

## Company constitution of Taxis NSW Ltd

This is the constitution of Taxis NSW Ltd (ACN 651 129 190) (**Company**)

### BACKGROUND

- A. The Company is a public company limited by guarantee.
- B. The liability of the Company is limited to the amount of guarantee contained in clause 26.

### OPERATIVE PROVISIONS

## 1 Definitions and interpretation

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### 1.1 Definitions

The following definitions apply in this constitution.

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

**Affiliated Provider** has the meaning provided in section 5(1) of the P2P Act, or its successor.

**Alternate** means an alternate Director appointed under clause 7.1 of this constitution.

**Appointor** in relation to an Alternate, means the Director who appointed the Alternate.

**Associate Member** means an individual or corporate entity admitted as a Member but who does not fall within any of the other classes of membership but has an interest in the Taxi industry either because they:

- (a) represent an allied industry;
- (b) are a supplier to the Taxi industry; or,
- (c) have an interest in the Taxi industry.

**Board** means the Directors acting collectively under this constitution.

**Central Coast** means the area bounded by the City of Gosford and the City of Wyong.

**City Director** means a Director who is nominated to be a representative of a City Taxi Service Provider for the purposes of being a Director.

**City Taxi Service Provider** means a Taxi Service Provider that operates in New South Wales other than a Country Taxi Service Provider.

**Company** means the company named at the beginning of this constitution, as amended from time to time.

**Country Director** means a Director who is nominated to be a representative of a Country Taxi Service Provider for the purposes of being a Director.

**Country Taxi Service Provider** means a Taxi Service Provider that operates outside the transport areas of Sydney, Newcastle, Wollongong, and the Central Coast.

**Director** means a person who is at any time, a director of the Company.

**Executive Officer** means an employee of the Company appointed as its executive officer pursuant to clause 10.1.

**Former Director** has the meaning given to that term in clause 6.7.

**Independent Director** means a Director appointed pursuant to clause 6.1(d).

**Interest Rate** means, in relation to each clause in which that term is used:

- (a) the rate for the time being prescribed by the Board in respect of that clause; or
- (b) if no rate is prescribed, 10% each year.

**Listed Corporation** means a corporation that is admitted to the official list of ASX Limited.

**Listing Rules** means the official listing rules of ASX Limited.

**Member** means a person whose name is entered in the Register as the holder of a share.

**NSWTIA** means the New South Wales Taxi Industry Association.

**Object** means the objects of the Company set out under clause 2.1.

**Officer** has the meaning given by section 9 of the Act.

**Ordinary Resolution** means a resolution passed at a meeting of members by a majority of the votes cast by members present and entitled to vote on the resolution.

**P2P Act** means the Point to Point Transport (Taxis and Hire Vehicles) Act 2016 (or its successor).

**Register** means the register of members kept as required by sections 168 and 169 of the Act.

**Secretary** means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this constitution.

**Special Resolution** means a resolution of which notice has been given and that has been passed by at least 75% of the votes cast by members present and entitled to vote on the resolution.

**Taxi** means a motor vehicle used to provide a Taxi Service.

**Taxi Licence Holder** means a person or organisation that holds a current Taxi licence validly issued by a NSW Government body authorised at the relevant time to issue such licences.

**Taxi Operator** means an Affiliated Provider.

**Taxi Service** has the meaning set out in section 5(1) of the P2P Act, or its successor.

**Taxi Service Provider** means a person or entity:

- (a) authorised to provide a Taxi Service; and
- (b) who has at least 1 Taxi affiliated with its Taxi Service and that Taxi operates within NSW.

**TLO Director** means a Director who is:

- (c) a Taxi Operator or Taxi Licence Holder, where the Taxi Operator or Taxi Licence Holder is an individual; or
- (d) a representative of a Taxi Operator or Taxi Licence Holder for the purposes of being a Director, where the Taxi Operator or Taxi Licence Holder is a corporation or partnership.

## **1.2 Interpretation of this document**

- (a) Headings are for convenience only and do not affect interpretation. The following clauses also apply in interpreting this constitution, except where the context makes it clear that a clause is not intended to apply.
- (b) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (iv) anything (including a right, obligation or concept) includes each part of it.
- (c) A singular word includes the plural and vice versa.
- (d) A word that suggests 1 gender includes the other genders.
- (e) If a word is defined, another part of speech has a corresponding meaning.
- (f) If an example is given of any thing (including a right, obligation or concept) (eg, by use of the word “including” the example does not limit the scope of that thing.
- (g) The word “agreement” includes an undertaking or other binding arrangement or understanding whether or not in writing.
- (h) A reference to something being written or in writing includes that thing being represented or reproduced in any mode in a visible form.
- (i) A word (other than a word defined in clause 1.1) that is defined by the Act has the same meaning in this constitution where it relates to the same matters as the matters for which it is defined in the Act.
- (j) A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.
- (k) A reference to a clause is to a clause of this constitution.

## **2 Objectives & Powers**

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### **2.1 Objects**

- (a) The objects for which the Company is established are to:
  - (i) act as a representative body on behalf of its Members in relation to all aspects of the Taxi industry;
  - (ii) formulate policies designed to promote and further the interests of Taxi Service Providers, incorporated or unincorporated groups of Taxi owners and/or proprietors, Taxi Operators and Taxi Licence Holders;
  - (iii) implement the policies of the Company by taking such action in accordance with the laws of New South Wales as may from time-to-time be appropriate by consulting with State Federal and Local authorities and any other relevant authorities;
  - (iv) assist the Members to provide efficient and responsive services for the community and to provide advice and assistance to its Members;
  - (v) protect and conserve the interest of the Members;
  - (vi) consider and deal with all questions involving the Taxi industry;
  - (vii) endeavour at all times to unite and conduct for the whole or any section of the Taxi industry;
  - (viii) to provide services, training, resources, advocacy and assistance to Taxi industry including by assisting members with the provision of a safe transport system; and
  - (ix) to provide products and services on commercial terms to ensure the viability of the Company for the benefit of the Members.

### **2.2 Powers**

The Company shall have the following powers:

- (a) to do all such acts, matters and things necessary or incidental to the carrying out of its Objects.
- (b) the Company may exercise in any manner permitted by the Act any power which a public company limited by guarantee may exercise under the Act. The business of the Company is managed by or under the direction of the Directors. The Directors may exercise all the powers of the Company except any powers that the Act or this Constitution requires the Company to exercise in general meeting.
- (c) in relation to any real or personal property of any kind whatsoever:
  - (i) to purchase, take on, lease or acquire by gift, exchange or otherwise any such property.
  - (ii) to sell such property or to exchange it for other property.
  - (iii) to demise or let such property or to exchange it for other property.

- (iv) to accept surrenders of leases on such terms and subject to such terms and conditions as desirable.
- (v) to raise or borrow money on such terms and conditions as shall appear desirable and whether with or without security.
- (vi) to declare, undertake and execute trusts of any property or of any power, privilege, licence or incorporeal right of the Company on such terms and in such manner as may be necessary or desirable.
- (vii) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants, debentures, and other negotiable or transferable securities and instruments preferential or otherwise.
- (viii) to construct, maintain and alter any building or works necessary or convenient for the purposes of the Company.
- (ix) to acquire, hold sell and deal with shares, stock, bonds, debentures, debenture stock, securities and any other interest or investments of any kind whatsoever and to vary the same from time-to-time.
- (x) to give guarantees or security for payment of money or the performance of contracts or obligations by any person.
- (xi) to enter into any arrangements with any authority, company, or person that may seem conducive to the Company's objects or any of them and to carry any such arrangements into effect.
- (xii) to appoint attorneys or agents on such terms as may appear desirable.
- (d) to enter into any contract or obligation, which in the opinion of the Company is conducive to its objects.
- (e) the Board may submit any industrial dispute to conciliation or arbitration and may do all such acts, matters and things which an industrial organisation is permitted to do by law.

### **3 Prohibition on distribution to members**

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- (a) The Company must not make any distribution to any Members, whether by way of dividend, surplus on winding up or otherwise.
- (b) Clause 3(a) does not prevent the payment in good faith by the Company of reasonable remuneration to any Member for goods or services supplied by that Member to the Company in the ordinary course of business, the payment of interest at a reasonable rate on money borrowed by the Company from any Member, the payment of reasonable rent for premises leased to the Company by any Member, or the payment of any other reasonable amount of a similar character to those described in this clause 3(a).

## **4 Members**

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### **4.1 Categories of Membership**

The following individuals and organisations (whether incorporated or unincorporated) shall be entitled to apply to become Members:

- (a) City Taxi Service Providers;
- (b) Country Taxi Service Providers;
- (c) Taxi Operators;
- (d) Taxi Licence Holders; and
- (e) those who, if admitted as a Member, would be an Associate Member.

#### **4.2 Initial members**

The initial Members of the Company will be those parties set out in Schedule A (subject to the Company's receipt of any entrance or other fees payable under this constitution).

#### **4.3 Rights of City Taxi Service Provider members**

City Taxi Service Provider members are eligible to:

- (a) vote in the election of City Directors;
- (b) vote on any resolution to remove such a Director; and
- (c) attend and speak at general meetings.

#### **4.4 Rights of Country Taxi Service Provider members**

Country Taxi Service Provider members are eligible to:

- (a) vote in the election of Country Directors;
- (b) vote on any resolution to remove such a Director; and
- (c) attend and speak at general meetings.

#### **4.5 Rights of Taxi Operator members**

Taxi Operator members are eligible to:

- (a) vote in the election of the positions on the Board to be filled by TLO Directors;
- (b) vote on any resolution to remove such a Director; and
- (c) attend, speak and vote at general meetings.

#### **4.6 Rights of Taxi Licence holder members**

Taxi Licence holder members are eligible to:

- (a) vote in the election of the positions on the Board to be filled by TLO Directors;
- (b) vote on any resolution to remove such a Director; and
- (c) attend, speak and vote at general meetings.

#### **4.7 Rights of Associate Members**

Associate Members are eligible to attend and speak at general meetings, but cannot vote at general meetings.

#### **4.8 Only 1 Membership Category can Apply**

- (a) Subject to 4.8(b) and (c), if a person or entity is (or once a member, becomes) eligible for more than 1 category of membership (for example because they are both a Taxi Service Provider and Taxi Operator), they may elect which category of membership to apply for and once admitted as a member of that category, they will be treated as a member of that category only.
- (b) If the categories of membership have different fees applicable to them, the person or entity will be deemed to be only eligible for the category (or categories) of membership applicable to them which have (or has) the highest fee.
- (c) If, during the course of a member's membership, they become eligible for membership for a different or additional category of membership, they:
  - (i) must notify the Company in writing at their earliest opportunity; and
  - (ii) may be required to transfer their membership to a different category of membership (and pay any additional fees associated with that) if so required pursuant to clause 4.8(b).

## **5 Membership**

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### **5.1 Application for membership**

A person may apply to become a member of the Company by writing to the Secretary stating that they want to become a member and agree to comply with the Company's constitution, including paying the guarantee under clause 26, if required.

### **5.2 Issue at discretion of Board**

Subject to section 259C of the Act, the Board may, on behalf of the Company, admit to membership in the Company the applicants who applied as per clause 5.1.

### **5.3 Approval of membership**

If the Directors approve an application, the Secretary must as soon as possible:

- (a) enter the new member on the Register, and
- (b) write to the applicant to tell them that his or her application was approved, and the date that the membership started.

#### **5.4 Rejection of membership**

- (a) If the Directors reject an application, the Secretary must write to the applicant as soon as possible to tell them that his or her application has been rejected, but does not have to give reasons.
- (b) Other than initial members, an applicant will become a member when he or she is entered on the Register.

#### **5.5 Fees**

- (a) The Directors may require each applicant applying for membership to pay an entrance fee, determined from time to time by the Board.
- (b) Each Member shall pay a subscription fee as set and approved by the Board and which may be determined from time to time. The Board may make subscription fees payable for one or more Members for different amounts and at different times, and subject to the terms of the membership payable by instalments. The Board may revoke or postpone subscription fees or extend the time for payment of fees.
- (c) The Company must give Members at least 10 Business Days' notice of subscription fees payable by Members. A notice of fees must be in writing and specify the amount of the subscription fee, and the time and the place of payment of the subscription fee.
- (d) A Member must pay to the Company the amount of each subscription fee made on the Member at the times and places specified in the notice of the fee. If a subscription fee is payable in one or more fixed amounts on one or more dates, the Member must pay to the Company those amounts on those dates.
- (e) A Member must pay to the Company interest at the Interest Rate per annum on any amount referred to in clause 5.5 (d) which is not paid on or before the time appointed for its payment, from the time appointed for payment to the time of the actual payment of that amount. The Board may waive payment of all or any part of an amount payable under this clause 5.5(e).
- (f) The Company may recover an amount due and payable under clauses 5.5(d) and 5.5 (e) from a Member by commencing legal proceedings against the Member for all or part of the amount due.
- (g) The debt due in respect of an amount payable under clauses 5.5 (d) and 5.5 (e) is sufficiently proved by evidence that the name of the Member sued is entered in the Register and there is a record in the minute books of the Company of the resolution requiring payment of the subscription fee or the fixed amount referred to in clause 5.5 (d).
- (h) The Company may accept from any Member all or any part of the subscription fees payable before the amount is due and payable. The Company may pay interest at any rate the Directors resolve on the amount paid before it is due and payable (from the date of payment until and including the date the amount becomes actually payable) and the Company may repay the amounts so paid to that Member.
- (i) Members who are Taxi Service Providers or Taxi Operators are obliged as a condition of their membership of the Company to pay each month to the Company an amount equal to the monthly subscription fee payable for membership of the Company multiplied by the number of Taxis operating within its Taxi Service or owned by the Taxi Operator for the particular month.

## 5.6 Membership not transferrable

Membership in the Company is not transferrable.

## 5.7 Lapsed membership

- (a) A Member who:
- (i) falls into arrears with respect to its subscription fees or any other fees the Member must pay to the Company; and
  - (ii) fails to pay those arrears within 14 days after receipt of a written demand for payment from the Company,
- ceases to be a Member.
- (b) Subject to clause (c), any Member who ceases to be a Member due to the operation of subparagraph (a) or otherwise may apply to be re-admitted as a Member (**Renewing Member**).
- (c) Unless otherwise agreed by the Directors (in their sole discretion), a Renewing Member may only be re-admitted as a Member upon paying the subscription fees and any other fees payable under this constitution that the Renewing Member would have been required to pay during the period that the Renewing Member was not a Member including any fees which fell due for payment but were not paid by the Renewing Member before their earlier membership ceased.

## 5.8 Membership Details

Each member must:

- (a) ensure that their correct contact details are provided in writing to the Company; and
- (b) notify the Company in writing in a timely manner of any changes to their contact details.

## 6 Directors

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### 6.1 Number of Directors

The Board shall consist of a minimum of 9 Directors comprised of:

- (a) Three (3) City Directors;
- (b) Two (2) Country Directors;
- (c) Three (3) TLO Directors; and,
- (d) One (1) independent director appointed by the Board, who (subject to the terms of this constitution and the Act) be appointed for a term of 3 years.

### 6.2 Founding Directors

The persons to hold office as Directors on the Company's incorporation will be the parties listed in schedule A.

### **6.3 Eligibility of Directors**

With the exception of an Independent Director, no person shall be qualified to be a Director unless he or she is:

- (a) a Taxi Licence Holder or a Taxi Operator; or
- (b) nominated by an incorporated Member to be a representative of that incorporated member provided that:
  - (i) each incorporated member may only nominate one person as their representative for each election;
  - (ii) a person can only be the representative for one incorporated member at any one time.

### **6.4 Election of Directors**

- (a) The Board shall appoint a returning officer and at least one (1) scrutineer to take charge of the ballot. A candidate for any position shall not be appointed as the returning officer or as a scrutineer.
- (b) Notice of the date and time of the last day for receiving nominations for office in accordance with paragraph (c) of this clause 6.4, shall be prominently be given to members 28 days prior to the date fixed for the Annual General Meeting.
- (c) Nominations shall close at least 14 days prior to the date fixed for the Annual General Meeting and must be delivered to the Secretary on or before that date.
- (d) Nominations for election to the Board shall be made in writing and signed by one and Member provided that:
  - (i) Members who are City Taxi Service Providers can only nominate for election a person who is nominated as its representative for the purposes of that election;
  - (ii) Members who are Country Taxi Service Providers can only nominate for election a person who is nominated as its representative for the purposes of that election;
  - (iii) Members who are Taxi Operators or Taxi License Holders can only nominate for election a person who is either:
    - (A) a Taxi Operator Member or a Taxi Licence Holder Member; or
    - (B) (where the Taxi Operator member or Taxi Licence Holder member is not an individual) nominated as a representative of a Taxi Operator member or Taxi Licence Holder member for the purposes of that election.
- (e) A nomination can be withdrawn at any time prior to the close of nominations.
- (f) The Secretary shall as soon as practicable post the name of the candidate and his or her proposer on the website operated or used by the Company.
- (g) If the full number of candidates for the positions to be elected in accordance with Rule 6.4 is not nominated then those candidates who are nominated shall be declared elected to the Board and additional nominations shall with the consent of the nominee or nominees be made at the meeting for the position not so filled.

- (h) If there be only the requisite number nominated those candidates shall be declared duly elected.
- (i) If there be more than the required number nominated an election by secret ballot shall take place in respect of that position.
- (j) The returning officer shall supervise the preparation of ballot papers or the electronic voting process.
- (k) The order in which names appear on the ballot paper shall be determined by lot.
- (l) The ballot shall be conducted on such days and during such times as shall be determined by the Board from time to time.
- (m) Members shall record their vote in such manner as may be prescribed by the Board from time to time. Failure to comply with those requirements shall render the vote invalid.
- (n) The returning officer shall supervise the counting of votes.
- (o) The decision of the returning officer as to the formality or informality of any vote shall be final.
- (p) In the event of an equality of votes, the returning officer shall draw lots between the candidates and the candidate who is drawn first shall be declared elected to that position.
- (q) The returning officer shall report the result of the ballot to the Annual General Meeting.
- (r) If the returning officer is not present, a scrutineer shall perform the duties of the returning officer set out in this clause 6.4.
- (s) The Board may, at any time, engage the services of a professional electoral consultant or company to perform, or assist in performing, any or all of the duties of the returning officer or scrutineers set out in this clause 6.4.
- (t) If at the close of the Annual General Meeting any vacancies remain on the Board, such vacancies shall be casual vacancies and may be filled in accordance with clause 6.7.

## **6.5 Terms for directors**

- (a) Before nominations are called for in accordance with Rule 6.4 prior to the Company's first Annual General Meeting, the Board shall meet and be divided into 3 groups designated as group 1, group 2 and group 3 and if the Directors are unable to decide which individuals should be allotted to each group, such allocation shall be decided by lot.
- (b) Group 1 shall consist of 2 directors, comprised of 1 City Director and 1 TLO Director.
- (c) Group 2 shall consist of 3 directors, comprised of 1 City Director, 1 TLO Director, and 1 Country Director.
- (d) Group 3 shall consist of 3 directors, comprised of 1 City Director, 1 TLO Director, and 1 Country Director.
- (e) Subject to Rule 6.4(e), and to this Constitution and the Act,
  - (i) an election will be conducted each year for one of the 3 groups;

- (ii) the first election held, being the election in connection with the Company's first Annual General Meeting, will be for the group 1 positions;
  - (iii) directors will be elected to serve 3 year terms, where a year is the period between successive general meetings.
  - (iv) elections in subsequent years will be for group whose 3 year term of office is to expire at the Annual General Meeting to be held that year.
- (f) Subject to this constitution and the Act, the directors initially
- (i) allotted to group 1 shall hold office until the conclusion of the Company's first Annual General Meeting;
  - (ii) allotted to group 2 shall hold office until the conclusion of the Company's second Annual General Meeting;
  - (iii) allotted to group 3 shall hold office until the conclusion of the Company's third Annual General Meeting.

## 6.6 Chairperson and Deputy Chairperson

- (a) As soon as practicable after each Annual General Meeting, the Board shall meet to elect from amongst their number a Chairperson and Deputy Chairperson.
- (b) The directors elected to the positions of Chairperson and Deputy Chairperson shall, subject to this Constitution, hold those offices until the conclusion of the next Annual General Meeting.
- (c) The Board may by resolution remove a director from the position of Chairperson or Deputy Chairperson at any time. A director so removed then becomes an Ordinary director and the Board may then appoint another director to the position of Chairperson or Deputy Chairperson.
- (d) If, for any reason, either of the positions are vacated prior to the conclusion of the next Annual General Meeting, the Board may elect another director to the vacancy and the director so elected shall hold office until the conclusion of the next Annual General Meeting.

## 6.7 Filling casual vacancies

The Board shall have power at any time and from time to time, to appoint any eligible person to the Board to fill a casual vacancy on the Board. The person so appointed must be eligible to hold the position of Director in the same category for directorship (either City Director, Country Director, TLO Director or Independent Director) held by the former Director whose cessation from the Board gave rise to the casual vacancy (**Former Director**) and shall hold office until such time as the term of that Former Director would have concluded had that Former Director not ceased to be a Director.

## 6.8 Cessation of Director's appointment

A person automatically ceases to be a Director if the person:

- (a) is not permitted by the Act (or by an order made under the Act) to be a director;
- (b) becomes disqualified from managing corporations under Part 2D.6 of the Act and is not given permission or leave to manage the Company under section 206F or 206G of the Act;

- (c) is, or becomes, of unsound mind, or becomes physically or mentally incapable of performing the functions of that office, or that person's estate is liable to be dealt with in any way under the law relating to mental health;
- (d) fails to attend (either personally or by an Alternate) two (2) consecutive Board meetings (not including meetings of a committee of the Board) without leave of absence from the Board;
- (e) resigns by notice in writing to the Company;
- (f) is removed from office under clause 6.9;
- (g) is an Executive Officer and ceases to hold that office;
- (h) fails to comply with clause 6.12 without express permission from the Board; or
- (i) was appointed to the office for a specified period and that period expires.

### **6.9 Removal from office**

Whether or not a Director's appointment was expressed to be for a specified period, the Company may, by Ordinary Resolution at a meeting of members called in accordance with clause 16, remove a Director from office.

### **6.10 Too few Directors**

If the number of Directors is reduced below the minimum required by clause 6.1, the continuing Directors may act as the Board only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a meeting of members; and
- (c) in emergencies.

### **6.11 Voting rights of Directors**

All Directors have an equal vote on all motions or proposed resolutions and subject to the terms of this constitution and the Act, each Director may vote on any motion or proposed resolution.

### **6.12 Obligation of all Directors**

All Directors must undertake a course in governance which has been approved in advance by the Board within 6 months after being appointed as a Director unless they can satisfy the Board (acting reasonably) that prior to such appointment they undertook a course in governance which was of a standard acceptable to the Board.

## **7 Alternates**

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### **7.1 Appointment of Alternate**

A Director (other than an Alternate) may appoint a person who is approved by the Board (without the vote of the Appointor) to act as Alternate for a specified period or each time the Appointor is unable to attend a Board meeting or act as a Director.

## **7.2 Notice of Board meetings**

If the Appointor requests the Company to give the Alternate notice of Board meetings, the Company must do so. Unless the Appointor has requested it, the Company need not give notice of Board meetings to an Alternate.

## **7.3 Obligations and entitlements of Alternates**

An Alternate:

- (a) may attend and vote in place of the Appointor at a Board meeting at which the Appointor is not present;
- (b) if he or she is also a Director, has a separate right to vote as Alternate;
- (c) if Alternate for more than 1 Appointor, has a separate right to vote in place of each Appointor;
- (d) when acting as Alternate, is an Officer of the Company and subject to all the duties, and entitled to exercise all the powers and rights of the Appointor as a Director; and
- (e) is entitled to reasonable travelling, accommodation and other expenses incurred in attending meetings of the Board, or of the Company, or while otherwise engaged on the business of the Company on the same basis as other Directors, but is not entitled to any other remuneration from the Company (but the Appointor may further remunerate the Alternate).

## **7.4 Termination of appointment**

The Appointor may, at any time, revoke the appointment of a person as Alternate, whether or not that appointment is for a specified period. Any appointment of an Alternate immediately ceases if:

- (a) the Appointor ceases to be a Director; or
- (b) an event occurs that would cause the Alternate to cease to be a Director under clause 6.6 if the Alternate were a Director.

## **7.5 Appointments and revocations in writing**

The Appointor must appoint and revoke the appointment of any Alternate in writing. The appointment or revocation is not effective until a copy of the relevant document is provided to the Company.

# **8 Powers of the Board**

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## **8.1 Powers generally**

Except as otherwise required by the Act, any other applicable law, or this constitution, the Board:

- (a) has power to manage the business of the Company; and
- (b) may exercise every right, power or capacity of the Company to the exclusion of the members and the Company in general meeting.

## **8.2 Exercise of powers**

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with clause 15; or
- (b) in accordance with a delegation of the power under clause 10.1 or 11.

## **9 Executing negotiable instruments**

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- (a) The Board must decide the manner (including the use of copies of signatures if thought appropriate) in which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company.
- (b) The Company may execute, accept, or endorse negotiable instruments only in the manner decided by the Board under clause 9(a).

## **10 Executive Officer**

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### **10.1 Appointment and power of Executive Officer**

- (a) The Board may appoint 1 or more persons to be an Executive Officer, either for a specified term or without specifying a term.
- (b) The Board:
  - (i) may delegate any of the powers of the Board to an Executive Officer on the terms and subject to any restrictions the Board decides, so as to be concurrent with, or to the exclusion of, the powers of the Board;
  - (ii) may revoke the delegation at any time; and
  - (iii) may terminate the appointment of the Executive Officer.
- (c) This clause does not limit clause 11.

## **11 Delegation of board**

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### **11.1 Power to delegate**

The Board may delegate any of its powers as permitted by section 198D of the Act.

### **11.2 Power to revoke delegation**

The Board may revoke a delegation previously made, whether or not the delegation is expressed to be for a specified period.

### **11.3 Terms of delegation**

- (a) A delegation of powers under clause 11.1 may be made:
  - (i) for a specified period or without specifying a period; and

- (ii) on the terms (including power to further delegate) and subject to any restrictions the Board decides.
- (b) A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

#### **11.4 Proceedings of committees**

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the clauses of this Constitution that regulate the meetings and proceedings of the Board.

## **12 Directors' duties and interests**

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### **12.1 Compliance with duties under the Act**

Each Director must comply with sections 180 to 183 of the Act.

### **12.2 Director can hold other offices etc**

A Director may:

- (a) hold any office or place of profit or employment other than that of the Company's auditor or any director or employee of the auditor;
- (b) be a member of any corporation (including the Company) or partnership other than the Company's auditor;
- (c) be a creditor of any corporation (including the Company) or partnership; and
- (d) enter into any agreement with the Company.

### **12.3 Disclosure of interests**

Each Director must comply with section 191 of the Act.

### **12.4 Director interested in a matter**

- (a) If a Director has an interest in a matter that relates to the affairs of the Company, and either the Director discloses the interest under section 191 of the Act, or it is not required to be disclosed under section 191:
  - (i) the Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter that relates to the interest;
  - (ii) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
  - (iii) the Director may retain benefits under the transaction even though the Director has the interest; and
  - (iv) the Company cannot avoid the transaction merely because of the existence of the interest.

- (b) If the interest is required to be disclosed under section 191, clause 12.4(a)(iii) applies only if the interest is disclosed before the transaction is entered into.

## **12.5 Agreements with third parties**

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of an interest; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers, votes on, or participates in the execution of, that agreement.

## **12.6 Directors acting in the best interests of the holding company**

If the Company is a wholly owned subsidiary of a body corporate, a Director is authorised to act in the best interests of that body corporate if:

- (a) the Director acts in good faith in the best interests of the body corporate; and
- (b) the Company is not insolvent at the time the Director acts and does not become insolvent because of the Director's act.

## **13 Directors' remuneration**

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### **13.1 No Remuneration paid to Directors**

- (a) Unless it is a payment for a service rendered in good faith by a Director, the Directors will not be paid remuneration, fee, commission, or other financial benefit for acting as a Director of the Company.
- (b) Notwithstanding clause 13.1(a), the Company may, in the Board's sole and unfettered discretion, pay an honorarium to the Independent Director.

### **13.2 Expenses of Directors**

The Company may pay a Director all reasonable expenses (including travelling and accommodation expenses) incurred by the Director:

- (a) in attending meetings of the Company, the Board, or a committee of the Board;
- (b) on the business of the Company; or
- (c) in carrying out duties as a Director.

In the case of the Independent Director, the reimbursement of expenses is in addition to payment of an honorarium (if any).

## **14 Officers' indemnity and insurance**

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### **14.1 Indemnity**

- (a) Subject to, and so far as permitted by the Act and any other applicable law, the Company must, to the extent the person is not otherwise indemnified, indemnify every Officer of the Company and of any related body corporate (and may indemnify its auditor) against a

Liability incurred as such an Officer (or auditor) to a person (other than the Company or a related body corporate). The Liability includes Liability incurred as a result of appointment or nomination by the Company or related body corporate as a trustee or as an Officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith.

- (b) Subject to, and so far as permitted by the Act and any other applicable law, the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an Officer or employee or auditor in defending an action for a Liability incurred as such an Officer, employee or auditor or in resisting or responding to actions taken by the Australian Securities and Investments Commission or a liquidator.
- (c) In this clause, **Liability** means a liability or loss of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages, charges and expenses, including costs and expenses incurred in connection with any investigation or inquiry by the Australian Securities and Investments Commission or a liquidator.

## **14.2 Insurance**

Subject to the Act and any other applicable law, the Company may purchase and maintain, pay or agree to pay, a premium on a contract of insurance for any person.

## **14.3 Former officers**

The indemnity in favour of Officers under clause 14.1 is a continuing indemnity. It applies to all acts done by a person while an Officer of the Company or a related body corporate, even though the person is not an Officer at the time the claim is made.

## **14.4 Deed**

- (a) The Company may, without limiting a person's rights under this clause 14, enter into an agreement with a person who is, or has been, an Officer of the Company or any related body corporate, to give effect to the rights of the person under this clause 14 on any terms and conditions that the Board thinks fit.
- (b) Clause 14.4(a) is subject to the Act and any other applicable law.

## **15 Board meetings**

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### **15.1 Convening Board meetings**

A Chairperson may at any time, and a Secretary must on request from three (3) Directors, convene a Board meeting.

### **15.2 Notice of Board meeting**

- (a) The Secretary:
  - (i) must give reasonable notice of each meeting (and, if it is adjourned, of its resumption) individually to each Director and each Alternate in respect of whom the Appointor has given notice under clause 7.2 requiring notice of Board meetings to be given to that Alternate; and
  - (ii) may give that notice orally (including by telephone) or in writing.

- (b) Failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

### **15.3 Use of technology**

- (a) A Board meeting may be held using any means of audio or audio visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D of the Act.
- (b) A Board meeting held solely or partly by technology is treated as being held:
  - (i) at the place at which the greatest number of the Directors present at the meeting is located; or
  - (ii) if an equal number of Directors is located in each of 2 or more places, at the place where the chairman of the meeting is located.

### **15.4 Chairing Board meetings**

- (a) The Chairperson shall be entitled to take the chair at every meeting of the Board.
- (b) If the Chairperson is not present or is unwilling or unable to act then the Deputy Chairperson shall take the chair of the meeting.
- (c) If the Deputy Chairperson is not present or is unwilling or unable to act then the directors present shall elect one of their number to take the chair for that meeting.

### **15.5 Quorum**

- (a) Unless the Board decides otherwise, the quorum for a Board meeting is 4 Directors. A quorum must be present for the whole meeting.
- (b) An Alternate who is also a Director or a person who is an Alternate for more than 1 Appointor may only be counted once toward a quorum.
- (c) A Director is treated as present at a meeting held by audio or audio visual communication if the Director is able to hear and be heard by all others attending.
- (d) If a meeting is held in another way permitted by section 248D of the Act, the Board must resolve the basis on which Directors are treated as present.

### **15.6 Majority decisions**

- (a) A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- (b) The chairman of a Board meeting does not have a second or casting vote.
- (c) If an equal number of votes are cast for and against a resolution, the matter is decided in the negative.

### **15.7 Procedural rules**

The Board may adjourn and, subject to this constitution, otherwise regulate its meetings as it decides.

## **15.8 Written resolution**

- (a) To make a written resolution, all the Directors entitled to receive notice of a Board meeting and to vote on the resolution must sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) A written Board resolution in those terms is passed at the time when the last Director signs.

## **15.9 Additional provisions concerning written resolutions**

For the purpose of clause 15.8:

- (a) 2 or more separate documents in identical terms, each of which is signed by 1 or more Directors, are treated as 1 document;
- (b) signature of a document by an Alternate is not required if the Appointor of that Alternate has signed the document;
- (c) signature of a document by the Appointor of an Alternate is not required if that Alternate has signed the document in that capacity; and
- (d) a fax or email containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

## **15.10 Valid proceedings**

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid, even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

## **16 Meetings of members**

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### **16.1 Calling meetings of members**

A meeting of members:

- (a) may be convened at any time by the Board or a Director; and
- (b) must be convened by the Board when required by section 249D of the Act, or by order made under section 249G of the Act.

### **16.2 Notice of meeting**

- (a) Subject to clauses 16.3 and 16.4, at least 21 days' written notice of a meeting of members must be given individually:
  - (i) to each member entitled to vote at the meeting;
  - (ii) to each Director (other than an Alternate); and

- (iii) to the auditor (if any).
- (b) Subject to any regulation made under section 249LA of the Act, the notice of meeting must comply with section 249L and may be given in any manner permitted by section 249J(3).

### **16.3 Short notice**

Subject to section 249H(4) of the Act:

- (a) if the Company has elected to convene a meeting of members as the annual general meeting, if all the members entitled to attend and vote agree; or
- (b) otherwise, if members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

### **16.4 Postponement or cancellation**

Subject to section 249D(5) of the Act, the Board may postpone or cancel a meeting of members by written notice given individually to each person entitled to be given notice of the meeting.

### **16.5 Fresh notice**

If a meeting of members is postponed or adjourned for 1 month or more, the Company must give new notice of the resumed meeting.

### **16.6 Technology**

The Company may hold a meeting of members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

### **16.7 Accidental omission**

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of members.

## **17 Proceedings at general meeting**

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### **17.1 Member present at meeting**

If a member has appointed a proxy or attorney or (in the case of a member that is a body corporate) a representative to act at a meeting of members, that member is taken to be present at a meeting at which the proxy, attorney or representative is present.

### **17.2 Quorum**

- (a) Subject to section 249B of the Act, the quorum for a meeting of members is 25 members. Each individual present may only be counted once toward a quorum.
- (b) If a member has appointed more than 1 proxy or representative, only 1 of them may be counted toward a quorum.

### **17.3 Quorum not present**

If a quorum is not present within 15 minutes after the time for which a meeting of members is called:

- (a) if called as a result of a request of members under section 249D of the Act, the meeting is dissolved; and
- (b) in any other case:
  - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
  - (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

### **17.4 Attendance by auditor and Directors**

Every Director and the auditor (if any) has the right to attend and speak at all meetings of members whether or not the Director or Auditor is a member.

### **17.5 Adjournment**

Subject to clause 16.5, the chairman of a meeting of members at which a quorum is present:

- (a) may, with the consent of the meeting; and
- (b) must, if directed by Ordinary Resolution of the meeting, adjourn it to another time and place.

### **17.6 Business at adjourned meetings**

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

## **18 Proxies, attorneys and representatives**

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### **18.1 Appointment of proxies**

A member may appoint not more than 2 proxies in accordance with section 249X of the Act to attend and act for the member at a meeting of members. An appointment of proxy must be made by written notice to the Company that complies with section 250A(1) or in any other form and mode that is signed or otherwise authenticated by the member in a manner, satisfactory to the Board. If a member appoints 2 proxies, only 1 of those proxies may exercise the member's vote.

### **18.2 Member's attorney**

A member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of members. If the appointor is an individual, the power of attorney must be signed in the presence of at least 1 witness.

### **18.3 Deposit of proxy appointment forms and powers of attorney**

An appointment of a proxy or an attorney is not effective for a particular meeting of members unless:

- (a) in the case of a proxy, the proxy appointment form and, if it is executed by an attorney, the relevant power of attorney or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it,

are received by the Company at its registered office or a fax number at that office (or another address specified for the purpose in the relevant notice of meeting) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the resumption of the meeting.

### **18.4 Appointment for particular meeting, standing appointment and revocation**

A member may appoint a proxy, attorney or representative to act at a particular meeting of members or make a standing appointment and may revoke any appointment. A proxy, attorney or representative may, but need not, be a member.

### **18.5 Suspension of proxy or attorney's powers if member present**

- (a) A proxy or attorney has no power to act for a member at a meeting at which the member is present in person or, in the case of a body corporate, by representative.
- (b) A proxy has no power to act for a member at a meeting at which the member is present by attorney.

### **18.6 Priority of conflicting appointments of attorney or representative**

If more than 1 attorney or representative appointed by a member is present at a meeting of members and the Company has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to clause 18.6(a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

### **18.7 More than 2 current proxy appointments**

- (a) An appointment of a proxy by a member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that member that would result in there being more than 2 proxies of that member entitled to act at a meeting.
- (b) The appointment of proxy made first in time is the first to be treated as revoked or suspended by this clause.

### **18.8 Continuing authority**

An act done at a meeting of members by a proxy, attorney or representative is valid even if, before the act is done, the appointing member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up;
- (c) revokes the appointment or revokes the authority under which the appointment was made by a third party; or
- (d) transfers the share to which the appointment relates,

unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

18.8 No person may hold more than 1 proxy on behalf of any another member and if any person does hold more than 1 proxy, only 1 of the proxies that the person holds may be counted for the purpose of any vote.

## **19 Entitlement to vote**

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### **19.1 Number of votes**

- (a) Subject to clauses, 17 and 18:
  - (i) on a show of hands or a poll:
    - (A) each member has 1 vote unless clause 19.1(a)(E) applies;
    - (B) if a member has appointed 2 proxies, only 1 of those may vote;
    - (C) if a member who is present and entitled to vote and has appointed a proxy or attorney who is also present, only the member may vote;
    - (D) if a person holds more than 1 proxy on behalf of more than 1 member, the person will only be entitled to vote using 1 of the proxies the person holds. The remaining proxies will not be counted in any vote;
    - (E) if a member who is present and entitled to vote and is also a proxy, attorney or representative of another member, that member has a maximum of 2 votes (1 for the member and 1 for the proxy the member holds) but if the member is the attorney, representative or proxy for more than 1 other member, clause 19.1(C) applies;
    - (F)
- (b) The chairman of a meeting of members has a casting vote.

## **20 How voting is carried out**

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### **20.1 Method of voting**

- (a) A resolution put to the vote at a meeting of members must be decided on a show of hands, unless a poll is demanded under clause 20.2 either before, or on, declaration of the result of the vote on a show of hands..

- (b) Unless a poll is demanded, the chairman's declaration of a decision on a show of hands is conclusive evidence of the result.

## **20.2 Demand for a poll**

- (a) A poll may be demanded on any resolution (except a resolution concerning the election of the chairman of a meeting) by:
  - (i) a member entitled to vote on the resolution;
  - (ii) members entitled to cast at least 5% of the votes that may be cast on the resolution on a poll (worked out as at the midnight before the poll is demanded); or
  - (iii) the chairman.
- (b) The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

## **20.3 When and how polls must be taken**

If a poll is demanded:

- (a) the poll must be taken:
  - (i) if the resolution is for the adjournment of the meeting, immediately and in the manner that the chairman of the meeting directs;
  - (ii) in all other cases, at the time and place and in the manner that the chairman of the meeting directs;
- (b) a person voting who has the right to cast 2 or more votes need not cast all those votes and may cast those votes in different ways; and
- (c) the result of the poll is the resolution of the meeting at which the poll was demanded.

## **21 Resolutions without minutes**

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### **21.1 Written resolutions**

Subject to section 249A(1) of the Act, the Company may pass a resolution without a general meeting being called or held if the resolution is set out in a document:

- (a) if the Company has only 1 member, signed in the manner set out in section 249B of the Act; or
- (b) if the Company has more than 1 member, signed in the manner set out in section 249A.

### **21.2 Signature of resolutions**

The Company may treat a document on which a faxed or electronic signature appears, or which is otherwise acknowledged by a member in a manner satisfactory to the Board, as being signed by that member.

## **22 Secretary**

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### **22.1 Appointment of Secretary**

The Board may appoint 1 or more individuals to be a Secretary, either for a specified term or without specifying a term.

### **22.2 Terms and conditions of office**

- (a) A Secretary holds office on the terms (including as to remuneration) that the Board decides.
- (b) The Board may vary any decision previously made by it about a Secretary.

### **22.3 Cessation of Secretary's appointment**

A person automatically ceases to be a Secretary if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a secretary of a company;
- (b) becomes disqualified from managing corporations under Part 2D.6 of the Act and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under clause 22.4.

### **22.4 Removal from office**

The Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

## **23 Minutes**

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### **23.1 Minutes must be kept**

The Board must ensure that minutes of:

- (a) proceedings and resolutions of meetings of the Company's members;
- (b) the names of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under clause 11);
- (d) resolutions passed by members without a meeting;
- (e) resolutions passed by Directors, and declarations made by a single Director, without a meeting; and
- (f) disclosures and notices of Directors' interests,

to be kept in accordance with sections 191, 192 and 251A of the Act.

### **23.2 Minutes as evidence**

Any minutes recorded and signed in accordance with section 251A of the Act is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

### **23.3 Inspection of minute books**

The Company must allow members to inspect, and must provide copies of, the minute books for the meetings of members and for resolutions of members passed without meetings in accordance with section 251B of the Act.

## **24 Company seal**

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### **24.1 Common seal**

The Board:

- (a) may decide whether or not the Company has a common seal; and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal the Company decides to adopt under section 123(2) of the Act.

### **24.2 Use of common seal**

- (a) The common seal and duplicate seal (if any) may only be used with the authority of the Board.
- (b) The Board must not authorise the use of a seal that does not comply with section 123 of the Act.

### **24.3 Fixing seal to documents**

- (a) The fixing of the common seal, or any duplicate seal, to a document must be witnessed by 2 Directors or 1 Director and 1 Secretary and by any other signatories or in any other way (including the use of copies of signatures) authorised by the Board.
- (b) The fixing of the seal is witnessed in accordance with clause 24.3(a), a statement by the witness that the witness is the sole director and sole company secretary of the Company should appear next to the signature, but the absence of that statement does not affect the validity of the execution.

## **25 Financial reports and audit**

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### **25.1 Company to keep financial records**

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited,

and must allow a Director to inspect those records at all reasonable times.

## **25.2 Financial reporting**

If required by Part 2M.3 of the Act, the Board must cause the Company to prepare a financial report and a directors' report that comply with that Part and must report to members in accordance with section 314 no later than the deadline set by section 315.

## **25.3 Audit**

- (a) Unless section 301(2) of the Act applies, the Board must cause the Company's financial report (if any) for each financial year to be audited and obtain an auditor's report.
- (b) The eligibility, appointment, removal, remuneration, rights and duties of the auditor (if any) are regulated by the Act.

## **25.4 Inspection of financial records and books**

Subject to clause 23.3 and section 247A of the Act, a member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by a resolution of members.

## **26 Guarantee by members**

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### **26.1 Guarantee**

- (a) Each member must contribute an amount not more than \$25 (**guarantee**) to the property of the Company if the Company is wound up while the member is a member, or within 12 months after they stop being a member.
- (b) This contribution is required to pay for the debts and liabilities of the Company incurred before the member stopped being a member or costs of winding up.

## **27 Winding up**

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### **27.1 Distribution of assets generally**

- (a) If the Company is wound up or dissolved and after the satisfaction of all the Company's debts and liabilities, any property whatsoever remains, that property shall:
  - (i) not be transferred, paid to or distributed among the members;
  - (ii) be given or transferred to an institution or institutions having objects similar to the objects of the Company and which prohibit the distribution of its or their income and property amongst its or their members to an extent at least as great as is imposed on the Company.
- (b) The institution or institutions referred to in Rule 27.1 (a) shall be determined by:
  - (i) the members of the Company in general meeting (by ordinary resolution) at or before the time of dissolution; or in default thereof
  - (ii) the Supreme Court of New South Wales.

(b) the Supreme Court of New South Wales.

## **28 Notices**

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### **28.1 Notices by Company**

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) delivered:
  - (i) personally;
  - (ii) by prepaid mail (by airmail, if the addressee is overseas) to that person's address;
  - (iii) by fax to the fax number (if any) nominated by that person; or
  - (iv) sent by email to the email address (if any) nominated by that person.

### **28.2 When notice is given**

- (a) A notice to a person by the Company is regarded as given and received:
  - (i) if it is delivered personally or sent by fax or electronic message:
    - (A) by 5 pm (local time in the place of receipt) on a business day - on that day; or
    - (B) after 5 pm (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day; and
  - (ii) if it is sent by mail:
    - (A) within Australia - 1 business day after posting; or
    - (B) to a place outside Australia - 5 business days after posting.
- (b) A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

### **28.3 Business days**

For the purposes of clause 28.2, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

### **28.4 Counting days**

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

## **Schedule A**

The initial Members are

- Lee Furlong
- Mohamad Choubassi
- Alf Gange
- Geoff Ferris
- Brian Wilkins
- Peter Emery
- Andrew Doroukis
- Peter Louridas

The initial Directors are:

### **City Directors:**

1. Lee Furlong
2. Mohamad Choubassi
3. Alf Gange

### **Country Directors**

1. Geoff Ferris
2. Brian Wilkins

### **TLO Directors**

1. Peter Emery
2. Andrew Doroukis
3. Peter Louridas

### **Independent Director**

1. Rhonda Chesterton