

Corporations Act 2001
Special Purpose Proprietary Company Limited by
Shares to act as Trustee of a Self -Managed
Superannuation Fund

(Company)
ACN

COMPANY CONSTITUTION

COMPANY CONSTITUTION

Company Details

Date:

Name:

ACN:

Constitution Creation

Adoption:

Adopted on registration of the Company by written agreement to the provisions of the Constitution of each person specified in the registration application as a person consenting to become a member prior to lodgement of that registration application

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CONSTITUTIONAL RULES

PROVISIONS

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1.1 Capitalised Definitions

Meanings apply to capitalised terms used in this Constitution as specified in this provision, unless the context otherwise requires:

“**Company**” means the company specified in this Constitution;

“**Constitution**” means this Constitution, or any provision of this Constitution, as amended at any time;

“**Corporate Group**” means each Group Company separately and all Group Companies collectively;

“**Group Company**” means each of:

- (a) the Company; and
- (b) each subsidiary of the Company;

“**Incapacitated Shareholder**” means any shareholder being:

- (a) a minor;
- (b) an incapacitated person; or
- (c) an insolvent person;

“**Shareholder Agreement**” in relation to any present or future shareholder and the Company at any time, means any agreement created by, or acceded or adopted in any legally binding or enforceable manner to or by, that shareholder and the Company as at that time, including at the time of adoption of this Constitution the agreement comprising ; and

“**Self-Managed Superannuation Fund**” means a regulated superannuation fund of which this Company is the corporate Trustee.

1.2 Dictionary Definitions

Meanings apply to words and expressions used in this Constitution as specified in **rule 23** (Dictionary), unless the context otherwise requires.

1.3 Interpretational Rules

Rules of interpretation apply to this Constitution as specified in this provision, unless the context otherwise requires:

- (a) **(headings)**: headings and subheadings are for convenience only and do not affect interpretation;
- (b) **(plurality)**: words denoting the singular number include the plural, and the converse also applies;
- (c) **(gender)**: words denoting any gender include all genders;
- (d) **(variants)**: a defined word or expression has a corresponding effect in relation to its other grammatical forms;
- (e) **(parties)**: any reference to a party to any agreement or document includes its executors, administrators, legal personal representatives, successors and permitted assigns and substitutes by way of assignment or novation;
- (f) **(amendments)**: any reference to any agreement or document includes that agreement or document as amended, ratified, supplemented, novated or replaced at any time;
- (g) **(provisions)**: any reference to a provision comprises a rule, clause, recital, schedule, annexure, exhibit, appendix, and is a reference to to a provision of this Constitution, including each rule, clause, subclause, paragraph and subparagraph of that provision;
- (h) **(inclusions)**: the words “**include**”, “**including**”, “**for example**”, and similar expressions are used without limitation;
- (i) **(time)**: the expression “**at any time**” includes reference to past, present and future time and the performance of any action from time to time and any liability at all times during any specified period; and
- (j) **(liability)**: any liability, representation or warranty undertaken by, or right conferred on, 2 or more persons binds or benefits all of those persons jointly and each of them severally

1.4 Corporate Reference

Any reference in this Constitution to any rule, share, marketable security, member, shareholder, register, director, secretary, officer, employee, auditor, meeting, registered office, property or asset means a reference to that item or person of or in relation to the Company, unless the context otherwise requires.

1.5 Discretionary Decisions

Any provision in this Constitution that any person, including any group of persons acting collectively, is entitled to exercise any power or make any decision for any purpose means that that power or decision may be made or exercised by that person:

- (a) **(absolute discretion)**: at any time in the absolute and uncontrolled discretion of that person, without necessity for the consent of any other person or court of competent jurisdiction and without that person being under any liability, or being legally required or compelled by any other person, to consider any particular facts or to exercise that power or make that decision; and
- (b) **(subjective exercise)**: without that person being legally required or compelled to provide or communicate any reason to any other person for exercising that power or making that decision,

except where there is an express provision of this Constitution or any mandatory provision of the *Corporations Act 2001* to contrary effect.

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2.1 Constitutional Rules

The rules of the Company specified in the provisions of this Constitution apply to the Company and displace any replaceable rule specified in any provision of the *Corporations Act 2001*.

2.2 Legal Compliance

- (a) **(Compliance)**: The rules of the Company specified in the provisions of this Constitution apply subject to and in compliance with any mandatory provision of the *Corporations Act 2001*.
- (b) **(Conflict)**: Any mandatory provision of the *Corporations Act 2001* is incorporated into, and applies instead of any provision of, this Constitution in the event of any conflict.

2.3 Statutory Powers

The Company has power under this provision to perform any action in any case where the *Corporations Act 2001* confers that power on any company, if that power is comprised in its constitution documents, despite any other provision of this Constitution.

2.4 Shareholder Agreement

The provisions of this Constitution relating to any right or liability of any shareholder or the Company apply at any time subject to, and in compliance with, the provisions of any Shareholder Agreement effective and binding at that time on that shareholder and the Company, to the fullest extent permitted by law.

3.1 Proprietary Company

The Company at the time of adoption of this Constitution is registered under the *Corporations Act 2001* as a proprietary company limited by shares.

3.2 Shareholder Restriction

- (a) **(Maximum limit)**: The Company must not at any time have more than 50 shareholders, subject to this provision.
- (b) **(Employee exclusion)**: This provision does not apply in relation to any shareholder, who:
 - (i) is an employee of the Corporate Group; or
 - (ii) was an employee of the Corporate Group at the time when that shareholder became a shareholder of the Corporate Group.
- (c) **(Joint holdings)**: Any 2 or more joint holders of any share count as 1 shareholder in relation to the holding of that share for the purposes of this provision.

3.3 Fundraising Restriction

- (a) **(Securities issue restriction):** The Company must not at any time perform any action in relation to any marketable security that would require disclosure to investors by way of any prospectus or product or other disclosure document under the *Corporations Act 2001*.
- (b) **(Shareholder/employee exemption):** This provision does not apply to any share offer by the Company to any existing shareholder or employee of the Corporate Group.

4.1 Share Issue

The directors may issue shares of any class or share options or share options relating to shares of any class, subject to the provisions of this Constitution.

4.2 Share Rights

- (a) **(Special rights):** Any share may be issued with any preferred, deferred or other special right or restriction, whether in relation to dividend, voting, return of capital, payment of share calls or otherwise, as the directors decide.
- (b) **(Application):** This provision applies:
 - (i) without prejudice to any special right previously conferred on any holder of any existing share or in relation to any share class; and
 - (ii) subject to any ordinary resolution in general meeting.

4.3 Rights Variation

- (a) **(Application):** This provision applies, if at any time the share capital of the Company is divided into different share classes.
- (b) **(Procedure):** The rights attached to any share class may be varied or cancelled, whether or not the Company is in liquidation, with:
 - (i) the written consent of 75% of shareholders of that share class; or

- (ii) the consent of a special resolution passed at a separate general meeting of the shareholders of that share class,
except where the issue terms of shares of that share class specify otherwise.
- (c) **(Meetings)**: The provisions of **rule 11** (Shareholder Action) and **rule 12** (Shareholder Voting) apply to any separate meeting, as applicable and with any necessary amendment.
- (d) **(New issues)**: The rights attaching to shares of any share class issued with preferred or other special rights must not be treated as varied or cancelled by the creation or issue of new shares ranking equally with those shares, except where this Constitution or the issue terms of those shares specify otherwise.
- (e) **(Preferential issues)**: The issue of any shares, or any conversion of existing shares to shares, ranking in priority to an existing class of preference shares constitutes a variation or cancellation of rights attaching to that existing preference share class.

4.4 **Brokerage**

- (a) **(Power)**: The Company may pay brokerage or commission to any person in connection with any agreement by that or any other person to accept the issue of shares.
- (b) **(Payment methods)**: Brokerage or commission may be paid by:
 - (i) cash;
 - (ii) issue of fully or partly paid shares; or
 - (iii) any combination of any previously specified method.

5.1 Share Certificates

- (a) **(Right):** The Company must issue to any shareholder whose name is entered as a holder in the register of members a certificate in relation to any share of that shareholder, upon request and without payment by that shareholder, in compliance with the *Corporations Act 2001*.
- (b) **(Form):** The directors may at any time decide the form of any share certificate.
- (c) **(Joint holders):** The Company is not liable to issue more than 1 share certificate in relation to any share held jointly by 2 or more persons.
- (d) **(Delivery):** Delivery of any share certificate to one of 2 or more joint holders is sufficient delivery to all those joint holders.

5.2 Replacement Certificates

- (a) **(Replacement):** The Company must issue to any shareholder a replacement certificate for any share certificate previously issued to that shareholder, where that share certificate:
 - (i) is defective through becoming worn out or defaced; or
 - (ii) has been lost,
 in compliance with this provision.
- (b) **(Conditions):** The Company is entitled before issue of any replacement certificate:
 - (i) to receive any defective certificate for cancellation and cancel that certificate; and
 - (ii) to receive payment of any reasonable amount decided by the directors in connection with the issue of that replacement certificate.
- (c) **(Compliance):** The Company must in relation to the issue of any replacement certificate comply with, and is entitled to perform or require the performance by the shareholder of, any action specified in any provision of the *Corporations Act 2001* relating to the loss or destruction of certificates to marketable securities.

5.3 Beneficial Rights

- (a) **(Trusts):** The Company must not recognise any person as holding any share upon any trust, except where compelled by law.
- (b) **(Equitable interests):** The Company is not liable in any manner to recognise any equitable, contingent, future, partial or any other right in relation to any share, despite actual notice or other notice of that right, except:
 - (i) an absolute and entire legal right, title and interest of the registered holder; or
 - (ii) where compelled by law.

6.1 Transfer

Any shareholder may transfer any shares of that shareholder by written document in any form permitted by law decided by the directors, subject to this Constitution and the *Corporations Act 2001*.

6.2 Registration Effect

Any transferor of any shares remains the holder of those transferred shares until the transfer is registered in relation to the shares.

6.3 Registration Procedure

- (a) **(Transfer lodgment):** The transfer document in relation to any transferred shares must be lodged for registration at the registered office or location of the relevant register of members, together with:
 - (i) any share certificate to the shares, except where the directors waive lodgment following sufficient proof of the loss or destruction of that share certificate; and
 - (ii) any other information decided by the directors as necessary to prove the legal, right, title and interest of the transferor to or in the transferred shares.
- (b) **(Transfer registration):** The Company must register the transferee as a shareholder following lodgment in compliance with this provision, subject to **clause 6.4** (Registration Refusal).

6.4 Registration Refusal

- (a) **(Refusal):** The directors may refuse to register any transfer of any shares, whether voluntary or by operation of law.
- (b) **(Notification):** The directors must notify the transferee of any refusal of registration within 2 months following lodgment of any share transfer.

6.5 Registration Suspension

The directors may at any time suspend the registration of share transfers for any period not exceeding in aggregate 30 days in any calendar year.

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7.1 Shareholder Death

- (a) **(Recognition):** The Company must recognise following the death of any shareholder only:
 - (i) the legal representative of a sole shareholder; or
 - (ii) the survivor or survivors of a joint holder,
as the person holding the legal right, title and interest to or in any share held by that deceased shareholder and register upon application any legal representative in its register of members as the holder of that share, despite any other provision of this Constitution.
- (b) **(Joint liability):** This provision does not release the estate of any deceased joint holder from any liability in relation to any share jointly held with any other person.
- (c) **(Proof):** The directors may require sufficient evidence of the death of any shareholder or the entitlement of any legal representative of a sole shareholder, as decided by the directors.

7.2 Shareholder Disability

- (a) **(Registration election):** Any legal representative of an Incapacitated Shareholder who becomes entitled to any share as a result of any legal disability of that Incapacitated Shareholder may elect to:
 - (i) be registered personally as the shareholder; or

- (ii) nominate any other person to be registered as the transferee of that share.
- (b) **(Transfer)**: The provisions of **rule 6** (Share Transfer) and **rule 5** (Shareholder Rights) apply to any transfer under this provision, as if:
 - (i) any legal disability of any Incapacitated Shareholder had not occurred; and
 - (ii) the transfer had been executed by the Incapacitated Shareholder.
- (c) **(Rights)**: Any legal representative of an Incapacitated Shareholder is entitled to the same rights attaching to any share held by that Incapacitated Shareholder, including rights relating to dividends and being present and voting at general meetings, as if any legal disability relating to that Incapacitated Shareholder had not occurred.
- (d) **(Status)**: The directors may require sufficient information to prove any entitlement of any legal representative in relation to an Incapacitated Shareholder as decided by the directors.
- (e) **(Multiple representatives)**: Any 2 or more legal representatives who are jointly entitled to any share resulting from any legal disability of any shareholder must be treated as joint holders of that share.
- (f) **(Compliance)**: This provision applies subject to any mandatory provision of any bankruptcy or other applicable legislation.

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8.1 Call Liability

- (a) **(Decision)**: The directors may at any time make share calls on shareholders in relation to any unpaid moneys on the shares of those shareholders, which are not by the issue terms of those shares made payable at fixed times.
- (b) **(Timing)**: Any share call must be treated as made at the time that the resolution of directors deciding upon the call was passed.
- (c) **(Instalments)**: Any share call may be made payable by instalments.
- (d) **(Revocation)**: The directors may revoke or postpone any share call.

- (e) **(Liability preservation):** Any share call is valid, despite any non-receipt of, or accidental failure to give, any call notice by or to any shareholder.
- (f) **(Payment):** Any shareholder must pay any share call to the Company at the time and in the manner specified in the call notice within 12 business days following receipt of the call notice.

8.2 Joint Liability

The joint holders of any share are jointly and severally liable to pay any share call in relation to that share.

8.3 Fixed Payments

Any payment in relation to a share which under the issue terms of that share is payable upon issue of the share or at any fixed date must be treated as a share call, duly made and notified, and payable on the specified payment date.

8.4 Differential Liability

The directors may in the issue terms of any shares decide to differentiate between shareholders as to the amount and time of payment of any share call.

8.5 Prepayment

- (a) **(Acceptance):** The directors may accept full or part prepayment of any unpaid amount due on any share by any shareholder, despite the absence of any share call or the fact that the amount is not presently payable.
- (b) **(Interest):** The directors may decide that the Company must pay interest upon the prepayment, until the due date for payment, at the Specified Rate or any other rate agreed between the Company and the shareholder.
- (c) **(Refund):** The directors may refund any prepayment amount following notice of not less than 20 business days to the shareholder.

9.1 Shareholder Meetings

- (a) **(Director call)**: Any director may call any general meeting.
- (b) **(Cancellation)**: Any director may by written notice to shareholders cancel any meeting called by that director.

9.2 Meeting Notification

The Company must give notice of any general meeting, in compliance with **rule 22** (Corporate Notices), to:

- (a) **(shareholders)**: each shareholder;
- (b) **(directors)**: each director;
- (c) **(legal representatives)**: any legal representative entitled to any share of any Incapacitated Shareholder; and
- (d) **(auditor)**: any auditor.

9.3 Notification Procedure

- (a) **(General notice)**: The Company may call any general meeting by notice to shareholders, being at least 21 days, subject to this provision.
- (b) **(Short notice)**: The Company may call on shorter notice:
 - (i) any annual general meeting, with the consent of all shareholders entitled to attend and vote at that meeting; and
 - (ii) any other general meeting, with the prior consent of shareholders holding at least 95% of the votes that may be cast at that meeting,except for any meeting at which any resolution will be moved to remove any auditor.
- (c) **(Preservation)**: The non-receipt of any meeting notice to any person entitled to receive that notice, or accidental failure by the Company to give any meeting notice to that person, does not invalidate the meeting, or any action performed at the meeting.

9.4 Notice Contents

Any notice calling any general meeting must specify:

- (a) **(date)**: the date, place and time for the meeting, and any technology to be used for any meeting to be held in 2 or more places;
- (b) **(business)**: the general nature of the business of the meeting;
- (c) **(special resolution)**: any intention to propose any special resolution and the terms of that resolution;

- (d) **(proxies)**: the right of any shareholder to appoint any proxy, whether or not a shareholder; and
- (e) **(multiple proxies)**: that any shareholder entitled to cast 2 or more votes may appoint 2 proxies and direct the proportion or number of votes which each appointed proxy may exercise.

9.5 Meeting Quorum

- (a) **(Number)**: The quorum for any general meeting is 2 shareholders, present at the time when the meeting proceeds to business, except that the quorum is 1 shareholder at any time when the Company has only 1 shareholder.
- (b) **(Calculation)**: The quorum must be decided by counting as a shareholder:
 - (i) any representative of any corporate shareholder; and
 - (ii) any proxy of any shareholder, or any 1 proxy where that shareholder has appointed more than 1 proxy.
- (c) **(Action restriction)**: The Company must not perform any action at any general meeting in the absence of a quorum.

9.6 Quorum Deficiency

Any general meeting, in the event that a quorum is not present within 20 minutes after the specified time for the meeting:

- (a) **(shareholder call)**: in relation to any meeting called on any requisition of shareholders under the *Corporations Act 2001*, is dissolved, except where adjourned under **rule 11.9** (Meeting Adjournment); and
- (b) **(director call)**: in relation to any other meeting:
 - (i) must be adjourned to a day and at a time and place decided by the directors or, in the absence of any decision, to the same day in the next week at the same time and place; and
 - (ii) is dissolved, in the absence of a quorum present within 20 minutes after the specified meeting time.

9.7 Meeting Participation

- (a) **(Directors)**: Any director who is not a shareholder is entitled to be present and speak at any general meeting.
- (b) **(Secretary)**: Any secretary who is not a shareholder is entitled to be present, and at the request of the chair, speak at any general meeting.
- (c) **(Adviser)**: Any employee or agent of the Corporate Group or other person, whether a shareholder or not, requested by the directors to attend any general meeting is entitled to be present and, at the request of the chair, speak at that general meeting.

9.8 Meeting Chair

- (a) **(Director decision)**: The directors may elect an individual as the chair of any general meeting and, a deputy chair, to act in the absence of the chair.
- (b) **(Director chair)**: Any individual engaged as chair of the directors, or deputy chair of directors in the absence of the chair, must act as chair of any general meeting, in the absence of any decision of directors.
- (c) **(Director substitute)**: The directors present at any general meeting may decide the chair of any meeting, whether any director or other person present at the meeting, in the event that a general meeting is held and:
 - (i) a chair has not been elected or engaged under any previous provision; or
 - (ii) the chair is not present within 15 minutes after the specified meeting time or declines to act as chair.
- (d) **(Shareholder substitute)**: The shareholders present at any general meeting must decide the chair of that meeting, being an individual present, whether or not a shareholder, in the absence of any chair decided under any previous provision.

9.9 Meeting Adjournment

- (a) **(Adjournment)**: The chair may and, following any direction by the meeting, must adjourn any general meeting at any time and to any place.
- (b) **(Business)**: No action must be performed at any adjourned meeting, except for uncompleted business at the meeting being adjourned.
- (c) **(Adjournment notice)**: Notice of the adjourned meeting, must be given as in the case of an original meeting, when a meeting is adjourned for 30 days or more.
- (d) **(Notice dispensation)**: Notice of any adjournment or action to be performed at an adjourned meeting may be dispensed with, when a meeting is adjourned for less than 30 days.

9.10 Circulating Resolutions

The Company may pass any resolution of shareholders by means of a circulating resolution in compliance with the *Corporations Act 2001*, despite any other provision of this Constitution.

9.11 Single Shareholder Resolutions

- (a) **(Application)**: This provision applies at any time when the Company has only 1 shareholder.
- (b) **(Resolutions)**: The Company may pass any resolution by the shareholder recording the resolution and signing that record.
- (c) **(Decisions)**: Any document signed by the shareholder recording any decision of that shareholder:

- (i) constitutes a decision of the Company;
- (ii) is valid and effective, as if it were a resolution duly passed at any general meeting; and
- (iii) has effect as a minute of that decision.

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10.1 Voting Method

- (a) **(Ordinary method):** Any resolution proposed at any general meeting must be decided on a show of hands, except where a poll is demanded.
- (b) **(Declaration):** Any declaration by the chair that any resolution has on a show of hands been carried or lost, and any entry to that effect in the meeting minutes, must be treated as conclusive evidence of that fact, without necessity to show the number or proportion of the votes recorded in favour of or against the resolution.

10.2 Poll Demand

- (a) **(Demand):** A poll on any resolution at any general meeting may be demanded by:
 - (i) the chair; or
 - (ii) any shareholder present at the meeting.
- (b) **(Timing):** Any poll may be demanded:
 - (i) at any time before any voting decision being taken or the declaration of that decision; or
 - (ii) immediately after that declaration.

10.3 Poll Procedure

- (a) **(Chair direction)**: The chair must following any poll demand direct the manner in and the time at which the poll will be taken, except that a poll on the election of the chair or on the question of an adjournment must be taken immediately.
- (b) **(Result)**: The result of the poll is the resolution of the meeting at which the poll was demanded.
- (c) **(Business continuity)**: The demand for a poll does not prevent a meeting from performing any action, except that item on which a poll has been demanded.

10.4 Casting Vote

The chair of any meeting has a casting vote in the case of an equality of votes on a show of hands or on a poll, in addition to any deliberative vote to which the chair may be entitled as a shareholder.

10.5 Voting Rights

Each shareholder is entitled to:

- (a) **(voting attendance)**: attend and vote at any general meeting of shareholders, or of shareholders holding shares of the same share class as that shareholder; and
- (b) **(voting presence)**: vote at that meeting in person or by proxy or attorney or, applicable to a company, corporate representative,

subject to this Constitution and any rights or restrictions attaching to any share class under the issue terms of that share class.

10.6 Voting Power

Each shareholder, present and having the right to vote at any general meeting, has:

- (a) **(ordinary method)**: on a show of hands, 1 vote; and
- (b) **(poll method)**: on a poll, 1 vote for each fully paid share held by that shareholder,

subject to this Constitution and any rights or restrictions attaching to any share class under the issue terms of that share class.

10.7 Joint Holder Vote

The vote of the joint holder of any share whose name appears first in the register of members must be accepted to the exclusion of any other joint holder.

10.8 Shareholder Incapacity

Any legal representative of an Incapacitated Shareholder may exercise any rights of that Incapacitated Shareholder in relation to any general meeting.

10.9 Shareholder Guardian

Any person, being the guardian of any shareholder who is a minor, may exercise any rights of that shareholder in relation to any general meeting,

subject to the guardian providing the directors with sufficient evidence of the status of that person as guardian.

10.10 Voting Dispute

- (a) **(Dispute)**: Any dispute as to the entitlement of any person to vote at any general meeting may be raised only at the meeting or adjourned meeting at which the disputed vote is tendered.
- (b) **(Decision)**: Any dispute must be referred to the chair of the meeting, whose decision is final and conclusive.
- (c) **(Validity)**: Any vote allowed following dispute is valid for any purpose.

10.11 Proxy Appointment

- (a) **(Appointment)**: Any shareholder may by written document appoint a proxy to attend, vote or demand a poll at any general meeting, instead of and on behalf of that member.
- (b) **(Eligibility)**: A proxy need not be a shareholder.
- (c) **(Multiple proxies)**: Any shareholder may appoint 2 proxies, if the shareholder is entitled to cast 2 or more votes at any general meeting.
- (d) **(Split voting)**: Each proxy may exercise only the proportion of voting rights specified by the *Corporations Act 2001*, if a shareholder appoints 2 proxies and the appointment does not specify the proportion or number of the votes of that shareholder that each proxy may exercise.
- (e) **(Voting restriction)**: A proxy is entitled to vote on a show of hands, except that neither proxy is entitled to vote on a show of hands, if a member appoints 2 proxies.

10.12 Proxy Form

- (a) **(Form)**: Any proxy document must be in any form decided or accepted by the directors.
- (b) **(Document execution)**: A proxy document must be executed:
 - (i) by the appointing shareholder or any attorney of that appointing shareholder; or
 - (ii) in relation to any corporate shareholder, under seal or by any authorised officer or attorney of that corporate shareholder.
- (c) **(Voting discretion)**: Any proxy may vote as the proxy decides on any motion or resolution, in the absence of any voting direction in the proxy document.

10.13 Proxy Lodgment

- (a) **(Compliance)**: The documents required under the *Corporations Act 2001* for the valid appointment of a proxy must be received by the Company at any time before, as applicable, commencement or resumption of the general meeting.

- (b) **(Standing proxy):** Documents necessary for the valid appointment of an attorney to act on behalf of any shareholder at all meetings of the Company, or at all meetings for a specified period, must be received by the Company at any time before commencement of the meeting or adjourned meeting at which the attorney proposes to vote and must comprise:
 - (i) the power of attorney or a certified copy of that power of attorney; and
 - (ii) any evidence decided by the directors of the validity and non-revocation of that power of attorney.
- (c) **(Receipt):** Receipt by the Company of documents specified in this provision is effective, when received at:
 - (i) the registered office;
 - (ii) any fax number at the registered office; or
 - (iii) any place, fax number or electronic address specified for that purpose in the meeting notice.

10.14 Proxy Validity

Any vote exercised in compliance with the provisions of any proxy document, power of attorney or other appointment document is valid, despite any:

- (a) **(incapacity):** previous legal disability of any Incapacitated Shareholder being the shareholder principal;
- (b) **(revocation):** any revocation of that document or any consent under which that document was executed; or
- (c) **(transfer):** transfer of any share in relation to which that document was executed,

except where the Company has received written notice of that fact at its registered office of at least 48 hours, or any shorter period decided by the directors, before the commencement of the meeting or adjourned meeting at which that document is used.

10.15 Proxy Incompleteness

- (a) **(Validity protection):** Any proxy document not invalid because that document omits:
 - (i) the address of the appointing shareholder or any proxy;
 - (ii) the name of, or the name of the office held by, the proxy; or
 - (iii) in relation to any resolution, any voting direction to the proxy.
- (b) **(Chair substitution):** Any proxy document must be treated as given in favour of the chair of the meeting, where that document fails to specify any proxy name.

11.1 Appointment

- (a) **(Shareholders)**: The Company may at any time by resolution passed in general meeting appoint only those persons as a director who are also members of the Self-Managed Superannuation Fund.
- (b) **(Directors)**: The directors may not at any time appoint any person as a director.

11.2 Share Qualification Exclusion

Any director is not be required to hold any share in the capital of the Company.

11.3 Removal

The Company may at any time by resolution passed in general meeting remove any director from office that ceases to be a member of the Self-Managed Superannuation Fund.

11.4 Vacation

The office of a director is automatically vacated, if the director:

- (a) **(incapacity)**: becomes of unsound mind or a person liable, or a person whose assets are liable, to any control or administration under any law relating to physical or mental health;
- (b) **(resignation)**: resigns by written notice to the Company delivered to the registered office, as at the time of resignation specified in that notice;

- (c) **(absence)**: is absent from meetings of directors held during any continuous period of 6 months, except with the consent of the directors; or
- (d) **(death)**: dies.

11.5 Remuneration

- (a) **(Fees)**: The directors are not entitled to payment of any fees for their service.

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12.1 Management Powers

- (a) **(Business management)**: The directors manage the business of the Company which is to act as the Trustee of the Self-Managed Superannuation Fund.
- (b) **(Corporate powers)**: The directors may exercise all powers of the Company which are not, by the *Corporations Act 2001* or this Constitution, required to be exercised by the Company in general meeting, subject to the *Corporations Act 2001* and this Constitution.

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13.1 Director Meetings

- (a) **(Control)**: The directors may meet together to perform any business and adjourn and control their meetings as decided by the directors.
- (b) **(Meeting call)**: Any director may at any time, and on the request of any director a secretary must, call a meeting of the directors.
- (c) **(Notice)**: Reasonable notice must be given to each director of the place, date and time of any meeting of directors.
- (d) **(Overseas absence)**: Notice must be given to any director who is outside Australia at any time, only if that director has provided contact details, except that notice must be given to any current alternate director of that director remaining in Australia.

13.2 Meeting Technology

- (a) **(Methods)**: Each director, for the purposes of the *Corporations Act 2001*, consents by the fact of employment or engagement as a director to the use of any technology for calling or holding a directors meeting comprising:
 - (i) video;
 - (ii) telephone;
 - (iii) electronic mail;
 - (iv) any other technology which enables each director to communicate with each other director; or
 - (v) any combination of any previously specified method.
- (b) **(Consent withdrawal)**: Any director may withdraw that consent, in compliance with the *Corporations Act 2001*.
- (c) **(Effectiveness)**: Any meeting of directors held by use of technology, where the directors are not all in attendance at one place but where each director can communicate with each other director, whether simultaneously or at different times, must be treated:
 - (i) as if the participating directors for the purpose of this Constitution were assembled together and present at that meeting; and
 - (ii) so that any action performed by those directors in that manner is valid, as if performed at a meeting at which of those directors were present.

13.3 Meeting Quorum

- (a) **(Decision)**: The directors may decide the number of directors whose presence is necessary to constitute a quorum at any meeting of directors and, in the absence of any decision, is 2 directors entitled to vote.
- (b) **(Presence)**: The quorum need be present only at the time when the meeting proceeds to business, except where the directors decide otherwise.

13.4 Meeting Chair

- (a) **(Decision)**: The directors may elect 1 of their number as the chair of any directors meeting and may decide the period for which the chair is to hold office as chair.
- (b) **(Substitute)**: The directors present at any directors meeting must elect 1 of their number to act as chair for that meeting, in any case where:
 - (i) a chair has not been elected under the previous provision; or
 - (ii) the chair is not present within 10 minutes following the specified meeting time or declines to chair the meeting.

13.5 Voting

- (a) **(Majority vote)**: Any issue arising at a meeting of directors must be decided by a majority of votes of the directors present and voting.
- (b) **(Decision effect)**: Any majority decision must be treated as a decision of all the directors for any purpose.
- (c) **(Casting vote)**: The chair of the meeting has a casting vote in the case of an equality of votes, in addition to the deliberative vote of the chair.

14.1 Corporate Seal

- (a) **(Common seal)**: The Company may have a common seal.
- (b) **(Duplicate seal)**: The Company may have a duplicate common seal, in addition to any common seal.
- (c) **(Authority)**: A seal must be used only with the consent of the directors, or committee of the directors authorised by the directors to consent to the use of the seal.
- (d) **(Affixation)**: Any document to which the seal is affixed must be signed by:
 - (i) 2 directors; or
 - (ii) a director and a secretary, or any other person engaged by the directors to countersign that document, or a class of documents comprising that document; or
 - (iii) by any director in the capacity of sole director, where at any time the Company has only 1 director and no secretary or only 1 director, who is also the sole secretary of the Company.
- (e) **(Document execution)**: This provision does not limit any other method of execution of any document by the Company.

14.2 Records

- (a) **(Inspection)**: The directors may consent to the inspection by any shareholder of any business record or other document of the Company to the extent, at any time and place and under any provisions decided by the directors.
- (b) **(Shareholders)**: Any shareholder, excluding any director being a shareholder, is not entitled to inspect any business record or other

document of the Company, except where any law provides otherwise or with the consent of the directors.

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15.1 Dividend Declaration

- (a) **(Declaration):** The directors are prohibited from declaring any dividend or distributing the income of the company to any member of the Self-Managed Superannuation Fund.
- (b) **(Interest):** The Company is not liable to pay any interest in relation to any dividend.

15.2 Asset Distribution

- (a) **(Distribution):** The directors are prohibited from distributing any assets of the Company to the members of the Self-Managed Superannuation Fund

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- (a) **(Indemnity)**: The Company must indemnify any present or previous director or secretary against any liability resulting from any action by that officer in that capacity to any person, excluding the Corporate Group, except for any action performed without good faith or with actual notice that that action was wrongful.
- (b) **(Legal cost)**: The indemnity in favour of that officer extends to any liability comprising any cost of engagement in any legal action or proceeding, resulting in any judicial order for judgment, acquittal or relief under the *Corporations Act 2001* in favour of that officer.
- (c) **(Insurance exclusion)**: The Company is not liable to indemnify any officer to the extent that that officer is entitled to an indemnity in relation to any liability under any insurance agreement.
- (d) **(Indemnity cover)**: The Company may by decision of the directors create or procure any:
 - (i) indemnity in favour of; or
 - (ii) insurance for the benefit of,any present or previous director, secretary, auditor, employee or other officer of the Company.
- (e) **(Preservation)**: The benefit of any indemnity given under this provision continues after any modification or deletion of this provision, in relation to any liability resulting from any fact or action occurring before that modification or deletion.

17.1 Notification Methods

- (a) **(Written notices):** Any notice by the Company to any shareholder may be served by:
 - (i) delivery in person;
 - (ii) post to or delivery at any address of the shareholder as specified in the register of members or any other address specified by the shareholder to the Company;
 - (iii) fax to any fax number specified by the shareholder to the Company;
 - (iv) electronic transmission to any electronic mail address specified by the shareholder to the Company; or
 - (v) service in any previously specified method on any attorney of that shareholder in compliance with this provision.
- (b) **(Attorneys):** Any shareholder may by written notice to the secretary delivered at or sent to the registered office direct that any notice by the Company be served on any attorney of that shareholder, and at an address, as specified in the notice.
- (c) **(Overseas address):** Notice to any shareholder whose address for notices is outside Australia must be sent by airmail, fax or electronic mail.
- (d) **(Omitted address):** Any shareholder is not entitled to receive any notice or document from the Company, if that shareholder has failed to deliver at or send to the registered office an address, facsimile number or electronic mail address for registration in the register of members as an address for service.

17.2 Notification Receipt

- (a) **(Postal delivery):** Service of any notice sent by post is effective upon proper addressing, prepayment and posting of that notice as at:
 - (i) in relation to any notice of a meeting, the day after the date of posting; and
 - (ii) in any other case, the time of delivery in the ordinary course of post.
- (b) **(Electronic transmission):** Service of any notice sent by fax or electronic transmission is effective upon proper addressing and transmission of the notice as at the date of transmission.

17.3 Legal Representatives

- (a) **(Notice methods):** Any notice by the Company to any legal representative of any Incapacitated Shareholder entitled to any share following any legal disability of that Incapacitated Shareholder may be served by:
 - (i) delivery in person;
 - (ii) post addressed to that legal representative at any address within Australia specified by that legal representative to the Company;
 - (iii) fax to any fax number specified by that legal representative to the Company; or
 - (iv) electronic transmission to the electronic mail address specified by that legal representative to the Company.
- (b) **(Substitute address):** Any notice may be sent to the address, fax number or electronic mail address applicable to any Incapacitated Shareholder in the absence of any legal disability of that Incapacitated Shareholder, if that legal representative fails to specify any substituted address or number.

17.4 Joint Holders

- (a) **(Notices):** Joint holders of any share must specify to the Company a single address for service of any notice.
- (b) **(Payment):** Joint holders of any share must specify to the Company a single account for the payment of moneys by electronic funds transfer.
- (c) **(Receipt):** Any notice sent or payment made to the address or account specified under this provision must be treated as sent or made to all joint holders of the share.
- (d) **(Notification failure):** The Company must send any notice or payment to the address of the joint holder first named in the register of members, in the absence of any specification under this provision.
- (e) **(Release):** Any joint holder of a share may give an effective receipt or release to the Company for any payment in relation to the share.

Specified words and expressions for the purposes of this Constitution comprise:

“advance” in relation to any credit, means the making or extension, or borrowing, of that credit at any time and in any manner or by any means;

“agreement” means any contract, deed, covenant, undertaking, commitment, promise, understanding, acknowledgment, confirmation, term, condition, representation, warranty, assurance, provision, security interest, guarantee, waiver or legally enforceable agreement, arrangement or course of dealing, whether or not in writing and whether present or future, and the benefit of any agreement within any previous meaning;

“amendment” in relation to any agreement or document, means amendment, variation, modification, alteration, novation, assumption, supplement, renewal, replacement, substitution, exchange, or waiver of that agreement or document;

“assessment” means assessment, appraisal, evaluation, consideration, valuation, decision, determination, calculation, review, inquiry or report;

“authorised officer” in relation to any company for the purposes of any agreement at any time, means any director, secretary or person notified in that capacity by that company in or under any provision of that agreement to any party to that agreement, without withdrawal or cancellation of that notification as at that time;

“borrowing” in relation to any credit, means the borrowing of or raising moneys or incurring financial liability under or in relation to that credit in any manner or by any means;

“business day” for the purposes of any agreement, means any day on which trading banks generally are open for business in the place of receipt of any written notice, payment of any moneys or performance of any liability by any party contemplated or required under that agreement, excluding a Saturday, Sunday or public holiday in that place;

“company” means any company, body corporate, corporation, trust, partnership, joint venture, or any other incorporated or unincorporated body, association, society, organisation or entity;

“constitution documents” in relation to any company, means any replaceable rules or other constitution or other equivalent documents of or applicable to that company;

“cost” means:

- (a) any cost, charge, expense, disbursement, fee, commission, payment, outgoing, insurance premium payment, levy, tax, duty, impost, fine or penalty, whether legally due or otherwise, incurred at any time, directly or indirectly; and
- (b) in relation to legal cost, cost on a full solicitor and own client indemnity basis;

“credit” means any present or future loan, advance, credit facility or other financial accommodation;

“debt arrangement” in relation to any person, means any compromise, composition, moratorium, scheme of arrangement or reconstruction, suspension of any payment or right, restriction on any right or enforcement of any right, property transfer for the benefit of creditors, management, administration, voluntary administration, company arrangement or deed of company arrangement agreed or effected by or in connection with that person, or any creditor, asset, debt or other liability of that person;

“decision” means any decision, determination, declaration, resolution, discretion, election, opinion, consideration, assessment, appraisal, computation, calculation, valuation, certificate, certification or notice;

“default” by any person under any law, agreement or trust, means:

- (a) any default under, breach of, non-performance of or non-compliance with that law, agreement or trust or any provision of that law, agreement or trust by that person;
- (b) the occurrence of any event specified or defined in that law, agreement or trust to be a default under or breach of that law, agreement or trust by that person, whether or not within the power or control of that person;
- (c) any fraud, action, neglect, delay, breach of duty, omission or other prejudicial conduct under or relevant in relation to that law, agreement or trust; and
- (d) the occurrence of any fact which with the giving of notice, expiry of any period of time, fulfilment of any condition or occurrence of any other fact would constitute any default within any previous meaning or any default, termination, cancellation, prepayment or similar event of any nature or description under that law, agreement or trust;

“director” includes any alternate director or sole director;

“dispute” means dispute, disagreement, difference, challenge or objection;

“dividend” in relation to any share, means:

- (a) any dividend, money or other distribution of assets, whether on account of capital or income, applied, accruing or attaching in relation to or in connection with that share, or any right under that share;

- (b) any interim dividend within any previous meaning; and
- (c) any right to or proceeds of any dividend within any previous meaning;

“entity” means any company, trust, fund, authority, institution, foundation, hospital, school, charity, partnership, society, association, club or other incorporated or unincorporated body or trustee of any trust in that capacity for the beneficiaries or charitable or other purposes of the trust;

“exercise” means:

- (a) in relation to any right, any exercise or enforcement of or obtaining or taking, or discretionary determination to refrain from the exercise or enforcement of, that right, whether actual, attempted or contemplated; and
- (b) in relation to any power, any exercise of that power or making of any decision or appointment;

“general meeting” means any general meeting of shareholders, or class of shareholders;

“guarantee” in relation to any person, means any guarantee, indemnity, undertaking, covenant, letter of credit, legally binding letter of comfort, suretyship document, irrevocable offer, put option or other legal liability of any nature or description:

- (a) to pay or purchase;
- (b) to provide moneys or credit, whether by the advance of money, purchase of or subscription for marketable securities, purchase of assets, rights or services, or otherwise, for the payment or discharge of;
- (c) to indemnify against the consequences of default in the payment of; or
- (d) to be responsible for,

any liability or the financial condition or solvency or insolvency of any other person;

“holder” in relation to any marketable security held or to be held by any person, means that person, or any nominee of that person, as the registered holder, proprietor, purchaser or transferee of that marketable security;

“incapacity” in relation to any person, means any legal or other incapacity, disability, or limitation, or any absence or lack of, or failure in the authorisation of or consent to, any capacity, power, ability or entitlement, of or affecting that person, whether acting in its own right or any other purported capacity;

“incapacitated person” means any individual person who becomes incapable or protected under or within the meaning of any legislation or other law relating to physical or mental health or welfare;

“insolvent person” means any individual bankrupt or company in liquidation;

“invalidity” means invalidity, nullity, voidability, avoidance, setting aside, unenforceability, illegality, irrecoverability, incapacity, impropriety,

irregularity, deficiency, impairment, prohibition, postponement, suspension, extinguishment, frustration, failure, ineffectiveness, or limitation of or being of partial force and effect, whether total or partial, or liability to invalidity or invalidation within any previous meaning;

“issue” in relation to any marketable security held or to be held by any person, means any issue, allotment, offer, subscription, acquisition, accrual or attachment of that marketable security to, by or for the benefit of that person;

“issue right” in relation to any marketable security held or capable of being held by any person, means any right or option of that person to take up, accept, call for or require that marketable security, or the issue of that marketable security to that person;

“law” means any legislation, rule of the general law, including common law, equity and bankruptcy, judicial order, governmental consent and governmental requisition;

“legal representative” in relation to any person being:

- (a) dead or deceased, means a person named as the executor of the will of the deceased, whether or not that named person has been granted probate of the will, or the administrator of the estate of the deceased;
- (b) a minor, means the parent or guardian of the minor;
- (c) an incapacitated person, means any trustee, guardian, manager, committee or other person appointed under any legislation or other law relating to physical or mental health or welfare, whether by judicial order or otherwise, to control, manage or protect the incapacitated person or the property, affairs or business of the incapacitated person; and
- (d) an insolvent person, means the trustee in bankruptcy, receiver, manager, administrator of a deed of company arrangement, administrator or trustee of any voluntary arrangement or composition, or liquidator of or in relation to the insolvent person;

“legislation” means:

- (a) any statute, enactment, ordinance, code or other legislation;
- (b) any section or provision of that legislation;
- (c) any order, regulation, rule, by-law, proclamation, statutory instrument or regulatory policy, guide or guideline made or issued under that legislation; and
- (d) any amendment, modification, consolidation, re-enactment or replacement of, or substitution for, any legislation within any previous meaning at any time;

“liability” in relation to any person, means any liability, debt, indebtedness, moneys, payment, cost, loss, damages, compensation, expenditure, obligation, duty, function, responsibility, accountability, answerability or agreement of, due from, payable by or to be performed by that person at any time, whether present or future, actual or contingent, alone, severally, jointly

or jointly and severally and whether as principal or vicariously by or through any action performed or omitted by any employee or agent of that person;

“liquidation” as applicable to any person, means receivership, debt arrangement, merger, amalgamation, reconstruction, winding up, dissolution, bankruptcy, death or administration under any law relating to individual health or welfare;

“loss” means any loss, liability, damage, injury, accident, claim or cost, incurred at any time, and any fact causing or giving rise to any loss within any previous meaning, whether directly or indirectly, actually or potentially;

“marketable security” means:

- (a) any share;
- (b) any debenture, stock, option, bond or promissory note created or issued by any company, governmental agency or entity;
- (c) any unit or other interest in a unit trust or managed investment scheme as defined in the *Corporations Act 2001*;
- (d) any right or option in relation to any marketable security within any previous meaning; or
- (e) any marketable security within any previous meaning with special, qualified, restricted or deferred rights attaching to that marketable security,

but excludes any cheque, bill of exchange or payment order, except for a promissory note;

“minor” means an individual person under the age of 18 years;

“month” means calendar month;

“new right” in relation to any marketable security to or in which any person has a legal or equitable right, title or interest, means any new or additional marketable security, issue right, or other right, asset or moneys issued, or to be issued, to that person at any time in relation to or in connection with that marketable security, whether by way of new issue, bonus issue, rights issue, purchase, transfer, option, redemption, capital return, capital reduction, cancellation, forfeiture, consolidation, substitution, subdivision, splitting, conversion, reclassification, preference or otherwise;

“nominee” in relation to the issue, purchase, transfer, holding or registration of any marketable security, means any nominee, appointee, agent or trustee of or for any person who has a legal or beneficial right, title or interest to or in that marketable security;

“person” means any individual natural person, the estate of any individual natural person, company, trust, governmental agency or other entity;

“power” means any right, power or decision;

“presence” in relation to any shareholder at any company meeting, means that shareholder being present at that meeting in person or by proxy, attorney, representative or other permitted agent;

“property” means any money, goods, thing in action, right, land, business undertaking and any other real or personal property, including any intellectual property or intangible asset, of any nature or description, whether present or future, tangible or intangible, vested or contingent and any legal, equitable or statutory right, title, estate, tenure, interest, income, revenue or benefit in, under, derived from or incidental to that property;

“registration” in relation to the issue or transfer of any marketable security to any person, means the registration, recording or entry of the name of that person as registered holder or proprietor of that marketable security in the register of members or other applicable register relating to marketable securities of the company issuing that marketable security;

“restriction” means restriction, limitation, qualification or liability;

“right” means any right, equity, interest, entitlement, remedy, benefit, advantage, entitlement, privilege, bonus, claim, power, authority, authorisation, function, discretion, option or right to make or give any notice, claim, request or requisition;

“seal” means any common seal or duplicate common seal;

“security interest” means:

- (a) any mortgage, charge, pledge, lien, trust or power created or conferred in relation to any asset;
- (b) any title retention interest or other proprietary title or legal interest retained or reserved in any asset;
- (c) any other right conferred on, or agreement with, any creditor to be paid in priority or preference to other creditors by recourse to any asset or its proceeds;
- (d) any acknowledgment or confirmation of any liability; or
- (e) any agreement or document created to achieve or effect any security interest within any previous meaning,

by way of security for the payment or performance of any liability;

“share” means:

- (a) any share;
 - (b) any issue right or new right relating to any share; and
 - (c) any right in relation to any share within any previous meaning,
- excluding any share option;

“share call” means:

- (a) any call on the holder relating to any share or any instalment of that call; and
- (b) any instalment or other amount payable by the holder under the issue terms of any share, whether at any fixed time or otherwise and whether or not payable subsequent to any call on the holder;

“share payment amount” in relation to any share, means any amount paid, or credited as paid, on that share under any share call;

“shareholder” means the holder of any share in, and includes any member registered in the register of, members of any company;

“subsidiary” in relation to:

- (a) a body corporate, means a subsidiary within the meaning of Division 6 of Part 1.2 of the *Corporations Act 2001*;
- (b) a trust, means a trust that would be a subsidiary within that meaning if it were a company equating for this purpose:
 - (i) shares with the beneficial interests or units held in the trust; and
 - (ii) the board of directors with the trustee; and
- (c) a body corporate or subtrust owned or held as an asset of a trust, means a subsidiary within any previous meaning which would be applicable if the trust were a body corporate;

“tax” means any tax, duty, charge or rate levied, imposed, assessed or collected by or under any legislation or governmental agency, including GST, together with any associated interest, penalty, fine, charge and fee or other amount;

“title document” in relation to any marketable security, means any certificate or other document or agreement evidencing the legal right, title or interest of any person to or in that marketable security;

“transfer” in relation to any asset, means any conveyance, transfer, assignment, assurance, alienation, disposition, factoring, discounting, bailment, delivery of possession, payment, sale, realisation, exchange, conversion, variation, disposal or vesting of, or dealing with, that asset;

“trust” means trust, settlement and will;

“validity” in relation to any agreement, document, right or consent, means the validity, subsistence, enforceability, legality, recoverability, propriety, regularity and maintenance in full force and effect of that agreement, document, right or consent;

“voting right” in relation to any marketable security, means any right to vote or attend or make any demand for a poll at any meeting, or similar right, attaching to or exercisable in relation to that marketable security;

“waiver” in relation to any agreement or document, means any waiver of or consent to departure from any provision of, or grant to any person of any indulgence, forbearance, concession, extension of time for payment or performance of any liability or agreement to restrict or restrain any right of enforcement or legal action or proceeding or other right under, that agreement or document, whether full or partial in effect; and

“writing” includes facsimile transmission and any other means of communication or reproduction of words in a tangible and permanently visible form.

