

# **WATER PARTNERS (AUST) LTD**

**ACN 629 196 014**

**Public Company Limited by Guarantee**

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## 1 OBJECTS

The primary activities and objectives of the Company are to promote the development of agricultural resources, horticultural resources, pastoral resources, viticultural resources and manufacturing resources, specifically, the facilitation of access to the economic, efficient and affordable use of water to those within the agricultural industry.

Specific primary and dominant activities and objectives are;

- 1.1 to identify and promote advancements in water use and water efficiencies for the betterment of irrigation communities;
- 1.2 to provide education to all irrigation industry participants including, but not limited to;
  - 1.2.1 trading rules and regulations;
  - 1.2.2 water portfolio management;
  - 1.2.3 how to make efficient use of available market mechanisms;
  - 1.2.4 improve the efficient use of water;
  - 1.2.5 the continued engagement with Government and peak industry bodies.
- 1.3 to actively promote the services that the company provides, including its educational services and industry promotional activities.
- 1.4 to investigate and support research and development in regards to efficiencies of water use, transfer and affordability, in relation to the irrigation industry by co-operatively participating with and engaging third party service providers including tertiary institutions, peak industry bodies and government departments.
- 1.5 to establish a water trading model, including the trade of temporary and permanent entitlements, which will provide market access to the irrigation community, including smaller and niche businesses, which are important to the vitality of rural communities. These services will:-
  - 1.5.1 support a fair and open water trading environment
  - 1.5.2 conduct water trades in an open and transparent manner
  - 1.5.3 provide a published current price reference point for water market participants and the wider agricultural community;
  - 1.5.4 ensure confidentiality of water trade and trader information; and
  - 1.5.5 publish and adhere to developed water trading rules

Further, the ancillary objectives of the Company are;

- 1.6 to ensure that equal opportunity and access to trading is provided to all market participants;

- 1.7 to provide governance protocols that will ensure that all Members are treated equitably and that no Director or Officer will receive an advantage over another Member;
- 1.8 to develop protocols to ensure appropriate disclosure of the water trading activities of the Directors or Officers;
- 1.9 to provide that each Member has one (1) vote whenever a matter is referred to Members for decision at a General Meeting of the Company;
- 1.10 to provide that the weekly pooled water trading process will be independently audited;
- 1.11 to ensure that the Company will not undertake private water trades of temporary seasonal water allocation outside the mechanisms adopted for fair and transparent market disclosure;
- 1.12 to provide pertinent information and education to the water industry in Victoria and Australia wide;
- 1.13 to undertake other activities as deemed appropriate by the Board for the benefit of the Company and its Members.

## **2. KEY OPERATING ASPECTS**

The key operating aspects and rules of the Company are set out and defined as follows;

- 2.1 any person or persons which are considered and approved by the board, at its discretion, to be conducive to the achievement of the objectives of the Company may trade on "Water Partners (Aust) Ltd".
- 2.2 the company shall adopt written operating rules as to the way it carries on its business, a copy of which the company must provide to each customer, and must comply with the company's operating rules at all times.
- 2.3 the operating rules shall comply with all relevant operating rules (both commonwealth and state) in relation to the water trades in which the company is engaged and must comply with the requirements of the Australian

Competition and Consumer Commission (“ACCC”) and Council of Australian Governments (“COAG”).

- 2.4 the company shall not trade in water in its own right but always as a service providing agent for a principal. The company may at times, on behalf of a principal, hold water on trust, to facilitate the necessary transactional requirements of certain water trades.
- 2.5 as agent with fiduciary duties the company shall disclose to its principal all relevant information enabling the principal to give its fully informed consent to decisions of the company in its capacity as agent.
- 2.6 the company shall keep separate trust moneys and apply moneys received from its customers in the course of its water trading business strictly as trust moneys for the purpose for which the moneys are received and must not mix the trust moneys.
- 2.7 the company’s temporary entitlement transactions on Water Partners (Aust) Ltd shall be transparent.

### **3 POWERS**

Solely for the purpose of carrying out the Objectives and the Operating Aspects and not otherwise, the Company has the power to do all such things as are necessary, incidental or conducive to the attainment of these Objectives and, for that purpose and not otherwise, the Company has the legal capacity of an individual with all consequential powers as conferred by section 124 of the Corporations Act.

### **4 DEFINITIONS AND INTERPRETATION**

#### Definitions

- 4.1 “Alternate Director” means a person for the time being holding office as an alternate director of the Company under clause 12.24.
- 4.2 “Annual General Meeting” means a yearly meeting between the Directors and Members of the Company at which the Members are asked to elect the Directors, discuss any Member resolutions and approve the annual accounts of that year under Clause 19;
- 4.3 “Approved Water Register” means a water register approved by the National Water Commission;

- 4.4 “Board” means the board of Directors;
- 4.5 “Company” means Water Partners (Aust) Ltd;
- 4.6 “Constitution” means this document for the time being in force and any reference to any “part” or “clause” by number is a reference to the “part” or “clause” of that number in this constitution;
- 4.7 “Corporations Act” means the *Corporations Act 2001* (Cth) or any statutory modification, amendment or re-enactment thereof for the time being in force and applicable to the Company and any reference to any provision thereof so modified, amended or re-enacted;
- 4.8 “Director” means a director of the Company appointed in accordance with clause 12.13;
- 4.9 “General Meeting” means a general meeting of Members called in accordance with clause 10. ;
- 4.10 “Member” means a person admitted to membership of the Company in accordance with this Constitution;
- 4.11 “Month” means a calendar month;
- 4.12 “Officer” means an officer as defined in section 9 of the Corporations Act;
- 4.13 “Operating Rules” means the water trading rules adopted by the Company from time to time which are set out and described in Clause 2;
- 4.14 “Property” means both the tangible and intangible property of the Company, including but not limited to intellectual property
- 4.15 “Register” means the register of Members kept pursuant to the Corporations Act and includes a company register;
- 4.16 “Seal” means the common seal of the Company and includes any duplicate common seal;
- 4.17 “Secretary” includes an acting Company secretary and a person appointed by the Directors to perform all or any of the duties of a secretary;
- 4.18 “Special Resolution” means special resolution as defined in section 9 of the Corporations Act; and
- 4.19 “Temporary Entitlements” means seasonal irrigation water allocations on any Approved Water Register in Australia.

#### Interpretation

- 4.20 Unless the contrary intention appears in this Constitution:
- 4.21 words importing the singular include the plural and words importing the plural include the singular;
- 4.22 words importing a gender include every other gender;
- 4.23 words used to denote persons generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
- 4.24 a reference to a person includes that person's successors and legal personal representatives;
- 4.25 references to the word 'include' or 'including' are to be construed without limitation;
- 4.26 reference to dollars or \$ means Australian dollars;
- 4.27 reference to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in the place where the Company's office is located;
- 4.28 a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day;
- 4.29 a term of this Constitution which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day;
- 4.30 a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
- 4.31 where a word or a phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase has corresponding meanings.

#### Index and Headings

- 4.32 The index and any headings are for ease of reference only and do not affect the interpretation of this Constitution.

#### Application of Corporations Act

- 4.33 This Constitution is to be interpreted subject to the Corporations Act. However, the clauses that apply as replaceable rules to companies under the Corporations Act do not apply to the Company to the extent that the replaceable rules are replaced by the provisions of this Constitution.
- 4.34 Unless the contrary intention appears, an expression in a clause that deals with a matter dealt with by a provision of the Corporations Act has the same meaning as in that provision of the Corporations Act.
- 4.35 Subject to clause 4.7 unless the contrary intention appears, an expression in a clause that is defined in section 9 of the Corporations Act has the same meaning as in that section.
- 4.36 The Corporations Act applies in relation to this document as if it was an instrument made under the Corporations Act as in force on the day when this document became the Constitution of the Company.

## **5 NATURE OF COMPANY**

- 5.1 The Company is a company limited by guarantee.
- 5.2 The name of the Company is as set out on the first page of this Constitution which, subject to a Special Resolution at a General Meeting and the Corporations Act, may be changed.

## **6 LIABILITY OF MEMBERS AND GUARANTEE ON WINDING UP**

- 6.1 The liability of the Members is limited.
- 6.2 Each Member of the Company undertakes to contribute to the Property of the Company, in the event the Company being wound up while that person is a Member or within one (1) year after that person ceases to be a Member, for payment of the debts and liabilities of the Company contracted before that person ceases to be a Member and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributions among themselves, such amount as may be required not exceeding \$1.00.

## **7 APPLICATION OF INCOME**

- 7.1 The assets and income of the Company shall be applied solely in furtherance of its above-mentioned Objectives and Operating Aspects and no portion shall be distributed directly or indirectly to the Members of the Company except as bona fide compensation for services rendered or expenses incurred on behalf of the Company.
- 7.2 Clause 7.1 does not prevent the Company from doing the following, provided that such acts are done in good faith and for a proper purpose:



7.2.1 paying a Member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company; or

7.2.2 making a payment to a Member in carrying out the Company's Objectives and Operating Aspects.

## **8 NON DISTRIBUTION OF PROPERTY**

8.1 In the event of the Company being dissolved, the amount (including but not limited to the Property of the Company) that remains after such dissolution and the satisfaction of all debts and liabilities shall be transferred to another organisation with similar purposes which is not carried on for the profit or gain of its individual members and whose Constitution prohibits the distribution of its or their income and Property among its or their Members to an extent at least as great as imposed on the Company under this Constitution, such institution or institutions to be determined by the Members of the Company at or before the time of the dissolution and in default therefore by application to such court as may have or acquire jurisdiction in the matter.

## **9 MEMBERSHIP**

### Rights of classes of Members

9.1 A Member of the Company is a natural person who has applied and been admitted as a Member of the Company.

### Members

9.2 The Members of the Company are the initial Members (refer to clause 9.4) and such other persons as the Company admits to membership in accordance with this Constitution.

9.3 A Member has the right to receive notices of and to attend and be heard at any General Meeting and has the right to vote at any General Meeting.

### Initial Members of the Company

9.4 The initial Members of the Company are those persons who have consented to become Members and who are named in the application for registration of the Company to the Australian Securities and Investment Commission.

### Persons subsequently admitted to membership

9.5 After registration, a person is eligible to become a Member of the Company if he/she has attained the age of 18 years and the person:

- 9.5.1 is a current Director;
- 9.5.2 is a former Director of the Company, or;
- 9.5.3 has a connection with the Company which the Board believes necessary or desirable to further its Objectives.

#### Limits

- 9.6 Unless otherwise determined by the Members in a General Meeting, the number of Members is unlimited.

#### Application and admission to membership

- 9.7 An application for membership of the Company must:
  - 9.7.1 be in the form required by the Company from time to time, signed by the applicant;
  - 9.7.2 contain such particulars as the Directors determine; and
  - 9.7.3 be lodged with the Secretary.
- 9.8 On receipt of an application, the Secretary must forward the application to the Board.
- 9.9 Subject to clause 9.1 and 9.2, the Board must consider each application for membership as soon as practicable after its receipt. The Board has discretion to admit or reject the application. The Board need not give reasons for its decision.
- 9.10 If the Board accepts an application, the Secretary must enter the applicant's name in the Register of Members with as little delay as possible. The applicant becomes a Member of the Company when their name is entered in the Register.
- 9.11 A right, privilege or obligation of a person by reason of his or her membership of the Company:
  - 9.11.1 is not capable of being transferred or transmitted to another person; and
  - 9.11.2 terminates upon the cessation of his or her membership,.

#### Renewal of membership and removal from the Register

- 9.12 Unless a person's name is removed from the Register in accordance with this Constitution, a person is a Member of the Company from first entry of their

name in the Register until 30 June next, and then from 1 July in any year until 30 June in the following year.

- 9.13 A Member is not required to renew his/her membership. However if the Member has had no contact with the Company for three (3) years then the Board, by resolution, may remove the Member's name from the Register.

#### Register of Members

- 9.14 The Secretary must keep the Register in accordance with the Corporations Act.
- 9.15 The Register must contain the full name, address and date of entry of each Member. It must identify the class of each Member. It may also contain such other information as the Directors may require within the law. The Register shall be available for inspection at the registered office of the Company.
- 9.16 The name of a Member who has died, and a Member, to whom clause 9.17 or clause 9.19 applies, must be removed from the Register by the Secretary.

#### Resignation

- 9.17 A Member may resign from membership of the Company by giving written notice to the Secretary.
- 9.18 The resignation of a Member is deemed to take effect from the date of receipt of the notice of resignation or such later date as is provided in the notice.

#### Removal from membership

- 9.19 The Directors may at their discretion remove a Member from the Register if a majority of them consider that the Member evidences behaviour which is inconsistent with the Objectives of the Company. The Directors are not required to give notice of their intention to consider the removal of a Member from the Register, they are not required to disclose their proceedings in relation to the removal of a Member and they are not required to give the Member a hearing before reaching a decision.

## **10 GENERAL MEETINGS**

#### Calling General Meetings

- 10.1 The Board may, whenever the Board thinks fit, call and arrange to hold a General Meeting.

- 10.2 A General Meeting may be called and arranged to be held only as provided by this clause 10.1 or as provided by sections 249D, 249E, 249F and 249G of the Corporations Act.
- 10.3 The Board may change the venue for, postpone or cancel a General Meeting unless the General Meeting is called and arranged to be held by the Members or the court under the Corporations Act. If a General Meeting is called and arranged to be held under section 249D of the Corporations Act the Board must not postpone it beyond the date by which section 249D requires it to be held and must not cancel it without the consent of the requisitioning Members.

#### Notice of General Meetings

- 10.4 Subject to the provisions of the Constitution, notice of a General Meeting must be given within the time limits prescribed by the Corporations Act, being twenty-one (21) days, and in the manner authorised by clause 10.1 to each person who is at the date of the notice:
- 10.4.1 a Member;
- 10.4.2 a Director.
- 10.5 A notice of a General Meeting must specify the date, time and place of the General Meeting and state the general nature of the business to be transacted at the General Meeting.
- 10.6 A person may waive notice of any General Meeting by notice in writing to the Company.
- 10.7 The non-receipt of notice of a General Meeting or proxy form, or a failure to give notice of a General Meeting or a proxy form to, any person entitled to receive notice of a General Meeting under clauses 10.4 and 10.5 does not invalidate any act, matter or thing done or resolution passed at the General Meeting if:
- 10.7.1 the non-receipt or failure occurred by accident or error; or
- 10.7.2 before or after the General Meeting the person has notified or notifies the Company of the person's agreement to that act, matter, thing or resolution by notice in writing to the Company.
- 10.8 A person's attendance at a General Meeting:
- 10.8.1 waives any objection that person may have to a failure to give notice or the giving of a defective notice, of the General Meeting unless that person at the beginning of that General Meeting objects to the holding of that General Meeting; and

10.8.2 waives any objection that person may have to the consideration of special business at the General Meeting which is not within the business referred to in the notice of the General Meeting or in clause 10.6 unless the person objects to considering the special business when it is presented.

#### Admission to General Meetings

10.9 The chairperson of a General Meeting may refuse admission to, or require to leave and remain out of the General Meeting, any person:

10.9.1 in possession of a pictorial-recording or sound-recording device;

10.9.2 in possession of a placard or banner;

10.9.3 in possession of an article considered by the chairperson to be dangerous, offensive or liable to cause disruption;

10.9.4 who refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;

10.9.5 who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or

10.9.6 who is not:

(i) a Member or a proxy, attorney or representative of a Member;

(ii) a Director; or

(iii) an auditor of the Company.

#### Quorum

10.10 Business may not be transacted at a General Meeting unless a quorum of Members is present at the time when the General Meeting proceeds to business.

10.11 Except as otherwise set out in this Constitution, the quorum for a General Meeting is eleven (11) Members present in person or by proxy.

10.12 If a quorum is not present within half an hour from the time appointed for the General Meeting or a longer period allowed by the Chair:

10.12.1 if the General Meeting was convened by or on the requisition of Members it must be dissolved; and

10.12.2 otherwise it must stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Directors.

10.13 If a General Meeting has been adjourned to another time and place determined by the Directors not less than seven (7) days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting.

#### Quorum not present

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

10.14.1 where the General Meeting was convened upon the requisition of Members, the General Meeting must be dissolved; or

10.14.2 in another case;

(iv) the General Meeting will stand adjourned to the same day in the next week at the same time and place; and

(v) if at the adjourned meeting, a quorum is not present within half an hour of the time appointed for the meeting, the Members present will constitute a quorum.

## **11 PROCEEDINGS AT GENERAL MEETINGS**

### Chairperson

11.1 The chairperson of the Board must reside as chairperson at every General Meeting of the Company.

### Absence of Chairperson

11.2 If:

11.2.1 there is no chairperson; or

11.2.2 at any General Meeting the chairperson is not present within fifteen (15) minutes after the time appointed for the General Meeting; or

11.2.3 the chairperson is unwilling to act as chairperson,

the present Members must choose a Member to be the chairperson.

11.2.4 The person selected under clause 11.2 presides at that General Meeting until the time that the chairperson attends and is willing to act.

### Adjournments

- 11.3 The chairperson may with the consent of the meeting at which a quorum is present (and must if directed by the meeting) adjourn the meeting from time to time and from place to place.

### Adjourned meeting

- 11.4 No business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. It will not be necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting, save and where a General Meeting is adjourned for ten (10) days or more at any one time, where upon notice of the adjourned meeting must be given.

### Decisions

- 11.5 At a General Meeting, a resolution put to the vote of the General Meeting must be decided on a show of hands, unless a poll is demanded (before or on declaration of the result of the show of hands) by at least five (5) Members.

### Declaration by a Chairperson of a vote

- 11.6 Unless a poll is demanded, a declaration by the chairperson that a resolution has on a show of hands been:

11.6.1 carried;

11.6.2 carried unanimously;

11.6.3 carried by a particular majority; or

11.6.4 lost,

and an entry to the effect in the minute book of the Company is conclusive evidence of that fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.

### Equality of votes

- 11.7 In the case of an equality of votes on a proposed resolution, whether on a show of hands or on a poll, the chairperson on the General Meeting will be entitled to a second or casting vote.

### Voting

- 11.8 On a show of hands every Member present in person or by proxy has one (1) vote.

11.9 On a poll every Member present in person, or by proxy, attorney or representative has one (1) vote.

#### Appointment of proxies

11.10 A Member entitled to attend and vote at a General Meeting of the Members may appoint one other person as his or her proxy to attend and vote at the General Meeting in his or herstead.

11.11 The instrument appointing a proxy must be in writing and either signed or sealed by or on behalf of the appointor.

11.12 The instrument of proxy may specify the manner in which a proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote in the resolution except as specified in the instrument.

11.13 The instrument of proxy shall be in the form provided by the Company, or as prescribed by the Corporations Act.

11.14 The instrument appointing a proxy confers authority to demand or join in demanding a poll.

#### Depositing of proxies

11.15 At least forty-eight (48) hours before the time for holding the General Meeting at which proxies propose to vote:

11.15.1 the instrument appointing the proxy; and

11.15.2 the power of attorney or authority (if any) under which the proxy is signed or a notarially certified copy of the power of attorney or authority must be deposited at the registered office of the Company.

The instrument of proxy will not be treated as valid if these requirements are not satisfied.

#### Poll

11.16 If a poll is demanded by at least five (5) Members it will be conducted in such manner as the chairperson directs. The result of the poll will be deemed to be the resolution of the General Meeting at which the poll was demanded. A poll may be demanded immediately on the election of a chairperson or on a question of an adjournment. A poll demanded on any other question can be taken at such time as the chairperson of the General Meeting directs.



## 12 DIRECTORS

### Required numbers of Directors and Director prohibition

- 12.1 The minimum number of Directors shall be three (3) and maximum number of Directors shall be seven (7).
- 12.2 A Director must be:
  - 12.2.1 a natural person; and
  - 12.2.2 not less than eighteen (18) years of age.

### Eligibility of Directors

- 12.3 A person is not qualified to be a Director unless he or she is:
  - 12.3.1 a Member of the Company or a representative of a body corporate, which is a Member of the Company ("**Member Directors**"); or
  - 12.3.2 an employee of the Company or a person with qualifications which are deemed necessary by the Board ("**Independent Director**").
- 12.4 A person may only be appointed as an Independent Director if there are at least two (2) Member Directors elected or appointed for each Independent Directors.

### Term of independent Director

- 12.5 An Independent Director may be appointed for a term of one (1) year and may be eligible for reappointment.

### Disqualification from office

- 12.6 The office of a Director becomes vacant:
  - 12.6.1 in the circumstances prescribed by the Corporations Act;
  - 12.6.2 if the Director becomes bankrupt or of unsound mind or a person who is, or who's estate is, liable to be dealt with in any way under the law relating to mental health;
  - 12.6.3 if the Director resigns by notice in writing to the Company;
  - 12.6.4 if the Director absents himself or herself from three (3) consecutive meetings of the Board without special leave from the Board; or

12.6.5 if the Director ceases to hold the qualification by reason of which the Director was qualified to be a Director; or

12.6.6 the Member which the Director represents ceases to be a Member of the Company; or

12.6.7 the Director is removed by resolution of the Company.

#### Directors responsibility

12.7 All Directors shall represent all of the Members.

#### Retirement of Member Directors

12.8 Two (2) of the Member Directors must retire at the first Annual General Meeting and at the Annual General Meeting in each subsequent year, the Member Directors must retire in rotations of two (2), one (1) and two (2).

12.9 A retiring Director retains office until the close of the meeting at which his or her successor is elected.

12.10 The Directors to retire in any one (1) year are, subject to the provisions as to the filling of casual vacancies, those that have been longest in office since their last election and if there are two or more Directors who become Directors on the same day, those who retire must be determined by lot unless they otherwise agree amongst themselves.

12.11 A retiring Director is eligible for re-election.

12.12 Retiring Directors shall be deemed to be nominated unless a Director advises the Company at least twenty-eight (28) days before the Annual General Meeting that he or she does not seek re-election.

#### Election of Directors

12.13 At least six (6) weeks before an Annual General Meeting, the Board must:

12.13.1 notify all Members of a number of Directors retiring at the Annual General Meeting; and

12.13.2 advise the Members of:

- (i) their eligibility to nominate as a Director; and
- (ii) the duties and responsibilities of a Director; and
- (iii) the anticipated remuneration (if any); and

(iv) the nomination and election process.

12.14 Not less than six (6) weeks before the Annual General Meeting, a notice must be displayed at the registered office of the Company inviting nominations of candidates for election as Directors.

12.15 A nomination must:

12.15.1 be signed by two (2) or more Members; and

12.15.2 provide the details of the qualification and experience of the person nominated;

12.16 be accompanied by notice in writing signed by the candidate agreeing to his or her nomination;

12.16.1 the nomination and the notice referred to in 12.15 must be lodged at the registered office of the Company at least twenty-one (21) days before the Annual General Meeting;

12.16.2 details of each person who has been nominated must be given to Members with the notice of the Annual General Meeting by the Secretary or an Officer nominated by the Board;

12.16.3 details to be provided to Members must include the candidates:

(vi) name;

(vii) age;

(viii) qualifications and experience; and

(ix) length of any previous service as a Director of any other Company.

#### Manner of election

12.17 The ballot for the election of the Directors must be conducted at the Annual General Meeting in the manner that the Board directs.

12.18 If, at the Annual General Meeting at which an election of Directors ought to take place, the place of any retiring Directors is not filled, the Board shall treat any place not filled as a casual vacancy and it shall be filled in accordance with clause 12.19 and clause 12.20.

#### Casual vacancy

- 12.19 If there is a casual vacancy in the office of Director, the Board may appoint a person to fill that vacancy but the person appointed must retire at the next Annual General Meeting.
- 12.20 A person elected at the Annual General Meeting following the filling of a casual vacancy shall serve the unexpired term of office of a Director whose retirement would otherwise have taken effect at that time.

#### Remuneration

- 12.21 The Directors of the Company shall be paid out of funds of the Company as remuneration for their services as Directors such sums accruing from day to day as the Company in Annual General Meeting determines and shall be divided among them:
- 12.21.1 in such proportions as the Company may determine;
- 12.21.2 in default of such determination as the Board may determine; and
- 12.21.3 in default of any determination, equally.
- 12.22 Where the Board has exercised its power under this Constitution to appoint an Independent Director, the Board may remunerate the Independent Director in accordance with what it determines is fair and reasonable.
- 12.23 In addition to his or her remuneration a Director is entitled to be paid all reasonable travelling and other expenses properly incurred by that Director in connection with affairs of the Company including without limitations, attending and returning from meetings of the Board or of committees of the Directors.

#### Alternate Directors

- 12.24 In the absence of a Director from a meeting of the Board, the Board may appoint a person to act as an Alternate Director for that Director.
- 12.25 A person appointed under clause 12.24, must either be a Member, or an employee or a person with qualification which are deemed necessary by the Board.
- 12.26 A person appointed as an Alternate Director may act in the place of a Director for who he or she is an alternate.
- 12.27 The other members of the Board may by majority vote to remove an Alternate Director from office.
- 12.28 An Alternate Director vacates office:

12.28.1 if the Alternate Director is removed from office under this clause 12.27;  
or

12.28.2 if the Director for whom he or she is an alternate director ceases to hold office; or

12.28.3 if the Alternate Director dies; or

12.28.4 if the Alternate Director resigns.

12.29 An Alternate Director while acting as a Director is entitled to the same remuneration as that to which the Director for whom he or she is an Alternate Director would have been entitled.

## 13 THE BOARD

### Powers and duties of the Board

13.1 The Board is responsible for managing the business of the Company and may exercise to the exclusion of the Company in General Meeting all powers of the Company which are not required, by the Corporations Act or by this Constitution, to be exercised by the Company in General Meeting.

13.2 Without limiting the generality of clause 13.1, the Directors may exercise all the powers of the Company to borrow or otherwise raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give security, guarantee and/or indemnity for a debt, liability or obligation of the Company or of any other person.

13.3 The Board may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the Company.

13.4 The Board may:

13.4.1 appoint or employ any person to be an Officer, agent or attorney of the Company for such purposes and with powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the Directors), for such period and upon such conditions as they think fit;

13.4.2 authorise an Officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the Officer, agent or attorney;  
and

13.4.3 subject to any contract between the Company and the relevant Officer, agent or attorney of the Company remove or dismiss any Officer, agent or attorney of the Company at any time, with or without cause.

13.4.4 A power of attorney may contain such provisions for the protection and convenience of the attorney or person dealing with the attorney as the Board thinks fit.

#### Proceedings of the Board

13.5 Meetings of the Board are to be held as often as may be necessary for properly conducting the business of the Company and must in any case be held at least every three Months (**Board Meetings**).

13.6 The contemporaneous linking together by telephone or other electronic means of a number of the Directors sufficient to constitute a quorum, constitutes a Board Meeting of the Board and the rules relating to Board Meetings apply, so far as they can and with such changes as are necessary, to a Board Meeting by telephone or other electronic means.

13.7 A Director participating in a Board Meeting by telephone or other electronic means is to be taken to be present at the Board Meeting.

13.8 A Board Meeting by telephone or other electronic means is to be taken to be held at the place determined by the chairperson of the Board Meeting provided that at least one (1) of the Directors involved was at that place for the duration of the Board Meeting.

#### Convening and notice of a Board Meeting

13.9 A Director may call a Board Meeting by giving notice individually to every other Director.

13.10 Except in special circumstances determined by the chairperson, at least forty-eight (48) hours' notice shall be given to the Directors of all Board Meetings.

13.11 A notice of a Board Meeting:

13.11.1 must specify the time and place of the Board Meeting;

13.11.2 need not state the nature of the business to be transacted at the Board Meeting;

13.11.3 may be given immediately before the Board Meetings; and

13.11.4 may be given in person or by post, telephone or other electronic means.

13.11.5 A Director may waive notice of any Board Meeting by notifying the Company to that effect in person or by post or by telephone, fax or other electronic means.

13.11.6 The non-receipt of notice of a Board Meeting by, or a failure to give notice of a Board Meeting to a Director does not invalidate any act, matter or thing done or resolution passed at the Board Meeting if:

13.11.7 the non-receipt or failure occurred by accident or error;

13.11.8 before or after the Board Meetings, the Director:

(x) has waived or waives notice of that meeting under clause 13.11.5; or

(xi) has notified or notifies the Company of his or her agreement to that act, matter, thing or resolution personally or by post, telephone or other electronic means.

#### Quorum for Board Meetings

13.12 No business may be transacted at a Board Meeting unless a quorum of Directors is present at the time the business is dealt with.

13.13 A quorum for a Board Meeting consists of three (3) Directors with a majority of Member Directors being present.

#### Chairperson of the Board

13.14 The Board shall elect the chairperson of the Board at the first Board Meeting after each Annual General Meeting.

13.15 If the chairperson of the Board is unable or unwilling to preside or is not present within fifteen (15) minutes after the time appointed for the Board Meetings, Directors present must select one of their number to preside.

13.16 The person selected under clause 13.15 presides at the Board Meeting until the time that the chairperson attends and is willing to act.

13.17 The Board may by ordinary resolution remove the chairperson from office.

#### Decisions of the Board

13.18 A Board Meeting at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Directors under this Constitution.

13.19 Questions arising at a Board Meeting are to be decided by a majority of votes cast by Directors present and any such decision is for all purposes a determination of the Directors.

13.20 In the case of an equality of votes upon any proposed resolution the chairperson of the Board Meetings, in addition to his or her deliberative vote, has a casting vote.

#### Written resolution

13.21 If all of the Directors:

13.21.1 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

13.21.2 the Directors who assent to the document would have constituted a quorum at a Board Meeting held to consider that act, matter, thing or resolution, then that act, matter, thing or resolution is to be taken as having been done at or passed by at a Board Meeting.

13.22 For the purposes of clause 13.21:

13.22.1 the Board Meeting is to be taken as having been held:

(xii) if the Directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a Director; or

(xiii) if the Director 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;

13.22.2 two (2) or more separate documents in identical terms each of which is assented to by one (1) or more Directors are to be taken as constituting one (1) document; and

13.22.3 a Director may signify assent to a document by signing the document or by notifying the Company (through its company secretary) of the Director's assent in person or by post, telephone, fax or other electronic means.

#### Committees of the Board

13.23 The Board may delegate any of its powers to a committee or committees consisting of such number of Directors as it thinks fit.



13.24 A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the Board.

13.25 The rules applying to Board Meetings and resolutions of Directors apply, so far as they can and with such changes as are necessary, to Board Meetings and resolutions of a committee of the Board.

#### Delegation to individual Directors

13.26 The Directors may delegate any of their powers to one (1) Director.

13.27 A Director to whom any powers have been so delegated must exercise the powers delegated in accordance with any direction of the Directors.

#### Validity of acts

13.28 An act done by a person acting as a Director or by a Board Meeting or a committee of Directors attended by a person acting as a Director is not invalidated by reason only of:

13.28.1a defect in the appointment of the Director;

13.28.2the person being disqualified to be a Director or having vacated office;  
or

13.28.3the person not being entitled to vote,if that circumstance was not known by the person or the Directors or committee (as the case may be) when the act was done.

## **14 MINUTES AND RECORDS**

#### Minutes of meetings

14.1 The Directors must ensure minutes of proceedings and resolutions of General Meetings and of Board Meetings (including committees of the Board) are recorded in books kept for the purpose, within one (1) Month after the relevant meeting is held.

#### Minutes of resolutions passed without a meeting

14.2 The Directors must ensure minutes of resolutions passed by Directors (and committees of Directors) without a meeting are recorded in books kept for the purpose within one (1) Month after the resolution is passed.

#### Signing of minutes

14.3 The minutes of a meeting must be signed within a reasonable time by the chairperson of the meeting or the chairperson of the next meeting.

- 14.4 The minutes of the passing of a resolution without a meeting must be signed by a Director within a reasonable time after the resolution is passed.

#### Minutes as evidence

- 14.5 A minute that is recorded and signed under clauses 14.1, 14.2, 14.3 and 14.4 is evidence of the proceeding or resolution to which it relates unless the contrary is proved.

#### Inspection of Records

- 14.6 The Board must ensure the minute books for General Meetings are open for inspection by members free of charge.
- 14.7 Subject to clause 14.6, the Board may determine whether and to what extent, and at what time and place and under what conditions, the minute books, accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than the Board).
- 14.8 A Member (other than a Director) does not have the right to inspect any books, records or documents of the Company except as provided by law or authorised by the Board.

### **15 SECRETARY**

#### Appointment and removal of Secretary

- 15.1 A Secretary or Secretaries will be appointed by the Directors in accordance with the Corporations Act for such term, at such remuneration and on such conditions as they think fit, and any Secretary so appointed may be removed by the Directors.

#### Acting Secretary

- 15.2 The Directors may appoint a person as an acting Secretary or as a temporary substitute for a Secretary who for the purpose of this Constitution will be deemed to be a Secretary.

### **16 INDEMNITY AND INSURANCE**

#### Indemnities

- 16.1 To the extent permitted by law:
- 16.1.1 the Company indemnifies every person who is or has been an Officer of the Company or of a wholly owned subsidiary of the Company against any liability for costs and expenses incurred by that person in defending

any Proceedings in which judgment is given in that person's favour, or in which the person is acquitted, or in connection with an application in relation to any Proceedings in which the Court grants relief to the person under the law; and

16.1.2 the Company indemnifies every person who is or has been an Officer of the Company or of a wholly owned subsidiary of the Company against any liability incurred by the person, as an Officer of the Company or of a wholly owned subsidiary of the Company, to another person (other than the Company or a related body corporate of the Company) unless the liability arises out of conduct involving a lack of good faith or fraud.

### Insurance

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

16.2.1 incurred by the person in his or her capacity as an Officer of the Company or a subsidiary of the Company or in the course of acting in connection with the affairs of the Company or a subsidiary of the Company or otherwise arising out of the Officer's holding such office, provided that the liability does not arise out of conduct involving a willful breach of duty in relation to the Company or a subsidiary of the Company or a contravention of sections 182, 183 or 199B of the Corporations Act; or

16.2.2 for costs and expenses incurred by that person in defending Proceedings, whatever their outcome.

### Interpretation

16.3 In clauses 16.1 and 16.2:

16.3.1 the term "Proceedings" means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act, matter or thing in his or her capacity as such an Officer or in the course of acting in connection with the affairs of the Company or a wholly owned subsidiary (in clause 16.1) or subsidiary (in clause 16.2) of the Company or otherwise arising out of the Officer's holding such office (including proceedings alleging that he or she was guilty of negligence, default, breach of trust or breach of duty in relation to the Company or a wholly owned subsidiary (in clause 16.1) or subsidiary (in clause 16.2) of the Company); and

16.3.2 the term “Officer” has the meaning given to that term in section 9 of the Corporations Act.

## 17 EXECUTION OF DOCUMENTS

### Manner of execution

17.1 The Company may execute a document if the document is signed by:

17.1.1 two (2) Directors;

17.1.2 a Director and a Secretary; or

17.1.3 any person authorised in writing by the Company or the Directors to execute the document.

### Common Seal

17.2 The Company may have a Seal.

### Safe custody of Seal

17.3 The Board must provide for the safe custody of the Seal.

### Use of Seal

17.4 The Seal must be used only by the authority of the Board or of a committee of the Directors authorised by the Board to authorise the use of the Seal. The authority to use the Seal may be given before or after the Seal is used. Subject to clause 17.7, until the Board otherwise determines, every document to which the Seal is affixed must be signed by:

17.4.1 two (2) Directors;

17.4.2 a Director and a Secretary;

17.4.3 any person authorised in writing by the Company or the Directors to witness the fixing of the common seal.

### Seal register

17.5 The Company may keep a Seal register. If the Company does keep a Seal register the Company must enter in the register particulars of any document on which the Seal is fixed (other than a certificate for securities of the Company), giving in each case:

17.5.1 the date of the document;

17.5.2 the name of the parties of the document; and

17.5.3 the names of the persons signing the document under clause 17.4.

The register must be produced at Board Meetings for confirmation of the use of the Seal since confirmation was last given under this clause 17.5. Failure to comply with clause 17.5.1 or 17.5.2 does not invalidate any document to which the Seal is properly fixed.

#### Duplicate Seal

17.6 The Company may have for use in place of its Seal outside the State or Territory where its Seal is kept one (1) or more duplicate seals, each of which must be a facsimile of the Seal of the Company with the addition on its face of the words "duplicate seal" and the name of the place where it is to be used. A document sealed with a duplicate seal is to be taken as having been sealed with the common seal of the Company.

#### Sealing and signing of certificates

17.7 The Board may determine either generally or in a particular case that the Seal and the signature of any Director or Secretary or other person is to be printed on or affixed to any certificates for securities in the Company by some mechanical or other means.

### **18 NOTICES**

#### Notices by the Company to Members

18.1 A notice may be given by the Company to a Member:

18.1.1 by serving it personally at, or by sending it by post in a prepaid envelope to, the Member's address as shown in the register of Members, or by sending it to the fax number or electronic address the Member has supplied to the company for the giving of notices; or

18.1.2 if the Member does not have a registered address and has not supplied another address to the Company for the giving of notices, by exhibiting it at the registered office of the Company.

18.1.3 The fact that a person has supplied a fax number or an electronic address for the giving of notices does not require the Company to give any notice to that person by fax or electronic means.

18.1.4 A signature to any notice given by the Company to a Member under this clause 18 may be in writing printed or affixed by some mechanical or other means.

18.1.5 A certificate signed by a Director or Secretary of the Company to the effect that a notice has been given in accordance with this Constitution is conclusive evidence of that fact.

#### Notices by the Company to Directors

18.2 Subject to this Constitution, a notice may be given by the Company to any Director or Alternate Director either by serving it personally at, or by sending it by post in a prepaid envelope to the Director's, or Alternate Director's usual residential or business address, or such other address, or by sending it to the fax number or electronic address as the Director or Alternate Director has supplied to the Company for the giving of notices.

#### Notices by Members or Directors to the Company

18.3 Subject to this Constitution, a notice may be given by a Member, Director or Alternate Director to the Company by serving it on the Company at, or by sending it by post in a prepaid envelope to, the registered office of the Company or by sending it to the principal fax number or principal electronic address of the Company at its registered office.

#### Notices posted to addresses outside the Commonwealth

18.4 A notice sent by post to an address outside the Commonwealth must be sent by surface mail or airmail.

#### Time of service

18.5 Where a notice is sent by post, service of the notice is taken to be affected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been affected:

18.5.1 in the case of a notice of a General Meeting, on the day after the date of its posting; or

18.5.2 in any other case, at the time at which the letter would be delivered in the ordinary course of post.

18.5.3 Where a notice is sent by fax or electronic means, service of the notice is taken to be affected on the day after the date it is sent.

18.5.4 Where the Company gives a notice under clause 18.1.2 by exhibiting it at the registered office of the Company, service of the notice is taken to be affected when the notice was first so exhibited.

#### Other communications and documents

18.6 Clause 18.1 to 18.5 (inclusive) apply, so far as they can and with such changes as are necessary, to the service of any communication or document.

Notices in writing

18.7 A reference in this Constitution to a notice in writing includes a notice given by fax or electronic means.

**19 ACCOUNTS**

Company to keep

19.1 The Company will keep such accounting and other records of the business of the Company as it is required to keep by the Corporations Act.

Annual accounts to be laid before Annual General Meeting

19.2 At the Annual General Meeting in every year the Directors will lay before the Company the financial report for the last financial year of the Company, together with such other accounts, reports and statements as are required by the Corporations Act.

Copy of accounts to be sent

19.3 Other than those Members who have provided written notice to the Company stating that they do not wish to receive a copy of every document which is required to be laid before each Annual General Meeting by clause 19.1, a copy of these documents will be sent to all persons entitled to receive notices of General Meetings together with the notice of meeting, as required by the Corporations Act.

Accounts conclusive

19.4 Every account of the Directors when audited and approved or received by a General Meeting at which it is presented will be conclusive except as regards any material error discovered in it within three (3) Months next after its approval or adoption. Whenever any material error discovered within that period the account will forthwith be corrected and then it will be conclusive.

**20 AUDITORS: APPOINTMENT AND REMOVAL**

Appointment and Removal

20.1 The auditors of the Company will:

20.1.1 be appointed and may be removed as provided for in the Corporations Act; and

20.1.2 perform the duties and have the rights and powers as may be provided for in the Corporations Act.

## 21 **SECRECY**

### Members not entitled to discovery

21.1 Subject to the Corporations Act, (but excluding section 247D of the Corporations Act), a Member not being a Director does not have the right, but may in the absolute discretion of the Directors be authorised, to inspect or to require or receive any information, or to require discovery of any record or document of the Company or any information respecting any detail of the Company's trading or business, or any matter which is or may be in the nature of a trade secret, confidential information, mystery of trade or secret process which may relate to the conduct of the business of the Company.

### Officers of Company not to disclose information

21.2 Every Director, manager, employee, Secretary, auditor, trustee, member of a committee, agent, accountant or other Officer is bound to observe secrecy with respect to all transaction of the Company with its customers, the state of the account of any individual, and all related matters.

21.3 If required by the Directors, every such person will, before commencing that person's duties or employment or at any time afterwards, sign and make a declaration in a book to be kept for that purpose that they will not reveal or make known any of the matters, affairs or concerns which may come to their knowledge as Director, manager, Secretary, auditor, trustee, member of a committee, agent, accountant or other Officer and whether relating to transactions of the Company with its customers or the state of the account of any individual or to anything else, to any person or persons except in the course and in the performance of their duties, or under compulsion or obligation of law, or when officially required so to do by the Directors or by the auditors for the time being, or by any general meeting of Members.

## 22 **GENERAL**

### Submission to jurisdiction

22.1 Each Member submits to the non-exclusive jurisdiction of the Supreme Court of the State or Territory in which the Company is registered, the Federal Court of Australia and the courts which may hear appeals from those Courts.

### Prohibition and enforceability

22.2 Any provision of, or the application of any provision of, this Constitution which is prohibited in any place is, in that place, ineffective only to the extent of that



prohibition. Any provision of, or the application of any provision of, this Constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provision in that or any other place.

#### Alterations to the Constitution

22.3 A Special Resolution of the Members is required to alter or amend this Constitution.