause 56(c) or until the appointment of an Independent Director (whichever event occurs first).
- (c) If the Chair of the Board:
- (i) resigns as Chair of the Board by notice in writing to the Board;
 - (ii) ceases to be a Director; or
 - (iii) in the case of a Director other than an Independent Director, is removed as Chair of the Board by a resolution of the Board,

the office of Chair of the Board shall be vacated and the Directors shall elect one of their number to be Chair of the Board who shall hold office as Chair of the Board until that office is vacated in accordance with this Clause 56(c) or until the appointment of an Independent Director (whichever event occurs first).

- (d) The Chair of the Board shall be paid such remuneration as the Board and the Principal Employer may agree and any such remuneration shall be deemed to accrue from day to day.

CONSTITUTION

57. ACTING CHAIR

Where a meeting of the Board is held and

- (a) there is no Chair of the Board, or
- (b) the Chair of the Board is not present within ten minutes after the time appointed for the holding of the meeting or is unwilling to act as Chair of the Board,

the Directors present shall elect one of their number to act as chair at that meeting.

58. VALIDITY OF RESOLUTION WITHOUT MEETING

- (a) A resolution in writing signed by at least a quorum of the Board, for the time being entitled to vote in respect of that resolution if such resolution had otherwise been proposed and put to a vote at a meeting of the Board, shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held as at the date on which the document was signed and at the time at which the document was last signed by a Director or, if the Directors signed the document on different days, on the day on which, and at the time at which, the document was last signed by a Director.
- (b) Where a resolution in writing is signed in accordance with Clause 58(a), then
 - (i) a meeting of the Board shall be deemed to have been held at that time on that date;
 - (ii) the document as signed shall be deemed to constitute a minute of that meeting of the Board; and
 - (iii) the resolution in writing shall take effect and be binding:
 - A. upon the resolution being duly passed in accordance with Clause 58(a); or
 - B. at such later time and date as specified in the resolution as being the time or date when the resolution is to take effect.
- (c) Any document that is attached to a resolution in writing signed in accordance with Clause 58(a) and which is signed for the purposes of identification by a Director or Secretary shall be deemed to have been duly laid before that meeting of the Board which is deemed to have been held in accordance with Clause 58(a).
- (d) Any resolution in writing may consist of several documents in like form, each signed by one or more Directors, and any such resolution in writing shall be deemed to be signed by a Director if an electronic form of visible communication is received at the Office of the Company or its agent bearing the name of the Director signifying the Director's approval to that resolution.

59. COMMITTEES

- (a) The Board may delegate any of its powers to a committee (**Committee**) comprised of:
 - (i) an equal number of Employer Directors and Member Directors; and
 - (ii) if the Board so determines, the Independent Director,together with, if the Board so determines, any other person or persons.

CONSTITUTION

- (b) A Committee must exercise the powers delegated to it by the Board in accordance with any charters, policies, procedures, rules or any other governing document that may from time to time be imposed by the Board and a power so exercised shall be deemed to have been exercised by the Board.
- (c) A Committee may meet and adjourn as it thinks proper.

60. COMMITTEE CHAIR

The chair of the meetings of a Committee shall be:

- (a) the member of the Committee elected by the Board as chair; or
- (b) if the Board has not elected a member of the Committee as chair, the member of the Committee elected chair by the Committee.

61. ACTING COMMITTEE CHAIR

Where a Committee meeting is held and

- (a) a chair has not been elected as provided by Clause 60; or
- (b) the chair is not present within ten minutes after the time appointed for the holding of the meeting or is unwilling to act,

the members present may elect one of their number to act as chair at that Committee meeting.

62. COMMITTEE MEETING QUORUM

A quorum of a meeting of a Committee shall be:

- (a) the quorum for the Committee specified in the charter (or other document) approved by the Board governing the Committee; or
- (b) where the charter or other document governing the Committee does not specify a quorum, the greater of:
 - (i) two Directors; and
 - (ii) two-thirds of the number of Directors who are members of the Committee for the time being, including at least one Employer Director and at least one Member Director.

63. PROCEEDINGS OF COMMITTEE MEETINGS

- (a) Questions arising at a meeting of a Committee shall be determined by resolution and no such resolution shall be effective unless carried by a majority comprising at least a quorum of the Directors who are members of the Committee.
- (b) Each Director present at a meeting of a Committee shall have one deliberative vote on any question. No Director shall have a second or casting vote in addition to that deliberative vote.

CONSTITUTION

- (c) The provisions of this Constitution dealing with the proceedings of meetings of the Board apply insofar as they may, with such amendments as may be necessary, to a meeting of any Committee.

64. VOTE OF COMMITTEE CHAIR

Without prejudice to any right of the chair of a meeting of a Committee to vote as a Director, the chair of a meeting of a Committee shall not by virtue of the position as chair be entitled to a second or casting vote.

65. APPOINTMENT OF SECRETARIES

The Board may appoint one or more Secretaries for such term, at such remuneration and upon such conditions as they may think fit and any Secretary so appointed may be removed by them.

66. APPOINTMENT OF ACTING SECRETARY

The Board may also appoint a person as an acting Secretary or as a temporary substitute for a Secretary for such term, at such remuneration and upon such conditions as they think fit and any person so appointed may be removed by them.

67. NEGOTIABLE INSTRUMENTS

The Board may decide how cheques, promissory notes, banker's drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed (as applicable) by or on behalf of the Company.

68. ACCOUNTS

- (a) The Board shall cause proper accounting and other records to be kept and shall disseminate copies of balance sheets as required by the Act.
- (b) The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them shall be open to the inspection of Members not being Directors, and no Member, not being a Director, shall have any right to inspect any account or book or paper of the Company except as conferred by statute or authorised by the Board or by the Company in general meeting.

69. APPOINTMENT OF AUDITOR

The Board shall appoint an Auditor upon such terms and conditions as they determine and may revoke an appointment at any time. The Auditor's rights and duties as Auditor shall be regulated in accordance with the law.

70. CONCLUSIVENESS OF ACCOUNTS

Every set of accounts of the Company signed by the Board, when audited and approved by a general meeting, shall be conclusive except as regards any material error discovered therein within three months next after the approval thereof. Wherever any such material error is discovered within that period the account shall forthwith be corrected and then shall be conclusive.

CONSTITUTION

71. PAYMENT OF DIVIDENDS

Subject to the Act, the Board may from time to time pay such interim and final Dividends as in their judgement the position of the Company justifies.

72. DIVIDENDS DIVISIBLE AMONG HOLDERS OF ORDINARY SHARES

Subject to any rights or restrictions attached to any shares or class of shares:

- (a) all Dividends in respect of shares must be paid in proportion to the number of shares held by the Members;
- (b) where shares are partly paid, 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;
- (c) for the purposes of Clauses 72(a) and 72(b), an amount paid or credited as paid on a share in advance of a call is to be taken as not having been credited as paid on the share.

73. PAYMENTS OF DIVIDENDS IN SPECIE

The Board when declaring a Dividend or bonus may direct payment of such Dividend or bonus wholly or partly by the distribution of specific assets and in particular of Shares, debentures or debenture stock of the Company or any other company or in any one or more of such ways and where any difficulty arises in regard to such distribution, the Board may settle the same as they think expedient, and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any Member upon the footing of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as may seem expedient to the Board.

74. RECEIPTS BY JOINT HOLDERS

If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any Dividend or other moneys payable on or in respect of the share.

75. ELECTRONIC PAYMENT OF DIVIDENDS

Without prejudice to any other method of payment the Board may adopt, payment in respect of a Share may be made by such electronic or other means approved by the Board directly to an account (of a type approved by the Board) nominated in writing by the Member or the joint holders.

76. NO INTEREST ON DIVIDENDS

Except as otherwise provided in this Constitution, interest is not payable by the Company in respect of any Dividend.

77. DEDUCTIONS FROM DIVIDENDS

The Board may deduct from any Dividend payable to any Member all sums of money (if any) presently payable by that Member to the Company in relation to the Shares in the Company.

78. RESERVES

- (a) Subject to Clause 78(f), the Board may determine to set aside any assets or money owned and controlled by the Company in its personal capacity (as distinct from its capacity as trustee of the Fund or any other capacity) as it thinks proper as reserves or provisions (**Reserves**).
- (b) Reserves may be funded out of the profits of the Company or from such other sources permitted by Relevant Law.
- (c) Subject to Clause 78(f), Reserves may, at the discretion of the Board and subject to Relevant Law, be applied for all or any of the following purposes:
 - (i) for meeting any liabilities or contingencies of the Directors or the Company; and
 - (ii) for any other purposes determined by the Board.
- (d) Subject to Clause 78(f), the Board may invest any such Reserve or may dispose of all or any part of it for the benefit of the Company.
- (e) The Board may divide any Reserve into such special funds as it thinks fit and they shall have full power to employ the assets constituting any Reserve in the business of the Company.
- (f) Any Reserve that is funded from money or assets transferred from the Fund (**Fund Reserve**), and any investment earnings attributable to that Fund Reserve:
 - (i) must be separately maintained;
 - (ii) may be applied at the discretion of the Board and subject to Relevant Law solely for the purpose of meeting any liabilities or contingencies of the Directors or the Company; and
 - (iii) immediately prior to or upon the winding up of the Company, must be paid back into the Fund and not be subject to distribution to Members or creditors,and for the avoidance of doubt no Member at any time shall have any right in respect of a Fund Reserve or any investment earnings attributable to that Fund Reserve.

79. CAPITALISATION OF UNDIVIDED PROFITS

Subject to the Act:

- (a) the Board may from time to time pass a resolution to the effect that any moneys, investments or other assets available for distribution as Dividend but not required for the payment or provision of any fixed preferential Dividend, whether standing to the credit of any reserve, or provision or not, and
 - (i) forming part of the undivided profits of business of the Company;
 - (ii) representing amounts arising from premiums received on the issue of Shares;
 - (iii) representing profits arising from an ascertained accretion to capital or from a revaluation of the assets of the Company; or
 - (iv) arising from the realisation of any capital assets of the Company or any investments representing the same,shall be capitalised and shall be distributed among such of the holders of Shares

CONSTITUTION

as would be entitled to receive the same if distributed by way of Dividend and in the same proportions;

- (b) the resolution of the Board may declare that all or any part of the capitalised fund shall be applied in paying up in full, either at par or at a premium determined by the resolution, any unissued Shares or debentures of the Company and that such application shall be accepted by the Members entitled to share in the distribution in full satisfaction of their interests in the capitalised sum;
- (c) when any such resolution has been passed, the Board may allot and issue a sufficient number of the unissued Shares or may issue a sufficient amount of debentures to the Members entitled to share in the distribution in satisfaction of their interests in the capitalised sum; and
- (d) prior to such allotment or issue, the Board may authorise any person, on behalf of the holders of the Shares to whom a distribution is to be made, to enter into any agreement with the Company for the allotment to them of unissued Shares and in satisfaction of the bonus or for the issue to them of debentures in satisfaction of the bonus and any agreement made under such authority shall be effective.

80. FRACTIONS

For the purpose of giving effect to any resolution for capitalisation and distribution of undivided profits or other moneys, or for satisfaction of a Dividend by distribution of Shares or other assets of the Company, the Board may:

- (a) settle as it thinks expedient any difficulty that may arise in making the distribution and in particular it may:
 - (i) issue fractional certificates; and
 - (ii) determine that fractions of less value than \$1.00 may be disregarded in order to adjust the rights of all parties;
- (b) fix the value for distribution of any specific assets;
- (c) determine the cash payments to be made to any Members upon the footing of the value so fixed; and
- (d) vest any such cash or specific assets in trustees upon such trusts for the persons entitled to the capitalised fund or Dividends as may seem expedient to the Board.

81. NOTICE TO MEMBERS

Any notice may be given by the Company to any Member by serving it personally or by sending it through the post in a prepaid letter or envelope addressed to the Member at the Member's Registered Address or by electronic transmission addressed to the Member using such contact details as the Member has supplied to the Company for service of notices.

82. WHEN DEEMED SERVED

Where a notice by the Company to a Member is served:

CONSTITUTION

- (a) by post, service shall be deemed to be effected when posted to a Registered Address one day following the date on which the letter, envelope or wrapper containing the same is put into the post. In proving service under this Clause 82(a), it shall be sufficient to prove that the letter, envelope or wrapper containing the notice was properly addressed and put into the post as a prepaid letter;
- (b) by electronic transmission, service shall be deemed to be effected on the day on which the electronic transmission is sent. In proving service under this Clause 82(b), it shall be sufficient to prove that the correct contact details of the Member or the Member's agent appear on the electronic transmission report generated by the Company's or its agent's electronic system.

83. JOINT HOLDERS

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

84. PERSONS ENTITLED BY TRANSMISSION

A notice may be given by the Company to a Person Entitled by Transmission to a share by serving it personally or by sending it by post in a prepaid letter addressed by name, by title or by any like description at the address supplied for the purpose by the Person Entitled by Transmission or, if such an address has not been supplied, at the address to which the notice might have been sent if the Transmission Event in relation to the Member had not occurred.

85. DISTRIBUTION OF ASSETS ON WIND-UP

If the Company is wound up, the provisions of the Act will apply in relation to the division of the property of the Company subject to Clause 78(f).

86. JURISDICTION

Every Member submits to the non-exclusive jurisdiction of the Supreme Court of Victoria and the Federal Court of Australia and to the Courts which may hear appeals from those Courts.

87. INDEMNITY TO DIRECTORS AND OFFICERS

- (a) To the full extent permitted by law:
 - (i) the Company shall indemnify a person who is or has been an Officer of the Company against a liability incurred by the person as such an Officer to another person (other than the Company or a related body corporate) unless the liability arises out of conduct involving a lack of good faith;
 - (ii) the Company shall indemnify a person who is or has been an Officer of the Company against a liability for costs and expenses incurred by the person in defending proceedings, whether civil or criminal, in which the person is involved in the person's capacity as an Officer,

in so far as the Officer is not actually indemnified by a contract of insurance taken out by any person for the benefit of such Officer.

CONSTITUTION

- (b) If the Officer is insured or entitled to any other indemnity from another person (other than the Company or a related body corporate) for any amount for which the Officer is entitled to be indemnified under Clause 87(a), the Officer must claim under the applicable insurance policy or other indemnity if directed by the Company.
- (c) The indemnity at Clause 87(a) is not intended to replace or diminish any other person's (other than the Company or a related body corporate) obligations to the Officer, including any insurer's obligation to indemnify the Officer against any liability. The Officer is not required to await the outcome of a claim under the insurance policy or other indemnity before seeking indemnity under Clause 87(a). However, if indemnification under this Constitution may enable an insurer or another person (other than the Company or a related body corporate) to deny insurance cover or other indemnity to the Officer for any liability or costs, any payment made by the Company under this Constitution is taken to be an interest-free loan which is repayable by the Officer.
- (d) For the purposes of Clauses 87 and 88, 'Officer' shall include an 'Officer' as defined in the Act and such other Officers of the Company as the Board may determine.
- (e) The Company may enter into a deed or agreement with any Officer to give effect to the rights conferred by, or the exercise of a discretion under, Clauses 87 or 88 on such terms as the Board thinks fit. A deed or agreement entered into pursuant to this Clause may include provisions relating to rights of access to the books of the Company conferred by the Act or otherwise by law.

88. INSURANCE OF OFFICERS

To the full extent permitted by law, the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer of the Company against a liability incurred by the person as such an Officer, except for a liability arising out of conduct involving a wilful breach of duty in relation to the Company or a contravention of Sub-sections 182(1) or 183(1) of the Act. In the case of a Director, any such premium shall be paid in addition to any remuneration paid to the Director in accordance with Clause 42.

89. AMENDMENT OF CONSTITUTION

The Company may alter this Constitution in accordance with the Act by special resolution with the prior consent of the Board.