

Constitution of Members Equity Bank Limited ACN 070 887 679

Effective 25 April 2014

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1 Name of Corporation

The name of the company is Members Equity Bank Limited ACN 070 887 679.

2 Status of the Constitution

2.1 Constitution of the Company

This is the constitution of the Company.

2.2 Replaceable rules

The rules that apply as replaceable rules to companies under the Corporations Act do not apply to the Company except as far as they are repeated in this Constitution.

3 Interpretation

3.1 Definitions

In this Constitution:

Auditor means the person appointed for the time being as the auditor of the Company.

Board means the Directors and alternates present at a meeting, duly convened as a Board meeting, at which a quorum is present.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Melbourne, Victoria.

Certificate means any certificate issued by the Company on issue, or registration of transfer, of any Share, and any duplicate of that certificate.

Company means Members Equity Bank Limited ACN 070 887 679.

Constitution means the constitution for the time being of the Company as constituted by this document and any resolutions of the Company modifying this document.

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

Default Rate means the interest rate per annum that is the sum of 3% and the rate advised by Westpac Banking Corporation (or such other bank as is nominated by the Company) as an equivalent rate charged by that bank for overdrafts in excess of \$100,000.

Director means a person who is a director for the time being of the Company, in relation to rules applying to meetings of the Board, including voting by Directors and material personal interests, references to Directors include alternates and in relation to **clause 38** includes a person who is a director for the time being of a wholly owned subsidiary of the Company.

Dispose means to grant options or rights of pre-emption over, sell, transfer, assign, part with the benefit of, mortgage, charge, declare a trust of, encumber

or deal with or agree to do any of those things and **Disposal** is to be construed accordingly.

Entity means:

- (a) a body corporate;
- (b) an unincorporated body;
- (c) a trust; or
- (d) a partnership.

Eligible Investor means:

- (a) a person acting as trustee of a Superannuation Fund with net assets of not less than \$10 million;
- (b) a person who is directly or indirectly wholly owned by a person described in paragraph (a) of this definition; or
- (c) a person acting as trustee of a person described in paragraph (b) of this definition.

Fair Value means the per Share value of the Shares certified in writing by the Auditor having regard to all normal share valuation factors.

Group:

- (a) in respect of a Member who is acting as trustee of a Superannuation Fund, means:
 - (i) each person who is acting as trustee of that Superannuation Fund;
 - (ii) each person who is directly or indirectly wholly owned by that Superannuation Fund; and
 - (iii) each person who is acting as trustee of a person who is directly or indirectly wholly owned by that Superannuation Fund;
- (b) in respect of a Member who is directly or indirectly wholly owned by a Superannuation Fund (who is not acting as trustee of that Superannuation Fund);
 - (i) each person who is acting as trustee of that Superannuation Fund;
 - (ii) each person who is directly or indirectly wholly owned by that Superannuation Fund; and
 - (iii) each person who is acting as trustee of a person who is directly or indirectly wholly owned by that Superannuation Fund; and
- (c) in respect of a Member who is acting as trustee of a person who is directly or indirectly wholly owned by a Superannuation Fund, means:
 - (i) each person who is acting as trustee of that Superannuation Fund;
 - (ii) each person who is directly or indirectly wholly owned by that Superannuation Fund; and

- (iii) each person who is acting as trustee of a person who is directly or indirectly wholly owned by that Superannuation Fund.

Managing Director means any person appointed for the time being as a managing director of the Company.

Member means a person who is, or who is registered as, a member of the Company or, in the case of joint holders of any Share, who are, or who are registered as, joint holders of that Share.

Register of Members means the register of Members maintained pursuant to the Corporations Act.

Related Body Corporate has the meaning given to that term in the Corporations Act.

Relevant Proportion means:

- (a) for the purposes of **clauses 7.2(a)** and **14.6**, in relation to each Voting Member, the proportion of issued Voting Shares held by that Member to the total of all issued Voting Shares at the relevant time; and
- (b) otherwise, in relation to each Member, the proportion of issued Shares held by that Member to the total of all issued Shares at the relevant time.

Secretary means any person appointed for the time being as, or to perform the functions of, secretary of the Company, and in relation to **clause 38** includes a person who is appointed for the time being as, or to perform the functions of, secretary of a wholly owned subsidiary of the Company.

Share means any share in the share capital of the Company.

Superannuation Fund means a complying superannuation fund as that term is defined in the *Superannuation Industry (Supervision) Act 1993* (Cth).

Voting Member means a Member who holds Voting Shares

Voting Shares means Shares that are voting shares (as defined in the Corporations Act).

3.2 Interpretation

In this Constitution:

- (a) words importing the singular include the plural and vice versa;
- (b) the words “including”, “include” and “includes” are to be construed without limitation;
- (c) a reference to legislation is to be construed as a reference to that legislation, any subordinate legislation under it, and that legislation and subordinate legislation as amended, re-enacted or replaced for the time being;
- (d) a reference to a “person” includes an Entity;
- (e) a reference to a trustee includes a custodian, sub-custodian or nominee;
- (f) a reference to a custodian, sub-custodian or nominee is to a custodian, sub-custodian or nominee who is acting as a bare trustee;

- (g) a reference to a person acting as trustee of a person:
 - (i) is, in the case where the first-mentioned person is not acting as a custodian, sub-custodian or nominee of a person, a reference to the first-mentioned person (as a trustee of a trust);
 - (ii) in the case where the first-mentioned person is acting as a custodian of a person (as a trustee of a trust), a reference to the first-mentioned person (as a custodian of the trust);
 - (iii) in the case where the first-mentioned person is acting as a custodian of a person (other than as a trustee of a trust), a reference to the first-mentioned person (as a custodian of the second-mentioned person);
 - (iv) in the case where the first-mentioned person is acting as a sub-custodian of a person ((as a custodian of a person (as a trustee of a trust)), a reference to the first-mentioned person (as a sub-custodian of the trust);
 - (v) in the case where the first-mentioned person is acting as a sub-custodian of a person ((as a custodian of a person (other than as a trustee of a trust)), a reference to the first-mentioned person (as a sub-custodian of the third-mentioned person);
 - (vi) in the case where the first-mentioned person is acting as a nominee of a person ((as a custodian of a person (as a trustee of a trust)), a reference to the first-mentioned person (as a nominee of the trust);
 - (vii) in the case where the first-mentioned person is acting as a nominee of a person ((as a custodian of a person (other than as a trustee of a trust)), a reference to the first-mentioned person (as a nominee of the third-mentioned person);
 - (viii) in the case where the first-mentioned person is acting as a nominee of a person (as a trustee of a trust but not as a custodian of a person), a reference to the first-mentioned person (as a nominee of the trust); or
 - (ix) in the case where the first-mentioned person is acting as a nominee of a person (other than as a trustee of a trust), a reference to the first-mentioned person (as a nominee of the second-mentioned person);
- (h) headings are used for convenience only and are not intended to affect the interpretation of this Constitution; and
- (i) a word or expression defined in the Corporations Act and used, but not defined, in this Constitution has the same meaning given to it in the Corporations Act.

4 Modification or repeal of this Constitution

4.1 Modifying or repealing Constitution

This Constitution may be modified or repealed only by a special resolution of the Company in a general meeting.

4.2 Date of effect of modification or repeal

Any modification or repeal of this Constitution takes effect on the date the special resolution is passed or any later date specified, or provided for, in the resolution.

5 Members

5.1 Number of Members

- (a) The Company must have at least one Member.
- (b) If there is only one Member, that Member may act as the sole Member of the Company.

5.2 Becoming a Member

6 Subject to the Corporations Act and this Constitution, a person becomes a Member on the registration of that person's name in the Register of Members. Shares

6.1 Board may issue Shares

Subject to this Constitution and the Corporations Act, the Board may issue Shares from time to time.

6.2 Shares may be partly paid

- (a) The Board may issue Shares without requiring full immediate payment in cash (**partly paid Shares**).
- (b) The issue of partly paid Shares may be subject to any conditions that the Board sees fit, including that amounts on those Shares must be paid by instalments.

7 Issue of Shares

7.1 Class rights

- (a) Subject to **clause 7.2**, the Board may issue Shares with such preferred, deferred or other special rights (including conversion rights) or such restrictions as to dividends, voting, return of capital, payment of calls, payment by instalment or otherwise as the Directors determine.
- (b) Where the share capital of the Company is divided into different classes of Shares, unless the terms of issue of the Shares of any class provide otherwise, the rights attached to that class may be varied or abrogated in

any way with the approval of a special resolution passed at a separate meeting of the Members holding the issued Shares of that class or with the consent in writing of the Members holding three-quarters of the issued Shares of that class.

- (c) A quorum of a meeting of Members of a class is the lesser of all the Members of the class and 5 Members present in person or by proxy who together hold at least 20% of the shares of that class.

7.2 Procedure for allotment and issue of Voting Shares

- (a) Before issuing Voting Shares, the Board must offer the Voting Shares (**Offer Shares**) to all Voting Members as nearly as possible to each Voting Member's Relevant Proportion.
- (b) In making the offer, the Board must give the Voting Members a statement setting out the terms of the offer, including:
 - (i) the number of Voting Shares offered;
 - (ii) the offer price for the Voting Shares offered, each call date (if any), if the offer price is to be to paid in instalments the amount of each instalment and the amount of each call; and
 - (iii) the period of time for which the offer will remain open.
- (c) Subject to this Constitution and the Corporations Act, the Board may issue any Voting Share not taken up under **clauses 7.2(a)** and **(b)** as the Board sees fit, provided that the Board may not issue any Voting Share not taken up under **clauses 7.2(a)** and **(b)** to any person who is not an Eligible Investor.

7.3 Company may resolve

By resolution passed at a general meeting, the Company may authorise the Board to make a particular issue of Voting Shares without offering the Voting Shares to Voting Members in accordance with **clause 7.2**.

7.4 Fractional entitlement

If on any issue of Shares (including on a distribution or bonus issue), a Member is entitled to a fraction of a Share, the Board may deal with that fractional entitlement, on behalf of that Member, in any manner determined by the Board to be appropriate whether by rounding such entitlement down to the nearest whole number or otherwise.

7.5 Restrictions on issue

The Company may not issue Shares otherwise than in accordance with **clauses 7.1** to **7.4**.

8 Certificates

8.1 Company to issue Certificates

Within two months after the issue of any Share, the Company must:

- (a) complete and have ready for delivery to the Member registered as the holder of that Share or other security a Certificate or, as the case may be, all the appropriate certificates or other title documents in connection with the issue of the Share or other security; and
- (b) send or deliver a Certificate or, as the case may be the completed certificates or other title documents:
 - (i) to the Member; or
 - (ii) if the Member has instructed the Company in writing to send the Certificate or, as the case may be all the appropriate certificates or other title documents in connection with the issue of the Share or other security to a nominated person, to that person.

8.2 Details on Certificate

Each Certificate must set out:

- (a) the Company's name and ACN;
- (b) that the Company is registered under the Corporations Act;
- (c) the name of the Member;
- (d) the number of Shares held by the Member;
- (e) the class (if any) of those Shares;
- (f) the amount (if any) unpaid on the Shares;
- (g) the terms of which those Shares are on issue.

8.3 Title to Shares

A Certificate or title document issued in accordance with this Constitution is prima facie evidence of the title of the Member to each Share or other security to which the Certificate or title document relates.

9 Maintenance of Register of Members

9.1 Register of Members

The Company must maintain a Register of Members setting out:

- (a) the name and address of each Member;
- (b) the date on which each person became a Member;
- (c) the date on which each allotment of Shares took place;
- (d) the number of Shares in each allotment;
- (e) the Shares held by each Member;
- (f) the class (if any) of the Shares;

- (g) the Share numbers (if any) or Certificate number (if any) relating to the Shares;
- (h) the amount paid on the Shares;
- (i) whether or not the Shares are fully paid;
- (j) any amount unpaid on Shares;
- (k) if notified, whether the Share is held beneficially or not; and
- (l) in respect of each person who has ceased to be a Member, the date on which that person ceased to be a Member.

9.2 Inspection of Register of Members

The Register of Members must be kept at the Company's registered office or the principal place of business. A Member may inspect the Register of Members at no charge during normal business hours.

10 Joint holders of Shares

Where two or more persons are registered as the joint holders of any Share:

- (a) subject to the Corporations Act, the Company will not register more than four people as joint holder of any Share;
- (b) they hold that Share as joint tenants with rights of survivorship;
- (c) each Certificate must set out the name of all joint holders;
- (d) on the death of any one or more of them, the survivor or survivors, as the case may be, are the only persons the Company recognises as having legal title to that Share;
- (e) the Company must issue one Certificate and must give any notices to the joint holder whose name appears first in the Register of Members;
- (f) each of them is jointly and severally liable to pay each call or instalment of each call and interest and any other amount payable in respect of that Share;
- (g) on transfer of that Share the instrument of transfer must be signed by all joint holders;
- (h) if the Board receives a request to convene a general meeting in accordance with this Constitution from any joint holder or any joint holders of that Share, the request must detail any proposed resolution, the name or names of the joint holder or holders requesting the meeting and be signed by all of the joint holders making the request. For this purpose, signatures of joint holders may be contained in more than one document;
- (i) if more than one joint holder attends a general meeting and purports to be entitled to vote on any resolution at that meeting, the joint holder whose name appears in the Register of Members before the names of other joint holders attending the meeting may vote;

- (j) on any resolution passed without a general meeting being held, all joint holders of that Share must sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures of joint holders may be contained in more than one document; and
- (k) any one of them may give a receipt for any amount paid in respect of that Share.

11 Call on Shares

11.1 Power to make calls

Subject to the Corporations Act, this Constitution and the terms on which the Shares are on issue, the Board may make a call or calls on any Member in respect of any amount unpaid on any Share held by that Member.

11.2 Date of call and number of payments

- (a) Subject to the terms on which the Shares are on issue, a call is made on the date the Board resolves to make a call or, where the date of any call is specified in terms on which the Shares are on issue, on the date the Board allots the Shares.
- (b) Subject to the terms on which the Shares are on issue, a call may be payable in one payment or in instalments.

11.3 Notice of call

- (a) Subject to the terms on which the Shares are on issue, at least 14 days' notice must be given to the Member of the date on which the amount of the call or the instalment of the call must be paid.
- (b) Subject to the terms on which the Shares are on issue, the notice must state:
 - (i) the amount of the call or, as the case may be, the amount of each instalment;
 - (ii) the date (or dates) for payment;
 - (iii) the time (or times) for payment;
 - (iv) the place (or places) for payment;
 - (v) that interest may be payable if payment is not made on or before the date (or dates) for payment; and
 - (vi) that a lien will arise if the amount of the call or the instalment is not paid in accordance with the notice.
- (c) Any unintentional omission or error in giving or not giving notice of a call or the non-receipt of notice of a call by any person entitled to receive notice does not invalidate the call.

11.4 Revocation, postponement or extension of calls

Subject to the terms on which the Shares are on issue, before the Company receives any amount due under any call or instalment, the Board may resolve to revoke, postpone or extend the period within which that call or instalment must be paid. If the Board so resolves, the Board must notify all persons on whom the call was made.

11.5 Interest on unpaid calls

- (a) If an amount called is not paid on or before any date specified in the notice for payment, the Member must pay interest on the amount unpaid from the date specified in the notice of the call for payment until and including the date of actual payment. The interest rate may be determined by the Board, or, if the Board does not determine a rate, the interest rate is at the Default Rate. Interest will accrue and compound daily.
- (b) The Board may waive the right to require the payment of interest.

11.6 Differentiation between Members of amounts payable on calls

The terms on which Shares are on issue may differ between Members as to the amount to be paid on any call or instalment and the date (or dates) on which payment is to be made.

11.7 Payment of calls in advance

- (a) The Board may accept any sum in respect of any amount uncalled or called but not yet payable on any Share. The Board may authorise payment by the Company of interest upon the whole or any part of any sum so accepted until the date on which the sum paid is payable under a call. The interest rate will be determined by the Board.
- (b) Any sum so accepted is:
 - (i) to be treated as a loan to the Company, not as share capital of the Company until the date on which the sum is payable under a call or instalment; and
 - (ii) not to be taken into account in determining an entitlement to vote or the amount of any distribution in respect of any Share.
- (c) The Board may repay any sum so accepted at any time on giving the Member not less than ten days' notice.

12 Lien

12.1 Lien

- (a) The Company has a first and paramount lien:
 - (i) on each partly paid Share (and any distribution in respect of it, including dividends) in respect of any call (including any instalment) due and payable but unpaid and any interest and any other amount owing in respect of that Share; and

- (ii) on each Share in respect of any payment which the Company is required by law to pay (and has paid) in respect of the Share.
- (b) By notice, the Board may discharge or waive, in whole or in part, any lien or declare any Share to be wholly or partly exempt from a lien, but otherwise no act or omission is to be taken as discharging or a waiver or grant of an exemption from any lien. A lien may not be discharged or waived otherwise.

12.2 Enforcement of lien

- (a) The Board may sell or otherwise dispose of any Share the subject of a lien, if:
 - (i) a sum in respect of which the lien exists is due and payable but is unpaid;
 - (ii) the Company has provided notice to the Member or, if the Company has notice of the death, bankruptcy or the mental incapacity of the Member, provided notice to the person entitled to be registered as the holder of that Share:
 - (A) setting out that amount due but unpaid paid or required to be paid or outstanding;
 - (B) requiring payment of that amount; and
 - (C) stating that the Share is liable to be sold or otherwise disposed of if payment of that amount is not made within 14 days after the date of the notice; and
 - (iii) the amount specified in the notice is not paid in full in accordance with the notice.
- (b) The terms on which and manner by which any Share may be sold or otherwise disposed of are to be determined by the Board.
- (c) Interest accrues and compounds daily at the rate determined by the Board or, if no such rate is determined, at the Default Rate on the amount due but unpaid, costs and expenses paid in connection with the enforcement of the lien and the sale or other disposal of the Shares.
- (d) The Company may receive the net proceeds of the sale or other disposal of any Share and execute an instrument of transfer in respect of the Share. The Company must apply the net proceeds of the sale or disposal of any Share in or towards satisfaction of first, costs and expenses paid or payable in connection with the enforcement of the lien and the sale or other disposal of that Share and secondly, all amounts due but unpaid, and accrued interest on all those amounts.
- (e) The Company must pay any balance of the net proceeds of sale or other disposal to the Member whose Share has been sold or otherwise disposed of.
- (f) The purchaser is entitled to assume that the proceeds of sale or other disposal have been applied in accordance with this Constitution and is

not responsible for the application of the purchase money by the Company.

12.3 Continuing liability

If the net proceeds from the sale or other disposal are less than the sum of the amount:

- (a) due but unpaid in respect of that Share;
- (b) the costs and expenses paid or payable in connection with the enforcement of the lien and the sale or other disposal; and
- (c) interest on those amounts (**Shortfall**),

the person whose Share has been sold or otherwise disposed of, continues to be liable and must pay to the Company an amount equal to the Shortfall together with interest.

12.4 Protection of lien

The Board may determine to do anything to protect any lien.

13 Forfeiture

13.1 Notice regarding forfeiture

- (a) If any Member does not pay the amount of any call or instalment in respect of any Share when it is due, the Board may give notice to the Member:
 - (i) requiring payment of:
 - (A) the unpaid call or instalment;
 - (B) any costs and expenses incurred by the Company as a result of the non-payment of the call or instalment and the amount of the costs and expenses; and
 - (C) interest that has accrued and compounded (on a daily basis) on the amount of the unpaid call or instalment;
 - (ii) demanding payment of those amounts within 14 days after the date of the notice;
 - (iii) stating the place where payment is to be made; and
 - (iv) stating that the Share and any distribution in respect of it not yet made are liable to be forfeited and that on forfeiture the Shares may be sold or otherwise disposed of if payment of the amount demanded is not made in full within 14 days after the date of the notice.

13.2 Forfeiture

- (a) If payment of the amount demanded is not made in full in accordance with the notice, any Share or distribution, the subject of the notice, may be forfeited on a resolution of the Board to that effect.

- (b) The Board may accept the surrender of any Share which may be forfeited. If the Board accepts the surrender, that Share will be treated as having been forfeited.
- (c) If any Share is forfeited, notice of forfeiture will be given to the registered holder of that Share, or, as the case may be, each joint holder, and the date and details of the forfeiture will be recorded in the Register of Members.
- (d) The Board may sell or otherwise dispose of any forfeited Share on behalf of the Member. The terms and manner of sale or disposal are to be determined by the Board.
- (e) At any time before any forfeited Share is sold or otherwise disposed of, the Board may cancel the forfeiture on terms determined by it.
- (f) On forfeiture of any Share, the holder of that Share ceases to be a Member and ceases to have any right as a Member in respect of that forfeited Share (including in respect of any distribution), but remains liable to pay to the Company for:
 - (i) all amounts payable by the holder to the Company at the date of forfeiture;
 - (ii) further costs or expenses incurred by the Company in respect of the forfeiture; and
 - (iii) interest to accrue and to compound daily at a rate determined by the Board or, if no such rate is determined, at the Default Rate on those amounts from the date of forfeiture until payment of amounts and accrued interest in full.
- (g) The liability of a Member continues until:
 - (i) the Member pays all those amounts and accrued interest in full; or
 - (ii) the Company receives and applies the net proceeds from the sale or other disposal of the forfeited Share an amount which is equal to or greater than all those amounts and accrued interest.
- (h) The Company may receive the net proceeds from the sale or other disposal of any forfeited Share and execute an instrument of transfer in respect of the forfeited Share. The Company must apply the net proceeds of any sale or other disposal of any Share in or towards satisfaction of first, costs and expenses paid or payable in connection with the enforcement of the forfeiture and the sale or other disposal of that Share and secondly, all amounts due but unpaid, and accrued interest on all those amounts.
- (i) The Company must pay the balances (if any) of the net proceeds of sale or other disposal to the Member whose forfeited Share has been sold or otherwise disposed of.
- (j) The purchaser of any forfeited Share is entitled to assume that the proceeds of the sale or other disposal have been applied in accordance

with this Constitution and is not responsible for the application of the purchase money by the Company.

13.3 Continuing liability

If the net proceeds from the sale or other disposal of any Share are less than the sum of the amount:

- (a) due but unpaid in respect of that Share;
- (b) the costs and expenses paid or payable in connection with the enforcement of the forfeiture and the sale or other disposal; and
- (c) interest on those amounts (**Shortfall**),

the person whose Share has been sold or otherwise disposed of, continues to be liable and must pay to the Company an amount equal to the Shortfall together with interest.

13.4 Cancellation of forfeited Shares

By resolution passed at a general meeting, the Company may cancel any forfeited Share.

14 Pre-emptive rights

14.1 Restriction on Disposal

A Member must not Dispose of any Voting Share other than in compliance with this **clause 14**.

14.2 Restriction on transfer

The Company must not register a transfer of Shares or acknowledge that any person (other than a Member) has any right in relation to any Shares unless and until:

- (a) the provisions of this **clause 14** have been complied with in relation to those Shares; and
- (b) if the *Financial Sector (Shareholdings) Act 1998* (Cth) applies, the Company has received sufficient evidence that the new owner has been approved to hold the relevant Shares in accordance with that Act.

14.3 Notice of transfer

- (a) A Voting Member proposing to transfer any or all of its Voting Shares (**Offeror**) to a third party purchaser (**Third Party**) must give notice in writing to the Company that it wishes to transfer those Voting Shares (**Transfer Notice**).
- (b) The Transfer Notice must include details of:
 - (i) the number of Voting Shares which the Offeror wishes to transfer (**Offered Shares**); and
 - (ii) the terms on, and the price at which the Offeror wishes to transfer the Offered Shares.

14.4 Company may buy-back

When the Company has received a Transfer Notice, the Board may (in its discretion) elect that the Company buy back some or all of the Offered Shares by following the applicable buy back procedure in the Corporations Act.

14.5 If Board does not buy back

If the Board does not elect that the Company buy back all of the Offered Shares or elects that the Company buy back only some of the Offered Shares within two months after receiving a Transfer Notice, any remaining Offered Shares (**Remaining Shares**) must be offered to the other Voting Members in accordance with **clause 14.6**.

14.6 Sale to third party purchasers

Before a Voting Member may Dispose of any Remaining Shares to a Third Party it must make each other Voting Member an initial offer (**Initial Offer**) in writing to sell to that Voting Member as nearly as possible to its Relevant Proportion of those Voting Shares on the terms and for the price per Voting Share which the Offeror would, but for the provisions of this **clause 14**, have sold the Voting Shares to the Third Party (**Terms**). The Initial Offer shall also require each Voting Member to state whether the Voting Member desires the Fair Value of the Voting Shares to be fixed by the Auditor. In the event that a Voting Member desires the Fair Value to be fixed, and the Fair Value is fixed at an amount less than the sale price set in the Terms, the Terms are deemed to include the Fair Value as the sale price. If the Fair Value is fixed at an amount greater than the sale price set in the Terms, the sale price in the Terms continues to apply.

14.7 Time and manner of acceptance by Members

A Voting Member may accept an Initial Offer received by it by giving notice in writing to the Offeror within 21 days after the date of receipt of the Initial Offer.

14.8 Partial acceptance

A Voting Member may accept on the Terms any number of the Voting Shares comprised in an Initial Offer received by it and by doing so is taken to have rejected the balance of the Voting Shares comprised in the Initial Offer on the date of notification of acceptance.

14.9 Automatic rejection

An Initial Offer which is not accepted within 21 days after the date of receipt (**Acceptance Period**) of that offer is taken to be rejected.

14.10 Re-offers

(a) Where a Voting Member does not accept all of its Initial Offer within the Acceptance Period, the Offeror must re-offer the rejected Voting Shares to each Voting Member who accepted its Initial Offer in relevant proportions as between those Voting Members who accepted the Initial Offer.

- (b) The re-offer must be in accordance with **clauses 14.6 to 14.9** inclusive, except that the Acceptance Period referred to in **clause 14.9** is five Business Days.

14.11 Completion of offer process

The process set out in **clauses 14.6 to 14.10** inclusive must be repeated until all of the Initial Offers or re-offers with respect to the Remaining Shares:

- (a) have been accepted by one or more Shareholders; or
- (b) or have been rejected by all Shareholders; or
- (c) have lapsed.

14.12 Rejection of Initial Offer

Once the offer process has been completed pursuant to **clause 14.11**, any rejected Voting Shares may be sold by the Offeror to the Third Party on the Terms during the period commencing on the date of completion of the offer process and ending six months after.

14.13 Exception

Clauses 14.1 to 14.12 inclusive do not apply to the following transfers of Shares:

- (a) a transfer by a Voting Member to another person in the Group of the Voting Member;
- (b) any transfer by a Member who is the sole Member at the time of that transfer; and
- (c) a transfer in relation to which all of the Voting Members other than the Voting Member transferring Voting Shares have waived their rights under this **clause 14**,

provided that any such transfer of Voting Shares is to an Eligible Investor.

14.14 Change of Control

If a Voting Member is part of a Group and that Voting Member ceases to be part of that Group, then the Voting Member concerned is to be taken as wishing to dispose of all of its Voting Shares in accordance with **clause 14.3** and for the purpose of such disposal the price per Voting Share comprised in the Transfer Notice and the Terms is to be equal to Fair Value.

14.15 Restrictions on Third Party

For any proposed Disposal of Voting Shares by an Offeror to a Third Party;

- (a) the Third Party must be an Eligible Investor; and
- (b) the proposed Disposal must not contravene the Corporations Act.

14.16 Members may not Dispose

A Voting Member must not mortgage, pledge or give any form of security over a Voting Share without prior approval by a resolution of the Board.

15 Requirements for Instruments of Transfer

15.1 Transfer of Shares

- (a) Subject to the Corporations Act and this Constitution, a Member may transfer any Share held by the Member by an instrument of transfer:
 - (i) in any form prescribed by the Board; or
 - (ii) if the Board does not prescribe a form, in any common form.
- (b) A Share may not be transferred other than in accordance with this rule.
- (c) An instrument of transfer must set out:
 - (i) the name and address of the transferor or transferors;
 - (ii) the name and address of the transferee or transferees;
 - (iii) the Share or Shares being transferred;
 - (iv) the Share number or numbers (if any);
 - (v) any amount unpaid on the Share or Shares;
 - (vi) if the Share or Shares being transferred is or are to be held non-beneficially; and
 - (vii) the jurisdiction of registration of the Company.
- (d) The instrument of transfer must be signed by, or on behalf of, both the transferor and the transferee.

15.2 Registration of transfers

- (a) A Member transferring a Share remains the holder of that Share until the transfer is registered and the name of the person to whom the Share is being transferred is entered in the Register of Members.
- (b) No Shares will be transferred to a person and that person's name entered into the Register of Members until that person has obtained all necessary approvals to hold the Shares.

15.3 Company may suspend registration

- (a) Subject to this Constitution, the Board may suspend the registration of transfers at the times and for the period of time it determines.
- (b) A period of suspension of registration must not exceed 30 days in any calendar year.

15.4 Retention of instruments of transfer

Instruments of transfer in respect of transfers that are registered may be retained by the Company for such period of time as the Board may determine.

15.5 Restriction on transfer

The Board may, with absolute discretion and without giving any reason, decline to register any transfer or transmission of a Share (whether or not it is fully paid).

16 Issue of Certificate after registration of transfer

16.1 Delivery of transfer and title documents

Subject to the Corporations Act and this Constitution, within one month after the date on which a proper instrument of transfer is lodged with the Company, the Company must:

- (a) complete and have ready for delivery to the transferee a Certificate or, as the case may be, all the appropriate transfer and title documents (if any); and
- (b) if the transfer is of all of the Shares or other securities of which the transferor is the registered holder, send or deliver the Certificate or, as the case may be, all the appropriate transfer and title documents (if any) completed documents to:
 - (i) the transferee; or
 - (ii) if the transferee has instructed the Company to send them to a nominated person, that person.
- (c) if the transfer is of some but not all of the Shares or other securities of which the transferor is the registered holder, if the transferor has provided the original Certificate or, as the case may be, other title document to the Company, send or deliver two Certificates or, as the case may be, other title documents:
 - (i) one Certificate or the appropriate title document to the transferor in respect of those Shares or other securities that have not been transferred; and
 - (ii) the other Certificate or the appropriate title document in respect of the Shares or other securities that have been transferred:
 - (A) to the transferee; or
 - (B) if the transferee has instructed the Company to send them to a nominated person, to that person.

16.2 Return of Certificate

Any person who ceases to be a Member must return any Certificate or, as the case may be, any other title document to the Company as soon as practicable.

17 Buy back

17.1 Members may request buy back

A Member may, at any time, give the Board notice in writing that it wishes the Board to buy back some or all of its Shares (**Buy Back Request**).

17.2 Company may buy back

After receiving a Buy Back Request from a Member the Board may (in its discretion) choose to buy back all or some of the Shares by following the applicable procedure for buy backs in the Corporations Act.

17.3 Price of Shares

The price at which the Company buys back the Shares (subject to approval by the Members in accordance with the Corporations Act) will be equal to Fair Value with appropriate adjustments if any Shares are partly paid.

17.4 Deemed request for buy back

A Member will be deemed to have given a Buy Back Request to the Company pursuant to **clause 17.1** if:

- (a) it seeks to wind up the Company by application to a court or other proceedings; or
- (b) in respect of a Voting Member, it ceases to be an Eligible Investor.

18 Interests recognised

Subject to this Constitution, the Company is entitled to treat the Member who is the registered holder of any Share as the sole legal owner of that Share.

Subject to the Corporations Act and this Constitution, the Company is not required to recognise any other interest in respect of any Share of any other person.

19 General meetings

19.1 Board convening a general meeting

The Board may convene a general meeting.

19.2 Meetings requested by Members

- (a) If the Board receives a request from a Member or Members with at least five percent of the votes that may be cast at any general meeting, the Board must convene a general meeting within 21 days after the date of receipt of that request.
- (b) The request must detail any proposed resolution, the names of the Members requesting the meeting and be signed by all of the Members making the request. For this purpose, signatures of the Members may be contained in more than one document.
- (c) A general meeting requested by the Members must be held no later than two calendar months after the request is received.

19.3 Notice of general meeting

At least 21 days' notice of a general meeting must be given to the Members, Directors and Auditor. The notice must:

- (a) state the date, time and place (or places) of the meeting;
- (b) state the general nature of the business to be conducted at the meeting;
- (c) state any proposed resolutions;
- (d) state the names of proxies that have been appointed (if any); and

- (e) contain a statement informing the Members of the right to appoint a proxy.

19.4 Shorter notice of general meeting

Subject to the Corporations Act, shorter notice of a general meeting may be given if the calling of the notice of the general meeting on shorter notice is agreed to by 95% of the Members entitled to attend and vote at the general meeting agree before the meeting, and accordingly, any such general meeting will be treated as having been duly convened.

19.5 Notice of resumption of an adjourned meeting

If a general meeting is adjourned for 30 days or more, at least 21 days' notice must be given to the Members, Directors and Auditor of the date, time and place (or places) for the resumption of the adjourned general meeting.

19.6 General meetings at two or more places

A general meeting may be held in two or more places. If a general meeting is held in two or more places, the Company must use technology that gives Members a reasonable opportunity to participate at that general meeting.

19.7 Postponement or cancellation of general meetings

- (a) Subject to this Constitution and the Corporations Act, the Board may change the place (or places) of, postpone or cancel a general meeting.
- (b) If a general meeting is convened pursuant to a request by Members, the Board may not postpone or cancel the general meeting without the consent of the requesting Members.

19.8 Notice of change, postponement or cancellation of meeting

- (a) If the Directors have convened a general meeting, the Board may change the place (or places) of the general meeting, postpone or cancel the general meeting. If a Director has convened a general meeting, only the Director who convened the general meeting may change the place (or places) of the general meeting, or postpone or cancel the general meeting.
- (b) If the Board changes the place (or places) of a general meeting, notice must be given to each Member and each person entitled to receive notice of the meeting of the new place (or places) of the meeting.
- (c) If the Board postpones a general meeting, notice must be given to each Member and each other person entitled to receive notice of the new date, time and place (or places) of the meeting.
- (d) If the Board cancels a general meeting, notice must be given to each Member and each other person entitled to receive notice of general meetings.

19.9 Omission to give notice relating to general meeting

No resolution passed at or proceedings at any general meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that general meeting;

- (b) any change of place (or places) of that general meeting;
- (c) postponement of that general meeting, including the date, time and place (or places) for the resumption of the adjourned meeting; or
- (d) resumption of that adjourned general meeting.

20 Proceedings at general meetings

20.1 Quorum

- (a) A quorum at a general meeting is the lesser of all the Members or 5 Members present in person or by proxy who together hold at least 20% of all Voting Shares on issue. The quorum must be present at all times during the general meeting.
- (b) Notwithstanding any other rule, if there is only one Member, that Member may act as the sole Member, and as such pass resolutions in writing.
- (c) If a Member, who is entitled to attend and vote at the general meeting, has appointed more than one proxy and two or more proxies attend a general meeting, only one proxy will be counted for the purposes of determining whether there is a quorum.

20.2 Lack of quorum

- (a) If a quorum is not present within 30 minutes after the time appointed for a general meeting (or any longer period of time as the chair may allow) or ceases to be present at any time during the general meeting, the general meeting:
 - (i) if convened by a Director or on the request of Members who are entitled to attend and vote at the general meeting, is dissolved; or
 - (ii) in any other case:
 - (A) is adjourned to be resumed on a day, time and place (or places) as the chair determines or if the chair is not present as the Directors at the meeting may determine; or
 - (B) if the Directors do not so determine, no Director is present, or no Director present determines:
 - (1) the date for the resumption of the adjourned general meeting will be on the same day in the next week;
 - (2) the time for the resumption of the adjourned general meeting will be at the same time as the adjourned meeting; and
 - (3) the place (or places) for the resumption of the adjourned general meeting, will be at the same place (or places) as the adjourned meeting.
- (b) If a quorum is not present within 30 minutes after the time appointed for the resumption of the adjourned general meeting or ceases to be present during the meeting, the general meeting is dissolved.

20.3 Chairing general meetings

- (a) At the first general meeting of the Company, following adoption of this constitution the Directors will elect a chair. The person elected as chair may chair each subsequent general meeting. At any subsequent general meeting a new chair may be elected. On the election of a new chair, the new chair will chair each subsequent general meeting.
- (b) If the chair is not present within 15 minutes after the time appointed for any general meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that general meeting, the Directors present may elect a Director present to chair the whole or any part of that general meeting.
- (c) If no Director is elected or if all the Directors present decline to take the chair for the whole or any part of that general meeting, the Members present (whether in person or by proxy) who are entitled to vote at that general meeting may elect a Member present (in person) to chair for the whole or any part of that general meeting. If the Members who are entitled to vote at that general meeting do not so elect a chair, the meeting will be adjourned to be resumed on the same day, at the same time and at the same place (or places) in the following week.

20.4 Conduct of general meetings

The chair of each general meeting has charge of conduct of that meeting, including the procedures to be adopted and the application of those procedures at that meeting.

20.5 Adjournment

- (a) The chair of a general meeting at which a quorum is present may, with the consent of the Members who are entitled to vote at that general meeting are who are present in person or by proxy adjourn the meeting to another date, time and place (or places).
- (b) If a majority of Members who are entitled to vote at that general meeting and who are present at a general meeting in person or by proxy determine that the meeting should be adjourned, the chair must adjourn the general meeting to a date, time and place (or places) determined by the chair.
- (c) No business may be transacted on the resumption of an adjourned or postponed general meeting other than the business left unfinished at the adjourned or postponed general meeting.

21 Proxy

21.1 Appointment of proxy

- (a) A Member who is entitled to attend and to vote at a general meeting of the Company may appoint a person as proxy to attend, speak and vote for that Member. The instrument appointing a proxy may restrict the exercise of any power.

- (b) A proxy may, but does not have to, be a Member.
- (c) An appointment of a proxy may be a standing one.
- (d) A proxy is not entitled to vote on a show of hands.
- (e) A proxy is not entitled to vote if the Member who has appointed the proxy is present in person at the meeting.
- (f) If a Member is entitled to cast two or more votes at a meeting, the Member may appoint two proxies. If the Member appoints two proxies and the appointment does not specify the proportion or the number of votes each proxy may exercise, each proxy may exercise half the votes.

21.2 Proxy instruments

- (a) An appointment of a proxy must be in writing and be signed by the Member appointing the proxy or by the duly authorised attorney of the Member and state:
 - (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the general meeting at which the proxy may be used, or if the appointment is a standing one, a clear statement to that effect.
- (b) Where a proxy is signed pursuant to a power of attorney, a copy of the power of attorney (certified as a true copy of the original) must be attached to the proxy instrument sent to the Company.
- (c) An instrument appointing a proxy may direct the way in which a proxy is to vote on a particular resolution. If an instrument contains a direction, the proxy is not entitled to vote on the proposed resolution except as directed in the instrument.

21.3 Proxy to be received by Company

- (a) An instrument purporting to appoint a proxy is not effective unless it is received, together with any additional documentation, including a copy of the power of attorney (certified as a true copy of the original), by the Company at least 48 hours before the general meeting or, as the case may be, the resumption of an adjourned general meeting, at any of the following:
 - (i) the registered office;
 - (ii) a fax number at the registered office; or
 - (iii) a place, fax number or electronic address specified for that purpose in the notice of the general meeting.

21.4 Power to demand poll

A proxy may demand, or join in demanding, a poll.

21.5 Revocation of proxy

The appointment of a proxy may be revoked by the Member who appointed the proxy by notice to the Company from the Member or, as the case may be, the duly authorised attorney of the Member, stating that the appointment of a proxy is revoked or by appointing a new proxy.

21.6 Validity of votes of proxy

A vote cast by a proxy will be valid unless before the start of a general meeting (or, in the case of an adjourned or postponed general meeting, not less than 48 hours before the resumption of the adjourned or postponed general meeting) at which a proxy votes:

- (a) the Member who appointed the proxy ceases to be a Member; or
- (b) the Company receives notice of:
 - (i) the revocation of the instrument appointing the proxy;
 - (ii) the appointment of a new proxy; or
 - (iii) the revocation of any power of attorney under which the proxy was appointed.

21.7 No liability

The Company is not responsible for ensuring that any directions provided in the instrument appointing the proxy or the way in which a proxy is to vote on a particular resolution are complied with, and accordingly is not liable if those directions are not complied with.

22 Body corporate representative

22.1 Appointment of corporate representative

- (a) If a Member is a body corporate, it may appoint a natural person as its representative to exercise on its behalf any or all of the powers it may exercise:
 - (i) at meetings of the Members;
 - (ii) at meetings of creditors or debenture holders; or
 - (iii) relating to resolutions to be passed without meetings.
- (b) The appointment of a corporate representative may be a standing one.

22.2 Authority to act as corporate representative

- (a) An appointment of a corporate representative must be in writing and be signed by the Member appointing the representative and state:
 - (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the representative's name or the name of the office held by the representative; and

- (iv) the general meeting at which the representative may act, or if the appointment is a standing one, a clear statement to that effect.
- (b) The instrument appointing the corporate representative may restrict the exercise of any power.

22.3 Instrument to be received by Company

- (a) An instrument purporting to appoint a corporate representative is not valid unless it is received by the Company at least 48 hours before the general meeting or, in the case of an adjourned meeting, at least 48 hours before the resumption of an adjourned general meeting.
- (b) An instrument appointing a corporate representative must be received by the Company at any of the following:
 - (i) the registered office;
 - (ii) a fax number at the registered office; or
 - (iii) a place, fax number or electronic address specified for that purpose in the notice of the general meeting.

22.4 Revocation and appointment of corporate representative

The appointment of a corporate representative may be revoked by the Member who appointed the corporate representative by notice to the Company from the Member stating that the appointment of the corporate representative is revoked or by appointing a new corporate representative.

22.5 Validity of votes of corporate representative

A vote cast by a corporate representative will be valid unless before the start of the general meeting (or, in the case of an adjourned or postponed general meeting, not less than 48 hours before the resumption of the adjourned or postponed general meeting) at which a corporate representative votes:

- (a) the Member who appointed the corporate representative ceases to be a Member; or
- (b) the Company has received notice of:
 - (i) the revocation of the instrument appointing the corporate representative; or
 - (ii) the appointment of a new corporate representative.

22.6 No liability

The Company is not responsible for ensuring that the terms of appointment of a corporate representative are complied with, and accordingly is not liable if those terms are not complied with.

23 Voting

23.1 Entitlement to vote

Subject to this Constitution and the terms on which Shares are issued, each Member entitled to vote at a general meeting may vote in person or by proxy.

On a show of hands, each Member who is entitled to vote has one vote and on a poll each Member who is entitled to vote has one vote for each fully paid Share held and, in respect of all partly paid Shares held, a number of votes equal to:

$$\frac{AxB}{C}$$

A = the number of partly paid Shares held by the Member;

B = the sum of all amounts actually paid on all the partly paid Shares held by the Member, (not including any amount paid in advance of a call or credited as paid); and

C = the aggregate fully paid issue price of all the partly paid Shares held by the Member.

If a Member is entitled to a fraction of a vote, the number of votes to which the Member is entitled will be rounded down to the nearest whole number.

Subject to this Constitution and the terms on which Shares are issued, each Member entitled to vote at a general meeting may vote in person or by proxy.

23.2 Unpaid calls and partly paid Shares

- (a) A Member is not entitled to vote at a general meeting in respect of any Share on which a call or instalment of a call is due and payable but is unpaid.
- (b) If a Member who is entitled to vote at a general meeting holds any partly paid Share, the aggregate number of votes that Member is entitled to cast on a poll in respect of those partly paid Shares is equal to **A**. **A** is determined as follows:

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

Where:

- (i) **B** is the number of partly paid Shares held by the Member;
- (ii) **C** is the amount actually partly paid (not credited) on the Shares; and
- (iii) **D** is an amount equal to the number of partly paid Shares held by the Member multiplied by an amount equal to the issue prices of the Shares.

If **A** is not a whole number, the number of votes must be rounded down to the next whole number.

23.3 Casting vote

If, on any ordinary resolution, an equal number of votes is cast for and against a resolution, the chair has no casting vote.

23.4 Proxy vote to be identified

Before a vote is taken the chair must inform the Members present whether any proxy votes have been received and, if so, how the proxy votes are to be cast.

23.5 Voting on resolution

At any general meeting, a resolution put to a vote must be determined by a show of hands unless a poll is demanded in accordance with this Constitution.

23.6 Objection to right to vote

- (a) A challenge to a right to vote at a general meeting:
 - (i) may only be made at that general meeting; and
 - (ii) must be determined by the chair.
- (b) A determination made by the chair in relation to a challenge to a right to vote is binding on all Members and is final.

23.7 Written resolutions

Members may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures of the Members may be contained in more than one document.

23.8 Minutes

- (a) Unless a poll is demanded in accordance with this Constitution, a declaration by the chair that a resolution has, on a show of hands, been:
 - (i) carried;
 - (ii) carried unanimously;
 - (iii) carried by a particular majority; or
 - (iv) lost or not carried by a particular majority,is conclusive evidence of the fact declared. An entry to that effect made in the minutes book of the Company signed by the chair is evidence of that fact unless the contrary is proved.
- (b) Within one month after each general meeting, the Directors must record or cause to be recorded in the minutes book:
 - (i) the proceedings and resolutions of each general meeting;
 - (ii) any declarations at each general meeting; and
 - (iii) all resolutions passed by Members without a general meeting.
- (c) The chair, or the chair of the next meeting, must sign the minutes within a reasonable time after the general meeting.
- (d) The minute books must be kept at the registered office.

- (e) Members may inspect the minute books between the hours of 9.00 am and 5.00 pm on any Business Day. No amount may be charged for inspection.

23.9 Disputes to be resolved by chair

The chair will determine any dispute in relation to any vote, and the determination of the chair is binding on all Members and is final.

24 Poll

24.1 Chair may determine to take a poll

The chair of a general meeting may determine that a poll be taken on any resolution.

24.2 Right to demand poll

A poll may be demanded on any resolution at a general meeting by any Member who is entitled to vote at the general meeting.

24.3 Procedure for demanding poll

- (a) A poll may be demanded:
 - (i) before a vote on a show of hands is taken;
 - (ii) before the result of a vote on a show of hands is declared; or
 - (iii) immediately after the result of a vote on a show of hands is declared.
- (b) If a poll is demanded on the election of a chair or on the question of an adjournment, it must be taken immediately. If a poll is demanded on any other matter, it may be taken in the manner and at the time and place (or places) as the chair directs.
- (c) Other than where a poll is demanded on the election of a chair or the question of an adjournment, a demand for a poll may be withdrawn at any time by the person or persons who demanded it. A demand for a poll which is withdrawn does not invalidate the result of a show of hands declared before the demand for the poll was made.
- (d) Other than where a poll is demanded on the election of a chair or the question of an adjournment, a demand for a poll does not prevent the general meeting continuing for the transaction of any business.

25 Appointment and removal of Directors

25.1 Number of Directors

Unless the Company resolves otherwise, the number of Directors (not counting alternates) must not be less than 6 or more than 9.

25.2 Appointment of Directors

- (a) Subject to **clause 25.1**, the Board may by resolution at a Board meeting appoint a natural person as a Director, as an additional Director or to fill the office of a Director vacated when a Director ceases to be a Director.
- (b) Subject to **clause 25.1**, the Company may by resolution passed at a general meeting appoint a natural person as a Director, as an additional Director or to fill the office of a Director vacated when a Director ceases to be a Director.
- (c) A Member may nominate a person for election as a Director by the Company at a general meeting.
- (d) An appointment of a person as a Director is not effective unless a signed consent to the appointment is provided by that person to the Company.
- (e) The appointment of a person as a Director will take effect on the later of the date of appointment and the date on which the Company receives the signed consent.

25.3 Board composition

The Directors as at the date of adoption of this constitution is as follows:

Name	End of Rotation Period
John Ries	1 January 2013
Garry Weaven	1 January 2013
Anna Booth	1 January 2014
Bernie Fraser	1 January 2012
Brian Pollock	1 January 2012
Graeme Grant	1 January 2012
Anne De Salis	1 January 2014

25.4 Term of appointment

- (a) Subject to this Constitution (including **clause 25.4(b) and 25.6(b)**), the appointment of each Director is for 3 years running from 1 January in the year immediately following the year in which the Director was appointed unless otherwise determined and resolved by the Members and noted in the minutes at the time of each Director's appointment (**Rotation Period**).
- (b) The Rotation Period for each Director at the date this constitution was adopted ends on the date specified next to the relevant Director's name in the table set out in **clause 25.3**.

25.5 Rotation of Directors

- (a) Each year one-third of the Directors are subject to retirement by rotation (or, if the number of Directors is not a multiple of three then the number

nearest to but not exceeding one-third of the Directors must retire from office as Directors).

- (b) The Directors to retire by rotation each year must include any Director who wishes to retire and does not wish to be re-appointed as a Director. Any further Director required to retire must be the Director whose Rotation Period ends soonest.
- (c) If there are two or more Directors that have been in office for an equal amount of time, and an agreement cannot be reached between those Directors on who will retire, the Director or Directors who will retire will be determined by lot.
- (d) A retiring Director is eligible for re-appointment.
- (e) Unless a resolution is passed to appoint some other person to fill the office of Director to be vacated by the retiring Director, a retirement by rotation at a general meeting does not become effective until the end of the meeting.

25.6 Rotation Periods

- (a) Despite anything else in **clauses 25.5** and **25.6(b)**, each Director must retire before the end of his or her Rotation Period.
- (b) If a Members' meeting is not held during the last six months of a Director's Rotation Period, that Director must retire at the Members' meeting held after the end of his or her Rotation Period.

25.7 Managing Director

Clauses 25.5 and **25.6** do not apply to Director who is also a Managing Director (or Chief Executive Officer) as appointed by the Directors and such a person is not counted for the purposes of determining the number of Directors.

25.8 Vacancy created by retiring Directors

- (a) The Board and any Member may nominate a person to fill a vacancy created by a retiring Director (**First Nominee**).
- (b) If no First Nominee is appointed by a resolution of the Members at a general meeting to fill the vacancy, the Board will convene a subsequent meeting within a reasonable period of time and the Board and any Member may nominate other candidates (each, a **Second Nominee**) for election as a Director to fill a vacancy on the Board and any such nominations will be considered at a subsequent general meeting convened within a reasonable period or by postal vote. The Second Nominee with the most votes will be appointed to fill the vacancy.
- (c) No person may be nominated as a Director to fill a vacancy on the Board unless they have signed a consent to nomination and appointment.

25.9 Removal of Director

The Company may remove a Director by resolution at a general meeting.

25.10 Cessation of Directorship

A person ceases to be a Director and the office of Director is vacated if the person:

- (a) is removed from office as a Director by a resolution of the Company at a general meeting; or
- (b) resigns as a Director in accordance with this Constitution.

25.11 Resignation of Directors

A Director may resign from the office of Director by giving notice of resignation to the Company at its registered office.

26 Powers and duties of Board

- (a) Subject to this Constitution and the Corporations Act, the activities of the Company are to be managed by, or under the direction of, the Board.
- (b) Subject to this Constitution and the Corporations Act, the Board may exercise all powers of the Company that are not required to be exercised by the Company in a general meeting.
- (c) The powers of the Board include the power to:
 - (i) borrow or otherwise raise money;
 - (ii) mortgage, charge (including in the form of a floating charge) any of the Company's assets (both present and future); and
 - (iii) issue debentures and other securities, and any instrument (including any bond).
- (d) The Board may delegate any of its powers to:
 - (i) a Director;
 - (ii) a committee of Directors;
 - (iii) an employee of the Company; or
 - (iv) any other person,

and in such a delegation the Board may specify that the power may be further delegated to other people.

27 Negotiable instruments

All negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed in such manner as the Board may determine.

28 Managing Director or CEO

- (a) The Board may appoint one or more people to the office of Managing Director or Chief Executive Officer (**CEO**) for such period, and on such terms (including as to remuneration), as the Board determines.

- (b) The Board may confer on a Managing Director or CEO any of the powers that the Board may exercise.
- (c) The Board may vary or revoke a conferral of any power on the Managing Director or CEO.
- (d) The Board may at any time vary or revoke an appointment of a Managing Director or CEO.

29 Alternate Directors

29.1 Appointment and terms of appointment

- (a) If a Director wishes to appoint a person as an alternate, that Director must give notice to the Company detailing:
 - (i) the name, experience and qualifications of the person;
 - (ii) the terms upon which the Director intends to appoint the person as an alternate, including whether the person is to exercise some or all of the powers of the Director and the proposed terms of the appointment; and
 - (iii) whether or not the alternate is to get notice of each meeting the Director is entitled to attend.
- (b) The Board may ask for further information from the alternate in relation to the alternate's qualifications and experience.
- (c) If the alternate is a Director, the appointment will take effect immediately.
- (d) If the alternate is not a Director, at the first meeting of the Board after the notice of the proposed appointment has been received by the Board, the Board must consider the proposed appointment and either accept or reject the appointment. If the Board accepts the appointment of the alternate, the Director may appoint the person on the terms notified.
- (e) Where the alternate is not a Director, an appointment of a person as an alternate is not effective until a signed consent to the appointment is provided by that person to the Company. Accordingly, such an appointment will take effect on the later of the date of appointment and the date on which the Company received the signed consent.
- (f) An alternate is not an agent of the Director appointing the alternate.

29.2 No liability

The Company is not responsible for ensuring that the terms of appointment of an alternate are complied with and accordingly is not liable if those terms are not complied with.

29.3 Remuneration of alternate

An alternate is not entitled to receive any fee (or other remuneration) from the Company for services performed as an alternate.

29.4 Notice and attendance at Board meetings

If the notice appointing the alternate provides that the alternate is to receive notice of Board meetings, the Company must provide each alternate with notice. By notice to the Company, the Director who appointed an alternate may at any time require that the notice of Board meetings cease to be given to the alternate. An alternate may not attend any Board meeting at which the Director who appointed the alternate is present, except where the alternate is appointed by more than one Director and the alternate is attending that Board meeting in respect of a Director who is not present.

29.5 Voting of alternate

An alternate is entitled to a vote for each Director that the alternate represents in addition to any vote the alternate may have as a Director in the alternate's own right.

29.6 Termination of appointment of alternate

- (a) A Director who appointed an alternate may terminate the appointment of the alternate at any time by notice to the alternate, the Directors and the Company.
- (b) The Board may terminate the alternate's appointment at any time by notice to the alternate, the Director who appointed the alternate and the Company.
- (c) An alternate may terminate the alternate's appointment at any time by notice to the Directors and the Company.
- (d) A termination of appointment does not take effect until the Company has received notice of termination.

29.7 Cessation of appointment of alternate

An alternate ceases to be an alternate if the person who appointed that alternate ceases to be a Director.

30 Remuneration and reimbursement for expenses

30.1 Remuneration of Director

The Company may pay a Director any fee (or other remuneration) it determines by resolution for services performed as a Director.

30.2 Reimbursement of expenses

Directors and alternates are entitled to be reimbursed by the Company for reasonable costs and expenses incurred or to be incurred in connection with attendance at meetings of the Board and committees of the Board.

31 Board meetings

31.1 Convening meetings

- (a) In the ordinary course, the Secretary will convene Board meetings in accordance with the determination of the Board.

- (b) A Director may at any time convene a Board meeting by notice to the other Directors.

31.2 Notice of meetings

- (a) Reasonable notice of each Board meeting must be given to the Directors and each alternate entitled to receive notice (if any).
- (b) Each notice must state:
 - (i) the date, time and place (or places) of the Board meeting;
 - (ii) the general nature of the business to be conducted at the Board meeting; and
 - (iii) any proposed resolutions.

31.3 Omission to give notice

No resolution passed at or proceedings at any Board meeting will be invalid because of any unintentional omission or error in giving or not giving notice of:

- (a) that Board meeting;
- (b) any change of place (or places) of that Board meeting;
- (c) postponement of that Board meeting; or
- (d) resumption of that adjourned Board meeting.

31.4 Use of technology

- (a) A Board meeting may be convened or held using any technology consented to by all Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- (b) If a number of Directors equal to the quorum is able to hear or to see and to hear each other Director contemporaneously using any technology consented to by all Directors, there is a meeting and that meeting is quorate. The rules relating to meetings of Directors apply to each such meeting as determined by the chair of the meeting.
- (c) A Director participating at a meeting using technology consented to by all Directors is treated as being present in person at the meeting.
- (d) A meeting using technology consented to by all Directors is to be taken to be held at the place determined by the chair of the meeting.
- (e) A Director is presumed conclusively to have been present and to have formed part of a quorum at all times during a meeting using technology consented to by all Directors, unless the chair consents to that Director leaving in which case that Director will be treated as having been present until that Director leaves.

31.5 Quorum at meetings

- (a) A quorum at a Board meeting is more than half of the Directors present in person. The quorum must be present at all times during the Board meeting.

- (b) If there is only one Director, that sole Director must pass resolutions by recording each resolution in writing and signing the record of that resolution.

31.6 Chair of meetings

- (a) At the first Board meeting a chair will be elected from the Directors present in person (not by alternate). The person that has been elected as chair may chair each subsequent Board meeting. At any subsequent Board meeting, a new chair may be elected. On the election of the new chair, the new chair will chair subsequent Board meetings. The Directors may elect a Director to chair a Board meeting by a majority vote.
- (b) If the chair is not present within 30 minutes after the time appointed for a Board meeting or if the chair is unwilling or unable to act as chair for the whole or any part of that Board meeting, the Directors present may elect a Director present to chair that Board meeting.

31.7 Passing resolutions at meetings

- (a) A resolution of the Board must be passed by a majority of the votes cast by the Directors entitled to vote on the resolution.
- (b) Each Director present in person or by alternate is entitled to vote and has one vote.

31.8 Casting vote

If on any resolution an equal number of votes is cast for and against a resolution, the chair has no casting vote.

31.9 Conduct of meetings

The chair of each Board meeting has charge of conduct of that meeting, of the procedures to be adopted and the application of those procedures at that meeting.

31.10 Written resolutions

- (a) If:
 - (i) all of the Directors, other than:
 - (A) any Director on leave of absence approved by the Directors;
 - (B) any Director who disqualifies himself or herself from considering the act, matter, thing or resolution in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest; and
 - (C) any Director who the Directors reasonably believe is not entitled at law to do the act, matter or thing or to vote on the resolution in question,

assent to a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed; and

- (ii) the Directors who assent to the document would have constituted a quorum at a meeting of Directors held to consider the act, matter, thing or resolution,

then that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the Directors.

- (b) For the purposes of **clause 31.10(a)**:
 - (i) the meeting is to be taken as having been held:
 - (A) if the Directors assented to the document on the same day, on the day on which the document assented to and at the time at which the document was last assented to by a Director; or
 - (B) if the Directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a Director;
 - (ii) 2 or more separate documents in identical terms each of which is assented to by 1 or more Directors are to be taken as constituting 1 document; and
 - (iii) a Director may signify assent to a document by signing the document or by notifying the company of the Director's assent in person or by post or by telephone, fax or other electronic means.
- (c) Where a Director signifies assent to a document otherwise than by signing the document, the Director must by way of confirmation sign the document at the next meeting of Directors attended by that Director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.

31.11 Minutes of meetings

- (a) Within one month after each Board meeting, the Directors must record or cause to be recorded in the minute books:
 - (i) the proceedings and resolutions of each Board meeting; and
 - (ii) all resolutions passed without a Board meeting.
- (b) The chair of the meeting, or the chair of the next Board meeting, must sign the minutes within a reasonable time after the meeting.
- (c) The minute books must be kept at the registered office.
- (d) The Directors may inspect the minute books at no charge between the hours of 9:00 am and 5:00 pm on any Business Day.

31.12 Committee meetings

The Board will determine how meetings of any committee of the Board are to be conducted, including the procedures to be adopted and the application of those procedures.

32 Director's interests

32.1 Declaration of interest

- (a) Any Director who has a material personal interest in a contract or proposed contract of the Company, holds any office or owns any property such that the Director might have duties or interests which conflict or may conflict either directly or indirectly with the Director's duties or interests as a Director, must give the Board notice of the interest at a Board meeting.
- (b) A notice of a material personal interest must set out:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company.
- (c) The notice must be provided to the Board at a Board meeting as soon as practicable.

32.2 Voting by interested Directors

If a Director who has a material personal interest in a matter that is being considered at a Board meeting has provided notice to the Board in accordance with this Constitution:

- (a) the Director may, subject to the Corporations Act, vote on the matter at a meeting;
- (b) any transactions that relate to the material personal interest may proceed;
- (c) the Director may retain benefits under the transaction even though the Director has a material personal interest; and
- (d) the Company cannot avoid the transaction merely because of the existence of the interest.

33 Appointment of Secretary

- (a) The Company must have at least one Secretary. At least one Secretary must ordinarily reside in Australia. The Board has the power to appoint a natural person to act as secretary on the terms and for such period as the Board may determine.
- (b) Any Secretary appointed may be removed at any time by the Board.

34 Removal and remuneration of Auditor

34.1 Remuneration of Auditor

The remuneration of the Auditor may be determined by the Company at a general meeting. If the remuneration is not determined at a general meeting, it may be determined by the Directors at a Board meeting.

34.2 Removal of Auditor

- (a) The Company may remove an Auditor by resolution at a general meeting.
- (b) At least two months' notice must be given to the Company of the intention to move a resolution to remove an Auditor at a general meeting.
- (c) If notice of an intention to move a resolution to remove the Auditor at a general meeting is received by the Company, the Auditor must be given a copy of the notice as soon as practicable.
- (d) The notice of an intention must also inform the Auditor that the Auditor:
 - (i) may submit written representations to the Company within seven days after receiving the notice and that the Auditor may request the Company to send a copy of the written representations to the Members before the resolution is put to a vote; and
 - (ii) may speak at the general meeting or request that the written representations be read at the general meeting at which the resolution is voted upon.

34.3 Auditor's attendance at general meetings

The Auditor must be notified of, and may attend, any general meeting. The Auditor is entitled to be heard at any general meeting it attends on any part of the business of the general meeting which concerns the Auditor.

35 Financial records

35.1 Member's access to financial records

The Board may determine whether and, if so, the extent to which and at what times and which place and under what conditions any financial record or other records of the Company may be inspected by Members.

35.2 Directors' access to financial records

Any Director may at any time access and inspect any financial record and any other record of the Company.

35.3 Access to financial records after ceasing to be a Director

The Board may determine that any person who is to cease or has ceased to be a Director may continue to have access to and inspect any financial record of the Company relating to the time during which the person was a Director.

36 Distributions

36.1 Payment of dividends

The Board may pay any interim and final dividends that, in their judgment, the financial position of the Company justifies.

36.2 Deductions from dividends

Without prejudice to the application of any other rule of this Constitution, the Board may deduct from any dividend payable to any Member any amount presently due but unpaid by that Member to the Company.

36.3 Unpaid calls

Without prejudice to the application of any other rule of this Constitution, the Board may retain any dividend payable in respect of any security in respect of which there is any unpaid call.

36.4 Determination of dividend

- (a) Subject to the Corporations Act and this Constitution, the Board may determine that a dividend is payable and fix:
 - (i) the amount of the dividend;
 - (ii) the time for payment; and
 - (iii) the method of payment.
- (b) The Board will determine the method of payment of a dividend which may include the payment of cash, the issue of Shares, the grant of options or the distribution of assets.
- (c) Interest is not payable on a dividend.

36.5 Place to which payment to be paid

- (a) A dividend payable in cash may be paid:
 - (i) by cheque sent by post or by courier to the address of each Member or to an address directed by that Member or joint holder, as the case may be;
 - (ii) by electronic funds transfer to an account nominated by and in the name of each Member, and in the case of any joint holder of any Share, to the account nominated by and in the name of the joint holder whose name appears first in the Register of Members, as the case may be; or
 - (iii) in any other manner determined by the Board.

36.6 Transfer of assets

- (a) The Board may direct payment of the dividend wholly or partly by the distribution of specific assets (including fully paid Shares and fully paid debentures or any other security) to some or all of the Members.
- (b) To give effect to any direction the Board may do all things that it considers appropriate including:
 - (i) fixing the value for distribution of any specific asset or any part of any such asset; or
 - (ii) making a cash payment to any Member to adjust the value of distributions made to Members.

36.7 Record Date

The Board will determine the date (**Record Date**) which will be the date on which persons who are Members at midnight at the end of that date will be entitled to receive the dividend.

36.8 Entitlement to dividends

Subject to the Corporations Act, this Constitution and the terms of issue of Shares, the amount of the dividend payable with respect to each class of Shares will be determined by the Board and the amount of the dividend payable to each Member in respect of each Share in a class of Shares of which the Member is the registered holder on the Record Date is determined as follows:

- (a) If any Share is fully paid during the whole period in which the dividend relates, the full amount of the dividend is payable in respect of that Share.
- (b) If any Share is partly paid during the whole period to which the dividend relates, the amount of the dividend payable in respect of that Share is in proportion to the amount partly paid on that Share and the fully paid issue price of that Share.
- (c) If any Share is fully paid for part of the period to which the dividend relates, the amount of the dividend payable in respect of that Share (in respect of that part of the period) is in proportion to the number of days that Share was fully paid during that part of the period and the number of days in the period.
- (d) If any Share is partly paid for part of the period to which the dividend relates, the amount of the dividend payable in respect of that Share (in respect of that part of the period) is in proportion to the amount partly paid during that part of the period and the fully paid issue price of that Share multiplied by the number of days during that part of the period divided by the number of days in the period.

36.9 Capitalisation of profits

- (a) Subject to the Corporations Act, this Constitution and the terms of issue of Shares, the Board may determine to capitalise any amount available for distribution to Members by paying up any amount unpaid on any Share.
- (b) Each Member is entitled to benefit from any such capitalisation on the same basis as that Member is entitled to dividends.
- (c) To give effect to any direction, the Board may do all things that it considers appropriate including:
 - (i) disregarding any fractional Share entitlement to any Share;
 - (ii) making a cash payment in respect of any fractional entitlement;
 - (iii) fixing the value for distribution of any specific asset or any part of any such asset; or

- (iv) making a cash payment to any Member to adjust the value of distributions made to Members.

36A Distribution of securities

- (a) To give effect to any resolution to reduce the capital of the Company, to satisfy a dividend as set out in **clause 36**, or to capitalise any amount under **clause 36.9**, the Board may:
 - (i) direct payment from any available source permitted by law, including wholly or partly by the distribution of specific assets, including paid up Shares or other securities of the Company or of another body corporate, either generally or to specific members;
 - (ii) settle as it thinks expedient any difficulty that arises in making the distribution or capitalisation and, in particular, make cash payments in cases where Members are entitled to fractions of shares or other securities and decide that amounts or fractions of less than a particular value decided by the Board may be disregarded to adjust the rights of all parties;
 - (iii) fix the value for distribution of any specific assets;
 - (iv) pay cash or issue Shares or other securities to any Member to adjust the rights of all parties;
 - (v) vest any of those specific assets, cash, Shares or other securities in a trustee on trust for the persons entitled to the distribution or capitalised amount that seem expedient to the Board; and
 - (vi) authorise any person to make, on behalf of all the Members entitled to any specific assets, cash, Shares or other securities as a result of the distribution or capitalisation, an agreement with the Company or another person which provides, as appropriate, for the distribution or issue to them of Shares or other securities credited as fully paid up or for payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing Shares or other securities by applying their respective proportions of the amount resolved to be distributed or capitalised.
- (b) Any agreement made under an authority referred to in **clause 36A(a)(vi)** is effective and binds all Members concerned.
- (c) If a distribution, transfer or issue of specific assets, Shares or securities to a particular Member or Members is, in the Board's discretion, considered impracticable, the Board may make a cash payment to those Members or allocate the assets, Shares or securities to a trustee to be sold on behalf of, and for the benefit of, those Members, instead of making the distribution, transfer or issue to those members.
- (d) If the Company distributes to Members (either generally or to specific Members) securities in the Company or in another body corporate or trust (whether as a dividend, reduction of capital or otherwise and

whether or not for value), each of those Members appoints the Company as his or her agent to do anything needed to give effect to that distribution, including agreeing to become a member of that other body corporate.

37 Notices

37.1 General

Any notice, statement or other communication under this Constitution must be in writing.

37.2 How to give a communication

- (a) In addition to any other way allowed by the Corporations Act, a notice or other communication may be given by being:
 - (i) personally delivered;
 - (ii) left at the person's current address as recorded in the Register of Members;
 - (iii) sent to the person's address as recorded in the Register of Members by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
 - (iv) sent by fax to the person's current fax number for notices; or
 - (v) sent by email to the person's current email address for notices.

37.3 Communications by post

A communication is given if posted:

- (a) within Australia to an Australian address, three Business Days after posting;
- (b) outside Australia to an address outside Australia, ten Business Days after posting.

37.4 Communications by fax

A communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

37.5 Communications by email

A communication is given if sent by email, when the information system from which the email was sent produces a confirmation of delivery report which indicates that the email has entered the information system of the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the information system of the recipient.

37.6 After hours communications

If a communication is given:

- (a) after 5:00 pm in the place of receipt; or

- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9:00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

38 Indemnity and insurance

To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company may indemnify each officer, Director and Secretary of the Company and any wholly owned subsidiary in respect of any liability, loss, damage, cost or expense incurred or suffered or to be incurred or suffered by the officer, Director or Secretary in or arising out of the conduct of any activity of the Company and any wholly owned subsidiary or the proper performance of any duty of that officer, Director or Secretary.

38.1 Documenting indemnity

The Company may enter into an agreement containing an indemnity in favour of any officer, Director or Secretary of the Company and any wholly owned subsidiary. The Board will determine the terms of the indemnity contained in the agreement.

38.2 Insurance

- (a) To the extent permitted by the Corporations Act and subject to the Corporations Act, the Company may pay any premium in respect of a contract of insurance between an insurer and an officer, Director or Secretary or any person who has been an officer, Director or Secretary of the Company or any wholly owned subsidiary in respect of the liability suffered or incurred in or arising out of the conduct of any activity of the Company or any wholly owned subsidiary and the proper performance by the officer, Director or Secretary of any duty.
- (b) If the Board determines, the Company may execute a document containing rules under which the Company agrees to pay any premium in relation to such a contract of insurance.

39 Winding up

If the Company is wound up, any property that remains after satisfaction of all debts and liabilities of the Company, the payment of the costs, charges and expenses of winding up and any adjustment of the rights of the contributories among Members must be distributed among the Members in accordance with their Relevant Proportions.