



# PPS Mutual Limited

ACN 162 634 684

## Constitution

A company limited by guarantee

Adopted on: 6 June 2016

# Constitution

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# 1 Interpretation

## 1.1 Definitions

In this Constitution unless the contrary intention appears:

**Agreed Related Party Contracts** shall mean the following contracts:

- (a) Executive Services Agreements;
- (b) Facility Agreements;
- (c) IP Licence Deeds.

**Alternate Director** means a person appointed as an alternate director under article 10.8.

**Applicant** has the meaning given in article 4.5(a).

**Ausmanco** means Ausmanco Pty Ltd (ACN 162 632 591) of Level 10, 45 Clarence Street, Sydney NSW Australia 2000.

**Australian OpCo** means PPS Mutual Insurance Pty Ltd (ACN 162 670 108), Level 10, 45 Clarence Street, Sydney NSW Australia 2000, being a wholly owned Subsidiary of the Company.

**Board** means the board of Directors of the Company from time to time.

**Board Charter** means the board charter set out in schedule 2.

**Board Reserved Matter** has the meaning given in article 9.1(b).

**Business Day** means a day other than a Saturday, Sunday or a public holiday in Sydney, Australia.

**Business Plan** has the meaning given in paragraph (b) of schedule 1.

**Change of Control** in relation to:

- (a) Ausmanco occurs if:
  - i. Ausmanco is no longer Controlled, whether directly or indirectly, by Michael Pillemer and/or any Eligible Transferee; or
  - ii. one or more other persons (other than Michael Pillemer or an Eligible Transferee) acquire/s, whether directly or indirectly, Control of Ausmanco; or
  - iii. Michael Pillemer ceases to have Control of Ausmanco but an Eligible Transferee retains Control of Ausmanco and at any later date that Eligible Transferee ceases to qualify as an Eligible Transferee or Ausmanco otherwise ceases to be Controlled by an Eligible Transferee;
- (b) PPS SA occurs if Control of PPS SA is acquired by any one or more Persons other than:
  - i. policyholders of PPS SA; or

- ii. any Entity directly or indirectly Controlled by the policyholders of PPS SA; or
- iii. any Entity which is not Controlled by the policyholders of PPS SA but which has trustees, directors or other officers elected by policyholders of PPS SA; or
- iv. any Entity which is Controlled by another Entity referred to in the preceding sub-paragraphs of this definition.

**Chief Executive Officer** means a person appointed as an executive director under article 11(a).

**Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

**CPI** means:

- (a) the Consumer Price Index All Groups weighted average for all capital cities published periodically by the Australian Bureau of Statistics;
- (b) if the Australian Bureau of Statistics stops publishing that index, then whatever other index, in the opinion of the Board, best reflects the rise and fall in the cost of living in Australian capital cities.

**CPI Adjusted** in relation to an amount referred to in schedule 1, means the amount being adjusted at the beginning of each financial year to reflect increases in CPI, on and from 1 July 2016.

**Committee** means a committee of Directors constituted under article 9.6.

**Company** means the company governed by this Constitution.

**Constitution** means this constitution as amended from time to time and a reference to an article, Part or schedule is a reference to an article, Part or schedule of this constitution.

**Control** has the meaning given to it in section 50AA of the Corporations Act, except that in addition:

- (a) an entity controls a second entity if the first entity would be taken to control the second entity, but for section 50AA(4); and
- (b) the references to "entity" in section 50AA apply equally to individuals, trusts and partnerships

and '**Controlled**' shall be interpreted accordingly.

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

**Director** means a person holding office as a director of the Company, and where appropriate includes an Alternate Director.

**Directors** means all or some of the directors of the Company acting as a board.

**Dispose** means to sell, transfer, make over, give, donate, exchange dispose of, unbundle, distribute or otherwise alienate, and **Disposal** has a corresponding meaning.

**Eligible Transferee** means a company or a trust or superannuation fund which is Controlled by Michael Pillemer. For the avoidance of doubt, it is recorded that even if any such company, trust or fund is Controlled by the spouse or descendants of Michael Pillemer, it shall not qualify as an Eligible Transferee for the purposes of this Constitution.

**Entity** includes a natural person, a body corporate, a partnership, a superannuation fund, a trust and the trustee of a trust.

**Executive Services Agreements** means the agreements in the agreed form between the Company or a Subsidiary and:

- (a) Marcello Bertasso;
- (b) Michael Pillemer;
- (c) Brian Pillemer;
- (d) Matthew Pilcher; and
- (e) Zalman Ratzemore.

**Facility Agreements** means collectively, the agreement between the Company or a Subsidiary (as borrower) and PPS SA dated 17 April 2013 and all variations thereto at the date of adoption of the Constitution and the agreement between the Company or a Subsidiary (as borrower) and Ausmanco dated 19 August 2014 and all variations thereto at the date of adoption of the Constitution.

**Founder Director** means a Director appointed by a Founder Member under article 8.4(a).

**Founder Member** means a Member who is a Founder Member by operation of article 4.2.

**Group** means the Company, the Australian OpCo and any other Subsidiary of the Company from time to time.

**Initial Member** means a Member as at 1 March 2013, being the date the Company was registered.

**Insolvency Event** means, in respect of a party which is a body corporate:

- (b) an administrator, liquidator or provisional liquidator, receiver, receiver and manager, or controller of property of the party is appointed;
- (c) the party commences to be wound up or ceases to carry on business;
- (d) the party enters into a compromise or arrangement with its creditors generally or a class of them;
- (e) any execution, attachment or other process of any court or authority or any distress is issued out against or levied upon any property of the party which is not appealed, satisfied or set aside; or
- (f) anything which is analogous or has an effect which is substantially similar to any events in paragraphs (a) to (d) of this definition occurs under any law.

**IP Licence Deeds** means the licence agreements in the agreed form between the Company and:

- (a) PPS SA, Australian OpCo and Ausmanco in relation to intellectual property rights (the “**PPS IP Licence Deed**”); and
- (b) Ausmanco, Australian OpCo and PPS SA in relation to intellectual property rights and establishments services (the “**Ausmanco IP Licence and Establishment Services Deed**”).

**Key Employee** has the meaning given in paragraph (a) of schedule 1.

**Member** means a person entered in the Register as an Ordinary Member or a Founder Member and who has not ceased to be a Member in accordance with this Constitution. The term “**Membership**” shall have a corresponding meaning.

**New Founder Member** has the meaning given in article 4.2(b).

**Nominations Closing Date** has the meaning given in article 8.6.

**Nominee** has the meaning given in article 8.5(b)(i).

**Objects** means the objects specified in articles 2.1 and 2.2.

**Ordinary Member** means a person whose application to be an Ordinary Member has been accepted under article 4.5(c), who has not ceased to be a Member in accordance with this Constitution.

**Permitted Group Transferee** in relation to a Founder Member means a Related Body Corporate of that Founder Member.

**PPS SA** means Professional Provident Society Insurance Company Limited (registration number 2001/017790/06) of 6 Anerley Road, Parktown 2193 South Africa.

**Product** means any insurance, investment, retirement or private health insurance or other financial product or service provided to, or for the benefit of, Ordinary Members or any Related Party of an Ordinary Member.

**Profession** means any profession which is from time to time recognised as a profession by the Board for the purposes of this Constitution, and the term “**Professional**” shall be construed accordingly.

**Profit Share Account** means, the Profit-Share Account Owners notional allocation of the profit from the relevant product or service including any investment earnings and losses thereon.

**Profit-Share Account Owners** mean any individual or entity that receives profit share assignments on behalf of the Members.

**Recognised Professional Organisation** has the meaning given in article 4.3(b).

**Register** means the register of Members of the Company and, if appropriate, includes a branch register.

**Registered Office** means the registered office of the Company.

**Related Body Corporate** has the meaning given in section 50 of the Corporations Act, interpreted so that the definition given to “Subsidiary” in this Constitution applies; provided that in relation to Ausmanco, the term Related Body Corporate shall mean only any Entity which is Controlled by Michael Pillemer or Ausmanco.



**Related Party** has the meaning given in the ASX Listing Rules (Australian Securities Exchange) as if references to:

- (a) a public company were instead references to any company; and
- (b) a responsible entity includes a trustee or a custodian.

**Related Party Contract** means a contract entered into by the Company or a Subsidiary with a Founder Member or a Related Party of a Founder Member.

**Representative** means a person appointed to represent a corporate Member at a general meeting of the Company in accordance with the Corporations Act.

**Secretary** means a person appointed under article 12 as a secretary of the Company, and where appropriate, includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

**Special Board Resolution** means a resolution which is approved by both:

- (a) a majority of the votes cast by the Directors present and entitled to vote (including, for the avoidance of doubt, any Founder Directors); and
- (b) at least one Founder Director appointed by each Founder Member; provided that the approval of a Founder Director is not required when that Founder Director cannot vote in terms of article 10.24.

**Special Resolution** means a resolution passed by at least 75% of votes cast by Members entitled to vote on the resolution.

**Subsidiary** has the meaning given in the Corporations Act, but so that:

- (a) an Entity will also be taken to be a Subsidiary of another Entity if it is Controlled by that Entity;
- (b) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share; and
- (c) an Entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation.

**Written Acceptance** means a written consent to act as a director in compliance with Part 2D.3 of the Corporations Act, signed by any person who is eligible to become a Director under article 8.11, which acceptance shall –

- (a) be unconditional;
- (b) confirm that that person is eligible to be a Director in terms of this Constitution;
- (c) be accompanied by such documents as may be required under article 8.11(c);
- (d) appoint an address for service under article 15.3(d) for delivery to that person of documents relating to the Company; and
- (e) if the Board has prescribed a form for such Written Acceptance in a notice to Members, be substantially in the form of that prescribed form;

provided that the Board may in its discretion accept a Written Acceptance which does not comply with items (a) to (e) above.

**Written Nomination** has the meaning given in article 8.5(b)(i).

## 1.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) words importing any gender include all other genders;
- (b) the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (c) a reference to a particular person includes the person's executors, administrators, successors, substitutes and permitted assigns. If there is any dispute as to which organisation is the successor-in-title of any such organisation, the Board shall determine which organisation shall be recognised as such for the purposes of this Constitution;
- (d) the singular includes the plural and vice versa;
- (e) a reference to a document (including this Constitution) includes any variation or replacement of it;
- (f) the meaning of general words is not limited by specific examples introduced by "including", "for example" or "such as" or similar expressions;
- (g) a reference to legislation includes regulations and other instruments under it and any variation or replacement of any of them;
- (h) a power, an authority or a discretion given to a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
- (i) "writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including any representation of words in a physical document or in an electronic communication or form or otherwise;
- (j) the word "present" in the context of a person being present at a meeting includes participating using technology approved by the Directors in accordance with this Constitution;
- (k) a reference to dollars or \$ is a reference to Australian dollars;
- (l) the word "law" includes common law, principles of equity and legislation, and a reference to legislation includes regulations and other instruments under it and any variation or replacement of any of them;
- (m) "in the agreed form" shall mean agreed between the parties thereto and initialled (or confirmed by email to be in the agreed form) by Australian Opco, Ausmanco and PPS SA to indicate agreement; and
- (n) a chairman appointed under this Constitution may be referred to as a chairperson, chairwoman or as chair, as appropriate.

## 1.3 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) a word or expression defined or used in the Corporations Act has the same meaning when used in this Constitution in a similar context; and

- (b) “section” means a section of the Corporations Act.

#### **1.4 Replaceable rules not to apply**

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and do not apply to the Company.

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## **2 Purpose and objects of the Company**

### **2.1 Principal Objects**

The Company is established with the objectives of:

- (a) receiving as its Ordinary Members the members of Recognised Professional Organisations; and
- (b) acting as the holding company of one or more companies (including Australian OpCo) which provide or will procure the provision to the Ordinary Members of benefits and services of any nature, including, without limitation, policies of insurance and/or other financial services.

### **2.2 Other Objects**

In furtherance of article 2.1, the Objects of the Company include to:

- (a) as needed, partner with other organisations and service providers which can provide Ordinary Members with benefits and services of any nature, including, without limitation, policies of insurance and/or other financial services;
- (b) conduct marketing activities in relation to Membership;
- (c) do all other things as may be incidental or ancillary to the attainment of these Objects.

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## **3 Income and property of the Company**

### **3.1 Application of income and property**

All income, property and profits of the Company must be applied towards the promotion of the Objects.

### **3.2 No dividend, bonus or profit paid to Members**

No part of the profits, income or property of the Company may be paid or transferred to a Member, either directly or indirectly by way of dividend, bonus or otherwise, other than in accordance with article 3.3.

### **3.3 Permitted payments by the Company**

Subject to articles 8.8 and 9.1, article 3.2 does not prevent payment in good faith to an officer of the Company or a Member, or to a Related Body Corporate of a Member, or to an officer of a Related Body Corporate of a Member, or to a firm of which an officer of the Company or a Member (or its Related Body Corporate) is a partner:

- (a) of remuneration for services provided by, or reimbursement of expenses incurred by, that person (other than as a Director) or firm, including in accordance with article 11;
- (b) for goods or intellectual property supplied or licenced;
- (c) for repayment of any money borrowed from that person or firm;

- (d) of reasonable rent for premises let from that person or firm.

### 3.4 Provision of Services

Article 3.2 does not prevent an officer of the Company or a Member being the recipient of services in accordance with the Company's Objects.

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## 4 Membership

### 4.1 Becoming a Member

Except for a person who agreed in writing to the terms of this Constitution before the application for the Company's registration was lodged, a person may only become a Member under this article 4.

### 4.2 Founder Members

- (a) Each of PPS SA and Ausmanco is a Founder Member unless and until its Membership is terminated in accordance with the provisions of this Constitution.
- (b) The Board must admit a person ("**New Founder Member**") as a Founder Member if:
  - (i) required to do so in writing by all the existing Founder Members; and
  - (ii) the New Founder Member has agreed in writing to be bound by this Constitution and any other rules, by-laws, policies or other standards prescribed by the Directors from time to time.

### 4.3 Eligibility for Ordinary Membership

Subject to articles 4.4 and 4.5, a person shall only be entitled to become an Ordinary Member of the Company if such person meets the following criteria:

- (a) (**citizenship and residency**) the person is either:
  - (i) an Australian citizen; or
  - (ii) entitled under a visa issued by the Australian Federal Government to permanently reside in Australia; and
- (b) (**Recognised Professional Organisation**) the person is a member or fellow of, or registered with, one of the organisations listed below ("**Recognised Professional Organisation**"), as follows:
  - (i) Accounting - An applicant will be eligible for membership if a member of Chartered Accountants Australia and New Zealand or CPA Australia.
  - (ii) Actuarial - An applicant will be eligible for membership if they can describe themselves as an Associate Actuary or a Fellow of the Institute of Actuaries of Australia.
  - (iii) Architect - An applicant will be eligible for membership if registered with the Architects Board in any State or Territory of Australia.
  - (iv) Barrister, Solicitor, Judge - An applicant will be eligible for membership if they have been admitted to practice by the Supreme Court of an Australian State or Territory and have

obtained a practising certificate issued by a local legal professional body.

- (v) Dentist, Dental Specialist - An applicant will be eligible for membership if registered with the Dental Board of Australia as a Dentist or Dental Specialist.
- (vi) Doctor – GP or Specialist - An applicant will be eligible for membership if registered with the Medical Practitioners Board in any Australian State or Territory.
- (vii) Engineer - An applicant will be eligible for membership if registered on the National Engineering Register with the occupational category of Professional Engineer or is a graduate member accredited by Engineers Australia as a Professional Engineer.
- (viii) Optometrist - An applicant will be eligible for membership if they have obtained general registration with the Optometry Board of Australia.
- (ix) Pharmacist - An applicant will be eligible for membership if they are registered with the Pharmacy Board of Australia.
- (x) Physiotherapist - An applicant will be eligible for membership if registered with the Physiotherapy Board of Australia.
- (xi) Psychologist - An applicant will be eligible for membership if they have general registration with the Psychology Board of Australia.
- (xii) Quantity Surveyor - An applicant will be eligible for membership if they are a Member or Fellow of the Australian Institute of Quantity Surveyors.
- (xiii) Veterinarian - An applicant will be eligible for membership if they are registered to practice with the Veterinary Registration Board in any Australian State or Territory.

#### **4.4 Changes to eligibility criteria**

The Board may by Special Board Resolution:

- (a) despite article 4.3(b), admit such other current or former Professional persons as Ordinary Members as it deems fit; and
- (b) amend the eligibility criteria in article 4.3, including by adding or removing a Recognised Professional Organisation from the list set out in article 4.3(b).

#### **4.5 Application for Membership - Ordinary Members**

- (a) Any person wishing to apply to become an Ordinary Member (“**Applicant**”) shall apply to the Company in such manner and on such application form as the Board shall from time to time prescribe. By completing an application form, if accepted, the Applicant agrees to be bound by this Constitution and any other rules, by-laws, policies or other standards prescribed by the Directors from time to time.
- (b) An Applicant shall in all cases give all such information to the Company as the Board may require.

- (c) Notwithstanding clauses 4.3 and 4.4, the Directors may by Special Board Resolution accept or reject in its discretion any application for Membership as an Ordinary Member.
- (d) Without derogating from article 4.5(c), the Board shall be entitled, but not obliged (unless obliged by any applicable law which overrides this provision of this Constitution), to furnish its reasons for rejecting an Applicant's application for Membership in terms of 4.5(c) to that Member in writing.

#### **4.6 Register of Members**

- (a) The Company shall maintain a register of Members of the Company, which shall reflect the class into which each Member falls.
- (b) Upon admission as a Member, that person's details will be recorded in the Register by a Director or the Secretary.
- (c) A Member must promptly notify the Company of any change in the Member's details which are recorded in the Register.
- (d) The Board must not remove a Founder Member from the Register except:
  - (i) with the prior written consent of all of the Founder Members (including, for the avoidance of doubt, the prior written consent of the Founder Member who is to be removed); or
  - (ii) where the Founder Member has automatically ceased to be a Member under article 4.10.

#### **4.7 Directors may create and vary classes and class rights**

The Directors may by Special Board Resolution, subject to this Constitution and the Corporations Act:

- (a) other than in relation to Founder Members, prescribe, revoke and amend the criteria for Membership and any classes of Membership (but are not obliged to accept persons fulfilling those criteria as Members or Members of a class);
- (b) establish any new class of Members and define the rights, restrictions and obligations of Members in that class; and
- (c) vary or cancel the rights, restrictions and obligations of Members in any new or existing class.

The articles on general meetings apply to meetings of a class of Members so far as they are capable of application and with the necessary changes to every separate meeting.

#### **4.8 Restrictions on transfer of Membership**

- (a) An Ordinary Member must not Dispose of their interests in the Company without the approval of a Special Board Resolution.
- (b) Subject to article 4.8(c), a Founder Member must not Dispose of its interests in the Company as a Member to any person (other than a Permitted Group Transferee) without the prior written consent of the other Founder Members.

- (c) A Founder Member may Dispose of its interest in the Company as a Member to a Permitted Group Transferee, provided that:
  - (A) the Founder Member provides written notice to the Board before the Disposal that sets out the identity of the transferee and an explanation of how it is a Permitted Group Transferee; and
  - (B) if the transferee is not a Permitted Group Transferee or ceases to be a Permitted Group Transferee, the transferee must immediately Dispose of its interest in the Company as a Member to the Founder Member from which it acquired that interest or another Permitted Group Transferee of the Founder Member from which it acquired that interest.
- (d) If a Founder Member disposes of its interests in the Company to a person to which it also Disposes of its rights and obligations under an IP Licence Deed and such Disposal is permitted by that IP Licence Deed, then that Disposal of its interests in the Company shall be deemed to have received the prior written consent of the other Founder Members.
- (e) If a Founder Member Disposes of its interest in the Company as a Member under article 4.8(b) to any person with the prior written consent of the other Founder Members or under article 4.8(c) to a Permitted Group Transferee, that other person or Permitted Group Transferee will for all purposes under this Constitution be regarded as a Founder Member under this Constitution in the place of the Founder Member which Disposed of that interest.

#### **4.9 Termination of Membership – Ordinary Members**

- (a) An Ordinary Member will automatically cease to be a Member:
  - (i) from the date the Ordinary Member or (if the Ordinary Member is not a participant in any Product but holds Membership by virtue of a Related Party of the Ordinary Member being a participant in any Product) that Related Party of the Ordinary Member, ceases to be a participant in any Product provided or procured by the Company or a Subsidiary of the Company (including Australian OpCo); or
  - (ii) upon the date of receipt by the Company of written notice of resignation from the Ordinary Member or such later date as may be stipulated as the effective date of such resignation in that notice; or
  - (iii) if the Ordinary Member is a natural person, upon the death of the Ordinary Member.
- (b) The Board may, in its discretion, terminate the Membership of any Ordinary Member for any other reason which the Board deems sufficient to warrant such termination and the termination shall take effect from such date as the Board may determine.
- (c) Without derogating from article 4.9(b), the Board shall, as soon as reasonably possible in the circumstances, furnish its reasons for terminating a Member's Membership under article 4.9(b) to that Member in writing.
- (d) A Member whose Membership is terminated pursuant to article 4.9(a)(ii) or 4.9(b) remains liable after resignation for all money due by



the Member to the Company at the date of resignation, in addition to any sum for which the Member is liable as a Member under article 17.1.

#### **4.10 Termination of Membership – Founder Members**

A Founder Member (or its Permitted Group Transferee, if relevant) will automatically cease to be a Member and Founder Member and all of its rights in terms of this Constitution will terminate if:

- (a) in the case of Ausmanco (or its Permitted Group Transferee), there is a valid termination of the Ausmanco IP Licence and Establishment Services Deed;
- (b) in the case of PPS SA (or its Permitted Group Transferee), there is a valid termination of the PPS IP Licence Deed;
- (c) there is a Change of Control in relation to that Founder Member to which the other Founder Member/s do not consent in writing;
- (d) there is a disposal by that Founder Member (or any Permitted Group Transferee to whom it has transferred its rights under the IP Licence Deed) of its rights, interests or obligations under an IP Licence Deed other than a disposal to a Permitted Group Transferee, whether in breach of that IP Licence Deed or otherwise;
- (e) there is a breach by that Founder Member of article 4.8(b) which is not remedied in accordance with article 4.8(c)(B);
- (f) an Insolvency Event occurs in relation to that Founder Member.

#### **4.11 Change of Name upon termination of Membership of PPS SA**

If PPS SA ceases to be a Founder Member, the Company acknowledges and agrees that, upon the request of PPS SA and subject to the terms of the PPS SA IP Licence Deed, it will immediately take all action necessary to:

- (a) change the company name and any business names and product names of the Company and any Subsidiary; and
- (b) change the company name and any business names of all other Group members or associates of the Company or the Group,

to such names which, in the opinion of PPS SA, do not indicate any association or connection with PPS SA or any of its businesses.

#### **4.12 Limited liability**

A Member has no liability as a Member except as set out in this article 4 and article 17.1.

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## **5 General meetings**

### **5.1 Annual general meeting**

Annual general meetings of the Company are to be held in accordance with the Corporations Act.

### **5.2 Convening a general meeting**

The Directors may convene and arrange to hold a general meeting of the Company when they think fit and must do so if required to do so under the Corporations Act.



### **5.3 Members have power to convene general meeting**

In accordance with the Corporations Act, Members may convene a general meeting of the Company at the cost of the Company.

### **5.4 Use of technology at general meetings**

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

### **5.5 Notice of general meeting**

Notice of a general meeting must be given in accordance with article 15 and the Corporations Act.

### **5.6 Calculation of period of notice**

In computing the period of notice for a general meeting, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

### **5.7 Cancellation or postponement of general meeting**

- (a) Where a general meeting (including an annual general meeting) is convened by the Directors, they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place for the meeting.
- (b) This article does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members, or to a meeting convened by a court.

### **5.8 Notice of cancellation, postponement or change of place of general meeting**

Written notice of cancellation or postponement or change of place of a general meeting must be given to all persons entitled to receive notices of general meetings from the Company. A notice of a change of place of a general meeting must specify the different place for the holding of the meeting.

### **5.9 Contents of notice postponing general meeting**

A notice postponing the holding of a general meeting must specify:

- (a) a date and time for the holding of the meeting;
- (b) a place for the holding of the meeting, which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

### **5.10 Number of clear days for postponement of general meeting**

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days' notice of the general meeting required to be given by this Constitution or the Corporations Act.

### **5.11 Business at postponed general meeting**

The only business that may be transacted at a postponed general meeting is the business specified in the original notice convening the meeting.

### **5.12 Non-receipt of notice**

The non-receipt of, immaterial defect in the form or manner of giving notice, or an accidental omission to give, a notice of a general meeting or cancellation, postponement or change of details for a general meeting, to a person entitled to receive notice, does not invalidate:

- (a) any resolution passed at the general meeting or at a postponed meeting; or
- (b) the cancellation or postponement of a meeting.

### **5.13 Proxy, attorney or Representative at postponed general meeting**

Where by the terms of an instrument appointing a proxy, attorney or Representative:

- (a) the appointed person is authorised to attend and vote at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of appointment,

then that later date is substituted for and applies to the exclusion of the date specified in the instrument of appointment unless the Member appointing the proxy, attorney or Representative gives to the Company, at its Registered Office, written notice to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

### **5.14 Director entitled to notice of meeting**

A Director is entitled to receive notice of and to attend all general meetings and all separate meetings of any class of Members of the Company and is entitled to speak at those meetings.

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## **6 Proceedings at general meetings**

### **6.1 Chairman**

The Directors may appoint a person (who may be a Director) to act as chairman at general meetings of the Company.

### **6.2 Absence of chairman at general meeting**

If a general meeting is held and:

- (a) a chairman has not been elected or appointed by the Directors; or
- (b) the elected or appointed chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairman of the meeting (in order of precedence):

- (c) the deputy chairman (if any);
- (d) a Director chosen by a majority of the Directors present;

- (e) the only Director present; or
- (f) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

### **6.3 Conduct of general meetings**

The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) having regard where necessary to the Corporations Act, may terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairman under this article is final.

### **6.4 No casting vote for the chairman**

If there is an equality of votes, whether on a show of hands or on a poll, the chairman of the general meeting is not entitled to a casting vote in addition to any votes to which the chairman is entitled to cast as a Member or as a proxy, attorney or Representative of a Member.

### **6.5 Quorum at general meetings**

- (a) A quorum for a general meeting shall be two Members, provided that all of the Founder Members are present.
- (b) If quorum is not present within thirty minutes of the scheduled time for a general meeting (including the resumption of a general meeting adjourned under article 6.6 but not the resumption of any meeting adjourned under this article 6.5), or if there is no quorum at any time after a general meeting has commenced, then:
  - (i) the general meeting shall be automatically adjourned to the third Business Day after the date appointed for that general meeting, at the same time and place as was fixed for the adjourned general meeting and if such place is not available at such other place as the Board may decide;
  - (ii) notice of such adjournment shall be given in accordance with article 6.6(b)(ii); and
  - (iii) if quorum is not present within thirty minutes after the scheduled time for resumption of the adjourned general meeting, then the Members then present at such adjourned general meeting shall constitute a quorum.

### **6.6 Adjournment of general meetings**

- (a) The chairman of a general meeting where a quorum is present must adjourn such general meeting, in whole or in respect of the consideration of only some of the matters on the agenda for such general meeting, if so directed by a resolution adopted by the general meeting at the request of the chairman or any Ordinary Member.

- (b) If any general meeting is so adjourned:
  - (i) it shall be resumed at such time and place as may:
    - (A) have been stipulated in the resolution directing such adjournment; or
    - (B) be determined by the chairman of that general meeting, or failing any such determination by the chairman, by the Board, but the time for the resumption of the adjourned general meeting which is determined by the chairman or the Board shall not be earlier than the third Business Day after the date of the adjourned general meeting;
  - (ii) the Board shall cause notice of such adjournment to be given to Members by electronic means only or by electronic means and such other means as the Board may deem fit.
- (c) No business shall be transacted at the resumption of any adjourned general meeting other than the business left unfinished at the general meeting at which the adjournment took place. When a general meeting is adjourned, the provisions of article 6 shall apply to such adjournment, with such necessary changes as the context may require.
- (d) The chairman may allow any general meeting to be interrupted for any reason if the general meeting continues in the same place at a later time on the same day and in that event such interruption shall not be regarded as an adjournment.

## **6.7 Voting on show of hands**

At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is effectively demanded and the demand is not withdrawn. A declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the chairman nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded in favour of or against the resolution.

## **6.8 Demanding a poll**

At a general meeting of the Company, a poll may be demanded by:

- (a) any Founder Member;
- (b) at least 5 Ordinary Members entitled to vote on the resolution;
- (c) Ordinary Members with at least 5% of the votes that may be cast on the resolution on a poll; or
- (d) the chairman of the meeting.

## **6.9 Poll**

- (a) If a poll is effectively demanded it shall be taken in such a manner as the chairman of the meeting directs and the result of the poll shall be deemed to be the resolution of the meeting on the matter on which the poll was demanded. The chairman of the meeting may appoint scrutineers to determine the result of the poll.

- (b) A poll demanded by the chairman of the meeting or a poll demanded on the question of adjournment by any Ordinary Member shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs. The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business not affected by the question upon which the poll has been demanded.

#### **6.10 Entitlement to vote**

- (a) Subject to article 7 and the requirements of the Corporations Act, all decisions of the Members shall be taken at a general meeting by a simple majority of the votes cast by the Members present at that meeting.
- (b) Each Founder Member shall have one vote on a show of hands or on a poll.
- (c) On a show of hands, each Ordinary Member present in person has one vote.
- (d) On a poll, each Ordinary Member present in person, by proxy or by attorney, has one vote plus one additional vote for each completed \$10,000 in his or her or his or her Related Party's Profit Share Account at the most recent date prior to that general meeting when the Profit Share Accounts were adjusted.
- (e) A certificate issued by the Company or a director or officer of a member of the Group relating to the number of votes which an Ordinary Member is entitled to cast at any meeting of Members shall constitute *prima facie* proof of the contents thereof for all purposes relating to this Constitution.

#### **6.11 Validity of vote in certain circumstances**

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies;
- (b) the appointing Member is mentally incapacitated; or
- (c) the Member revokes the appointment or authority.

#### **6.12 Objection to voting qualification**

An objection to the right of a person to attend or vote at a general meeting or adjourned general meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the chairman of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

#### **6.13 Right to appoint attorney**

- (a) A Member may by power of attorney appoint an attorney to act on the Member's behalf at all or any meetings of the Company or of any class of Members.

- (b) To be effective, an instrument appointing an attorney under this article, together with any evidence of non-revocation the Directors require, must be received by the Company at least 48 hours before the meeting.

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## 7 Matters to be determined by Members

Subject to the Corporations Act, each of the following matters are to be determined by both:

- (a) each and every Founder Member; and
- (b) the Members in accordance with the Corporations Act:
  - (i) **(retirement benefits for managerial or executive officers)** the giving of a benefit to a person by the Company, in connection with a person's retirement from an office or position of employment in the Company or a Related Body Corporate of the Company, under section 200E of the Corporations Act;
  - (ii) **(removal of an auditor)** removal of an auditor under section 329 of the Corporations Act;
  - (iii) **(appointment of a replacement auditor)** following removal of an auditor of the Company under section 329 of the Corporations Act, appointment of a replacement auditor under section 327D of the Corporations Act;
  - (iv) **(winding up by the court)** winding up of the Company by the court under section 461(1) of the Corporations Act;
  - (v) **(voluntary winding up)** voluntary winding up of the Company under section 491 of the Corporations Act;
  - (vi) **(appointment of a liquidator – Member's voluntary winding up)** appointment of a liquidator or a replacement liquidator under sections 495(1) or 495(3) of the Corporations Act;
  - (vii) **(appointment of a liquidator – creditor's voluntary winding up)** appointment of a liquidator under section 499(1) of the Corporations Act;
  - (viii) **(changing the name of the Company)** changing the name of the Company under section 157 of the Corporations Act;
  - (ix) **(change of company type)** changing the type of the Company under section 162(1) of the Corporations Act;
  - (x) **(sanction actions of liquidator)** sanctioning any matter or purpose of a liquidator under section 506(1)(f) of the Corporations Act;
  - (xi) **(powers and duties of liquidator – Member's voluntary winding up)** approval of liquidator's powers and duties under section 506(1A)(b) of the Corporations Act;
  - (xii) **(liquidator powers to accept shares or other property as consideration)** conferring a general authority or an authority in respect of a particular arrangement, on a liquidator, to accept shares or other items as consideration for a transfer or sale of the whole or part of the business or property of the Company, under section 507(2) of the Corporations Act;

- (xiii) **(winding up - arrangements with creditors)** approving an arrangement entered between the Company and its creditors where the Company is about to be wound up or is in the course of being wound up, under section 510(1)(a) of the Corporations Act; and
- (xiv) **(transfer place of registration)** transferring the registration of the Company to registration under a law of the Commonwealth, State or Territory under section 601AI of the Corporations Act.

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## **8 Composition of the Board**

### **8.1 Minimum number of Directors**

The number of Directors must be not less than four.

### **8.2 Change of number of Directors**

Subject to articles 8.1 and 8.4, the Company in general meeting may by resolution and with the consent of each Founder Member increase or reduce the number of Directors and may also determine any provisions for the rotation or retirement of Directors.

### **8.3 Office held until conclusion of meeting**

A retiring Director holds office until the conclusion of the meeting from which their retirement is effective.

### **8.4 Appointment and removal of directors**

- (a) Each Founder Member may appoint two Directors and replace each of those persons from time to time by giving written notice to the Company. Any notice of appointment will only be effective if accompanied by the Written Acceptance of that Director. Each Founder Member removing a Director which it has appointed will indemnify the Company against any Claim arising in connection with that Director's removal from office.
- (b) The Members in an annual general meeting may elect two Directors in accordance with the election procedure referred to in article 8.5, provided that:
  - (i) any Director so elected has been approved by a Special Board Resolution;
  - (ii) if any Director so elected ceases to hold office at any time then the Board may by Special Board Resolution co-opt a replacement Director to serve in office as such until the end of the next annual general meeting of the Company or earlier, when a new election can be held.
- (c) The Directors may by Special Board Resolution, appoint additional Directors to the Board whether nominated by a Recognised Professional Organisation or otherwise.
- (d) The appointment of Directors pursuant to articles 8.4(a), 8.4(b) and 8.4(c) above shall take effect at the later of:
  - (i) the date of such election, notice of appointment or co-option (as the case may be); and
  - (ii) the date of receipt of the Written Acceptance.



- (e) A Director appointed under article 8.4(a) automatically ceases to be a Director if their appointing Founder Member ceases to be a Founder Member in accordance with this Constitution.
- (f) A Director appointed under article 8.4(b) automatically ceases to be a Director if they cease to be an Ordinary Member in accordance with this Constitution.

## 8.5 Rotation and election of Directors by Ordinary Members

- (a) At every annual general meeting, the Directors appointed under article 8.4(b) shall retire from office.
- (b) An individual shall be elected as a Director by the Members in an annual general meeting under 8.4(b) in the following manner:
  - (i) the individual ("**Nominee**") must be an Ordinary Member and must have been nominated in writing ("**Written Nomination**") for election by at least two other Ordinary Members and the Company must have received that Written Nomination accompanied by a Written Acceptance by that individual by no later than the Nominations Closing Date (as defined in article 8.6 below) for that annual general meeting;
  - (ii) at the annual general meeting there shall be a vote by a poll conducted in respect of each Nominee;
  - (iii) the result of the vote held under article 8.5(b)(ii) shall be determined in accordance with the number of votes cast in favour of each Nominee so that the two vacancies will be filled by the two Nominees receiving the highest number of favourable votes.
- (c) The Board is not obliged to call for Nominees to be appointed to the Board. It will be the responsibility of the Ordinary Members who are nominating a Nominee to be appointed to the Board pursuant to article 8.4(b) to ensure that the Written Nomination and Written Acceptance are received by the Company by not later than the date stipulated under article 8.6 for that annual general meeting, failing which such Nominee shall not be eligible for appointment as a Director.
- (d) The Board must notify members of the identity of the Nominees standing for election at any annual general meeting in the notice convening that annual general meeting.

## 8.6 Nominations Closing Date

Except following a Special Board Resolution, a person is not eligible for election as a Director at an annual general meeting of the Company unless:

- (i) a Written Acceptance has been lodged at the Registered Office at least 30 Business Days before the annual general meeting or any other period permitted under the Corporations Act (the "**Nominations Closing Date**"); and
- (ii) no Founder Director has provided written notice to the Company objecting to the nomination of the person as a Director within 10 Business Days after the Nominations Closing Date.



## **8.7 Remuneration and expenses of Directors**

Subject to articles 7 and 9.1, the Board by Special Board Resolution shall be entitled to determine:

- (a) the remuneration, if any, to be paid to Directors for attendance at meetings and any other work performed in connection with the Company; and
- (b) the reimbursement, if any, to be paid to Directors for expenses incurred in connection with the Company,

and failing a determination of the Board entitling a Director to such remuneration or reimbursement, that Director shall have no right to any such remuneration or reimbursement.

## **8.8 Duties of Directors**

The Directors must act in good faith and in the best interests of the Company as a whole. Subject to this duty, a Director appointed by a particular party may have regard to, and act in the interests of, the party that appointed them.

## **8.9 Director's interests**

Subject to the provisions of this Constitution and to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in the Company, except that of auditor;
- (b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into a contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees or directors of the Company or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (f) despite having an interest in a matter that is being considered at a meeting of Directors, be present at, participate in, vote on and be counted in a quorum at the meeting;
- (g) despite having an interest in a document, sign or participate in the execution of a document by or on behalf of the Company; and
- (h) do any of the above despite the fiduciary relationship of the Director's office:
  - (i) without any liability to account to the Company for any benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement.

A reference to the Company in this article is also a reference to any Related Body Corporate of the Company.

## 8.10 Eligibility and disqualification of Directors

No person shall be eligible to become, or to continue in office as, a Director if:

- (a) they are less than 18 years of age;
- (b) in the case of a Director elected under article 8.4(b), they are not an Ordinary Member of the Company;
- (c) they do not meet the qualification criteria (which may include the provision of documents and proof of eligibility) which have been determined from time to time by the Board and have been recorded in a notice to Members;
- (d) they are declared bankrupt or insolvent or make an arrangement or composition with creditors of the person's joint or separate estate generally;
- (e) they die or become insane or incapacitated to the extent that they are unable to perform the functions of a Director, and are unlikely to regain that capacity within a reasonable time;
- (f) they are convicted, whether in Australia or elsewhere, for theft, fraud, forgery, uttering of a forged document or perjury;
- (g) they are removed by a competent court from the board of any body corporate on account of misconduct;
- (h) they have acted in a manner that:
  - (i) amounts to gross negligence, wilful misconduct or breach of trust in relation to the performance of the Director's functions within, and duties to, the Company;
  - (ii) amounts to gross abuse of the position of Director; or
  - (iii) is materially inconsistent with the duties of a Director;
- (i) they have repeatedly been personally subject to a compliance notice or similar enforcement mechanism, for substantially similar conduct, in terms of any legislation; or
- (j) they become ineligible to be or disqualified from being a director under the Corporations Act.

## 8.11 Removal and Retirement of Directors

A Director shall, without affecting the continuation in office of the other Directors, automatically cease to hold office if:

- (a) the Director delivers a notice of resignation to the Company, and the notice shall have effect from the date on which that notice is delivered (or such later date specified in the notice, which is approved by the Board);
- (b) the Director ceases to be eligible to continue in office as a Director under article 8.11, then he shall cease to hold office with effect from the date of that event;
- (c) the Director is removed from that office by a decision of a competent court, in which event such removal shall have effect from the date of

that decision or such later date, if any, as may have been determined for this purpose by the court;

- (d) in the case of a Director elected by the Members under article 8.4(b), the Director is removed from that office by a resolution of the Members, in which event such removal shall have effect from the date of adoption of that resolution;
- (e) in the case of a Director appointed by a Founder Member under article 8.4(a), the Director is removed by notice from the Founder Member which nominated him under article 8.4(a), in which event such removal shall have effect from the date on which the Company receives that notice or such later date, if any, as may have been specified for this purpose in that notice;
- (f) in the case of a Director co-opted by the Board in terms of the proviso to article 8.4(b), if he is not appointed as a Director under article 8.4(b) prior to the end of the annual general meeting immediately succeeding the date on which he was co-opted, in which event that Director shall cease to hold office as such at the end of that annual general meeting; or
- (g) the Director retires on rotation at the end of an annual general meeting in accordance with article 8.4(b) and is not appointed as a Director under article 8.4(b) prior to the end of that annual general meeting, in which event that Director shall cease to hold office as such at the end of that annual general meeting.

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## 9 Powers and duties of Directors

### 9.1 Role of the Board

- (a) Subject to matters requiring Member approval under article 7, the requirements of the Corporations Act, and article 9.1(c), the Directors are to manage the business of the Company and may exercise all the powers of the Company.
- (b) Without limitation to the Board's responsibilities under article 9.1(a), each of the matters marked in schedule 1 ("**Board Reserved Matters**") when determined by the Board, are to be determined by Special Board Resolution.
- (c) For the purposes of interpretation of schedule 1, it is recorded that the Company may conclude any agreement which provides for any of the actions referred to in schedule 1 as a Board Reserved Matter, but which is subject to any condition which will ensure compliance with article 9.1(b).

### 9.2 Specific powers of Directors

Without limiting the generality of article 9.1, the Directors may exercise all the powers of the Company to create by-laws, to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

### 9.3 Appointment of attorney

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for the period and subject to the conditions they think fit.

#### **9.4 Provisions in power of attorney**

A power of attorney granted under article 9.3 may contain any provisions for the protection and convenience of persons dealing with the attorney that the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

#### **9.5 Signing of cheques**

The Directors may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

#### **9.6 Committees**

The Directors may delegate, and revoke the delegation of, any of their powers, other than powers required by law to be dealt with by Directors as a board, to a Committee or Committees consisting of one or more of their number as they think fit.

#### **9.7 Chairman of committee**

- (a) The Directors may:
  - (i) appoint a chairman and deputy chairman of any such committee;
  - (ii) appoint as members of any such committee persons who are not Directors, but no such person shall have a right to vote on a matter to be decided by the committee;
  - (iii) authorise the members of such committee, or any of them, to fill any vacancies on that board or committee;
  - (iv) specify how the meetings, procedures and acts of such committees shall be governed, failing which those meetings, procedures and acts shall, as if such committee were the Board, be governed by the provisions of this Constitution relating to meetings, procedures and acts of Board (with such necessary changes as the context may require);
  - (v) without limiting article 9.9, delegate to that committee any power and authority of the Board (including the power to consult with or receive advice from any person) and that committee shall, to the extent of that delegation, have the full power and authority of the Board in respect of any matter referred to it.
- (b) Without limiting the foregoing, it is specifically recorded that the Directors:
  - (i) may appoint a nominations committee in order to assist with and discharge any or all of the functions of the Board in relation to the appointment of Directors; and
  - (ii) shall appoint an audit committee.

#### **9.8 Powers delegated to Committees**

A Committee to which any powers have been delegated under article 9.6 must exercise those powers in accordance with any directions of the Directors.

## **9.9 Powers of delegation**

The Directors may delegate any of their powers to any persons they select for any period, to be exercised for any objects and purposes on any terms and subject to any conditions and restrictions as they think fit, and may revoke, withdraw, alter or vary the delegation of any of those powers.

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Corporations Act.

## **9.10 Board Charter**

The Directors will abide by the Board Charter in schedule 2, as amended from time to time in accordance with the provisions of its terms.

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# **10 Proceedings of Directors**

## **10.1 Directors' meetings**

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

## **10.2 Director may convene a meeting**

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

## **10.3 Use of technology for Directors' meetings**

A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

## **10.4 Questions decided by majority**

Unless otherwise required by this Constitution or by the Corporations Act, a question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote and that decision is for all purposes a decision of the Directors.

## **10.5 Alternate Director or proxy and voting**

A person who is present at a meeting of Directors as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or proxy. If that person is also a Director, they have one vote as a Director in that capacity.

## **10.6 Chairman of Board**

- (a) At its first meeting after each annual general meeting (and upon the retirement of a chairman or deputy chairman or upon the chairman or deputy chairman ceasing to act):
  - (i) the Board shall elect from among the Directors a chairman and a deputy chairman; and
  - (ii) if the Board is unable to appoint a chairman or a deputy chairman pursuant to article 10.6(a)(i), then one Founder Member shall appoint a chairman and the other Founder Member shall appoint the deputy chairman. The identity of the Founder Member appointing the chairman and deputy chairman (respectively) will be determined by lots drawn..

- (b) Each of the chairman and deputy chairman shall retain office as such until the earlier of the date on which he ceases to be a Director and the date of election of the new chairman and deputy chairman, as the case may be, in terms of this article 10.6.

#### **10.7 Chairman at Board meetings**

The chairman shall preside at all meetings of the Board and shall accordingly determine the procedure to be followed at any such meeting; provided that the powers of the chairman to determine such procedures shall be subject to the provisions of this Constitution and shall be subject to any decision that the Board may have adopted on that subject. In his absence or if he is unwilling or unable to preside then the deputy chairman shall so preside and exercise the chairman's powers. In the absence of both the Chairman and the Deputy Chairman or if both are unable or unwilling to preside, then the Directors present shall elect one of the Directors who is present to preside over that meeting as its chairman and exercise the Chairman's powers.

#### **10.8 Appointment of Alternate Director**

Subject to the Corporations Act, a Director may appoint a person approved by a majority of the other Directors, to be an Alternate Director in the Director's place for such period as the Director thinks fit.

#### **10.9 Alternate Director and meetings**

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not participate in a meeting, the Alternate Director is entitled to participate and vote in their appointor's place.

#### **10.10 Alternate Director's powers**

An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.

#### **10.11 Alternate Director responsible for own acts and defaults**

Whilst acting as a Director, an Alternate Director:

- (a) is an officer of the Company and not the agent of the appointor; and
- (b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

#### **10.12 Alternate Director - expenses and remuneration**

Articles 3.3 and 8.8 apply to an Alternate Director as if they were a Director.

#### **10.13 Termination of appointment of Alternate Director**

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of the appointment of the Alternate Director has not expired, and terminates automatically if the appointor ceases to be a Director.

#### **10.14 Appointment or termination**

An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice signed by the Director who makes or made the appointment and delivered to the Company.

### **10.15 Alternate Director and number of Directors**

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

### **10.16 Director attending and voting by proxy**

- (a) A Director may participate in and vote by proxy at a meeting of the Directors if the proxy:
  - (i) is another Director; and
  - (ii) the appointment is signed by the appointor.
- (b) The appointment may be general or for one or more particular meetings. A Director present as proxy of another Director who would be entitled to vote if present at the meeting has one vote for the appointor and one vote in his or her own capacity as a Director.

### **10.17 Quorum for Directors' meeting**

- (a) At a meeting of Directors, the number of Directors whose presence in person or by proxy is necessary to constitute a quorum is as determined by the Directors and, as a minimum, is:
  - (i) one half of the Directors in office at the time of that meeting (including, for the avoidance of doubt, any Founder Directors); and
  - (ii) at least one Founder Director appointed by each Founder Member.
- (b) If a quorum is not present within thirty minutes of the scheduled time for a meeting (including the resumption of a meeting adjourned), or if there is no quorum at any time after a meeting has commenced, then:
  - (i) the meeting shall be automatically adjourned to the third Business Day after the date appointed for that meeting, at the same time and place as was fixed for the adjourned meeting and if such place is not available at such other place as any director may nominate;
  - (ii) notice of such adjournment shall be given in accordance with article 15 and the Corporations Act; and
  - (iii) if quorum is not present within thirty minutes after the scheduled time for resumption of the adjourned meeting, then the Directors then present at such adjourned meeting shall constitute a quorum.

### **10.18 Continuing Directors may act**

If the number of Directors in office at any time is reduced below the requirements of article 8.1, the continuing Directors may, act only for the following purposes:

- (a) filling vacancies to the extent necessary to bring their number up to the minimum required by article 8.1; or
- (b) to convene a general meeting; or
- (c) to the extent that may be necessary or desirable for the preservation and administration of the Company and the Company's assets.

### **10.19 Chairman of Committee**

The members of a Committee may elect one of their number as chairman of their meetings. If a meeting of a Committee is held and:

- (a) a chairman has not been elected; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members involved may elect one of their number to be chairman of the meeting.

### **10.20 Meetings of Committee**

A Committee may meet and adjourn as it thinks proper.

### **10.21 Determination of questions**

- (a) Subject to article 9.1(b), questions arising at a meeting of a Committee are to be determined by a majority of votes of the members of the Committee entitled to vote.
- (b) Each Director shall have one vote and the chairman shall not have a casting vote.

### **10.22 Circulating resolutions**

The Directors may pass a resolution without a Directors' meeting being held if the required majority of the Directors entitled to vote on the resolution sign a document or send an electronic mail containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs the document or sends an electronic mail containing a statement that they are in favour of the resolution set out in the document.

### **10.23 Validity of acts of Directors**

Subject to the Corporations Act, all acts done at a meeting of the Directors or of a Committee, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting;
- (b) a person acting as a Director was disqualified or was not entitled to vote;
- (c) there was an immaterial defect in the form or manner of giving notice of the meeting of Directors; or
- (d) there was an accidental or inadvertent failure to give notice of the meeting to any Director or Directors,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

### **10.24 Restrictions on voting by Directors**

A Director may not participate in a meeting of Directors, or cast a vote, on any matter to the extent that:



- (a) the matter concerns item (w) of Schedule 1; and
- (b) the counterparty to the contract in question is a Founder Member which has appointed that Director (or a Related Body Corporate or Eligible Transferee of that Founder Member).

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## 11 Chief Executive Officer

- (a) The Directors may, by Special Board Resolution:
  - (i) appoint a person to act as chief executive officer (“**Chief Executive Officer**”) for any period;
  - (ii) delegate to the Chief Executive Officer any of the powers conferred on the Directors; and
  - (iii) withdraw or vary any of those powers,on any terms and conditions and with any restrictions as they think fit.
- (b) The Directors may, by Special Board Resolution, fix the remuneration of the Chief Executive Officer which may be by way of salary drawn from the Company.
- (c) The Directors may, by Special Board Resolution, appoint the Chief Executive Officer to hold office as a Director for a period not to exceed the term of employment.
- (d) Subject to the terms of any employment contract between the Company and the Chief Executive Officer, the Directors may, by Special Board Resolution, at any time remove or dismiss the Chief Executive Officer from employment with the Company, in which event any appointment of the Chief Executive Officer as a Director will automatically cease.
- (e) If the Chief Executive Officer ceases to be a Director, the Directors may, by Special Board Resolution, revoke or vary the appointment as Chief Executive Officer.

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## 12 Secretary

### 12.1 Appointment of Secretary

The Company must have at least one Secretary who is to be appointed by the Directors.

### 12.2 Suspension and removal of Secretary

The Directors may suspend or remove a Secretary from that office.

### 12.3 Powers, duties and authorities of Secretary

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors.

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## 13 Seals

### 13.1 Safe custody of common seals

The Directors must provide for the safe custody of any seal of the Company.

## **13.2 Use of common seal**

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a Committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents.

---

## **14 Inspection of records**

### **14.1 Inspection by Members**

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than Directors).

### **14.2 Right of a Member to inspect**

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

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## **15 Service of documents**

### **15.1 Document includes notice**

In this article 15, a reference to a document includes a notice and a notification by electronic means.

### **15.2 Form of document**

Unless expressly stated otherwise in this Constitution, all notices, certificates, statements, demands, appointments, directions and other documents referred to in this Constitution must be in writing.

### **15.3 Methods of service**

The Company may give a document to a person:

- (a) personally; or
- (b) by delivering it or sending it by post to the address for the person in the Register or an alternative address nominated by the person; or
- (c) by sending it to a fax number or electronic address nominated by the person; or
- (d) by notifying the person by an electronic means nominated by the person that:
  - (i) the document is available; and
  - (ii) how the person may use the nominated access means to access the document.

### **15.4 Post**

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and in either case is taken to have been received on the day after the date of its posting.

### **15.5 Fax or electronic transmission**

A document sent or given by fax or to an electronic address:

- (a) is taken to be effected by properly addressing and transmitting the fax or electronic transmission; and
- (b) is taken to have been delivered on the day following its transmission.

### **15.6 Electronic notification**

A document made available by electronic means is taken to have been given and received on the day after the date of transmission of the notification specifying that the document is available and how it can be accessed.

### **15.7 Evidence of service to Members**

A certificate signed by a Director or a Secretary stating that a document was sent, delivered or given to a Member by post, fax or other electronic means on a particular date is evidence that the document was sent, delivered or given on that date and by that means.

---

## **16 Indemnity and insurance**

### **16.1 Indemnity**

To the maximum extent permitted by law, the Company indemnifies any current or former Director or other officer of the Company out of the assets of the Company against:

- (a) any liability incurred by the person in that capacity (except a liability for legal costs);
- (b) reasonable legal costs incurred in defending or resisting or otherwise in connection with proceedings, whether civil or criminal or of an administrative or investigatory nature against the person or in which the person becomes involved because of that capacity; and
- (c) reasonable legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer of the Company.

### **16.2 Insurance**

To the maximum extent permitted by law, the Company may pay a premium for a contract insuring a person who is or has been a Director or other officer of the Company against liability incurred by the person in that capacity, including a liability for legal costs.

### **16.3 Contract**

The Company may enter into an agreement with a Director or other officer of the Company with respect to the matters referred to in articles 16.1 and 16.2 and including provisions relating to rights of access to the books of the Company.

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## **17 Winding up**

### **17.1 Contributions on winding up**

The Initial Member undertakes to contribute to the Company's property an amount not exceeding \$1 if the Company is wound up during, or within one year after the cessation of, the Member's Membership, on account of:

- (a) payment of the Company's debts and liabilities contracted before they ceased to be a Member;
- (b) the costs of winding up; and
- (c) adjustment of the rights of the contributories among themselves.

### **17.2 Application of property on winding up**

If any property or funds remain on the winding-up or dissolution of the Company and after satisfaction of all its debts and liabilities, the property or funds may be paid to or distributed among the Members, or as determined by the Directors, or, if they determine, by the Members in general meeting, at or before the time of dissolution and in default by application to the court.

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## **18 Accounts**

The Directors must cause the accounts and records of the Company to be maintained and, if required, audited in accordance with the requirements of the Corporations Act.

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## **19 Amendments to this Constitution**

This Constitution, (including any schedule to this Constitution) may be modified or repealed only if the modification or repeal is approved by both:

- (a) the Members, by Special Resolution; and
- (b) each Founder Member.

# Constitution

## Schedule 1 – Board Reserved Matters (article 9.1(b))

The following matters in respect of the Company or any subsidiary of the Company (including Australian OpCo) are Board Reserved Matters:

- (a) **(Key Employees and Directors):** appointment, removal or material change to the terms of engagement, remuneration, bonus, other incentive, role or responsibilities, (and the assignment, novation, enforcement or waiver of right under an employment or service agreement), of the Chief Executive Officer, chief financial officer, chief operating officer, Directors or “**Key Employees**” (being those employees or officers determined by the Board as being a Key Employee from time to time), and approval of the final bonus payable to any of the aforementioned;
- (b) **(Business Plan):** adopting or varying any Business Plan, business financial plan or any operating, capital or cash budget;
- (c) **(Auditor):** appointment of the initial auditor or an auditor to fill a casual vacancy under section 327A or section 327C of the Corporations Act;
- (d) **(Equity Securities):** issue or allot or grant any right to issue or allot equity securities, or undertake any form of capital reduction or share buyback;
- (e) **(Borrowings):** borrowing or accepting financial accommodation in any year that exceeds the amount approved in the business plan of the Group from time to time approved in accordance with item (b) above (“**Business Plan**”), by more than \$25,000 (CPI Adjusted);
- (f) **(Encumbrances):** creation of any mortgage, charge, pledge or other encumbrance that is not included in the Business Plan over an asset or undertaking;
- (g) **(Guarantee):** giving or entering into any guarantee, letter of comfort or performance bond otherwise than in the ordinary course of business;
- (h) **(Acquisitions and disposals):** undertaking a trade sale or the acquisition or disposal of any operations by any member of the Group;
- (i) **(Acquisitions):** acquisition of securities in another entity;
- (j) **(Assets):** sale or purchase of assets (either tangible or intangible) having a value of more than \$50,000 (CPI Adjusted) except as approved under the Business Plan;
- (k) **(Capital expenditure):** incurring capital expenditure, the total of which in a financial year exceeds the amount approved under the Business Plan by more than \$50,000 (CPI Adjusted);
- (l) **(Related party transactions):** entry into any contract or other arrangement with a management team member, director or an associate of a Director or Founder Member or any Related Party of a Founder Member (other than the Agreed Related Party Contracts);

- (m) **(Change in nature of business)**: stopping the carrying on of, or materially altering the scale of operations of, the Company or its subsidiaries, or commencing any business or operational activities other than the current business operations of the Company or its subsidiaries or any other matter not in the ordinary course of business that a major financial investor might want to consider;
- (n) **(Reorganisation Event)**: enter into any proposal to reorganise or restructure the capital of the Company, including any compromise or arrangement with, or assignment for the benefit of, any of its Members or creditors (including a compromise or arrangement whilst solvent), or any analogous event;
- (o) **(Finance and operating leases)**: entry into any finance or operating leases the value of which in any financial year, in total, exceeds by more than \$25,000 (CPI Adjusted) any amount approved under the Business Plan;
- (p) **(Contracts)**: entry into, termination, amendment or variation of a contract outside of the ordinary course of business;
- (q) **(Accounting Standards and principles)**: materially altering the accounting standards or principles previously adopted by the Company for the preparation or presentation of individual or consolidated financial statements except if required by law to do so;
- (r) **(Financial year)**: adopting or changing the financial year of the Company or its subsidiaries;
- (s) **(Loans)**: making a loan or giving credit or other financial accommodation to a person except in the ordinary course of business;
- (t) **(Financial Assistance)**: giving a loan or other financial assistance to a Director or an associate of a Director or a Member, or varying the terms of a loan or other financial assistance previously given to a Director or an associate of a Director or a Member;
- (u) **(Insurance)**: establishing, amending or varying the insurance cover over the Company or its subsidiaries or the business activities of the Company or its subsidiaries or any key insurance policy;
- (v) **(Partnerships and joint ventures)**: entry into, amendment or variation of, a partnership or joint venture;
- (w) **(Documents)**: termination, amendment, variation, assignment, novation, enforcement or waiver of a Related Party Contract or a right thereunder;
- (x) **(Product issuer)**: appointment or amendment of the terms of appointment of a company engaged by the Group to provide Products to, or for the benefit of, Members;
- (y) **(Underwriting policy)**: amending the underwriting arrangements of the Company or its subsidiaries; and
- (z) **(PPS name/logo)**: use of any name or logo which indicate an association or connection with PPS SA or any of its businesses, other than in the ordinary course of the business; or
- (aa) **(Australian OpCo Board)** appoint any directors of Australian OpCo or any other subsidiary of the Company in accordance with the Australian OpCo Constitution.

# Constitution

## Schedule 2 – Board Charter (article 9.10)

# Board Charter

**PPS Mutual Limited (“Company”)**

Dated: 8<sup>th</sup> June 2016



# Board Charter

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# Constitution

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## 1 Purpose of this charter

The purpose of this charter is to specify how the Company is governed so as to promote the Company and protect the interests of Members.

The Board is responsible for the governance of the Company. This charter sets out the role and responsibilities of the Board, which responsibilities are delegated to committees of the Board or to management, as well as the membership and the operation of the Board.

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## 2 Role and responsibilities of the Board

### 2.1 Role

The role of the Board is to provide overall strategic guidance for the Company and effective oversight of management. The Board ensures that the activities of the Company comply with its constitution, from which the Board derives its authority to act, and with legal and regulatory requirements.

To achieve this role, the Board has reserved to itself the following specific responsibilities.

### 2.2 Responsibilities

The Board is responsible for:

- (a) oversight of the Company, including its control and accountability systems;
- (b) appointing and removing the chief executive officer (“CEO”);
- (c) where appropriate, ratifying the appointment and the removal of senior executives and the company secretary;
- (d) providing input into and final approval of management’s development of corporate strategy and performance objectives;
- (e) actively promoting ethical and responsible decision-making, including establishing, maintaining and monitoring compliance of appropriate codes of conduct and other significant corporate policies;
- (f) reviewing, ratifying and monitoring systems of risk management and internal compliance and control and legal compliance;
- (g) monitoring senior executives’ performance and implementation of strategy, and ensuring appropriate resources are available;
- (h) determining the remuneration of all senior executives, including any bonuses;
- (i) approving and monitoring the progress of major capital expenditure, capital management and acquisitions and divestitures; and
- (j) approving and monitoring financial and other reporting.

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## 3 Role and responsibilities of chairperson and company secretary

### 3.1 Chairperson

The chairperson is a director appointed by the Board. The chairperson is responsible for:

- (a) leading the Board in reviewing and discussing Board matters;
- (b) chairing Board meetings and meetings of Members;
- (c) ensuring the efficient organisation and conduct of the Board's function;
- (d) briefing all directors in relation to issues arising at Board meetings;
- (e) facilitating effective contribution by all directors and monitoring Board performance;
- (f) overseeing that membership of the Board is skilled and appropriate for the Company's needs;
- (g) promoting constructive relations between Board members and between the Board and management;
- (h) ensuring that independent directors (if any) meet separately at least annually to consider, among other things, senior executive performance;
- (i) reviewing corporate governance matters with the company secretary and reporting on those matters to the Board; and
- (j) establishing and overseeing the implementation of policies and systems for Board performance review and renewal.

### 3.2 Company secretary

The company secretary acts as secretary of the Board, attending all meetings of the Board as required. The company secretary is accountable to the Board through the chairperson on all corporate governance matters.

The company secretary is responsible for:

- (a) organising Board meetings and director attendance;
- (b) monitoring compliance with Board policy and procedures;
- (c) coordinating the completion and despatch of the Board agenda and briefing materials;
- (d) preparing minutes of meetings and resolutions of the Board and taking these to the chairperson for approval and circulation;
- (e) circulating minutes from committee meetings to the Board; and
- (f) ensuring the Company complies with its requirements under the Corporations Act 2001 (Cwlth) ("**Corporations Act**") regarding registered office, annual returns and notices to be lodged with the Australian Securities and Investments Commission.

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## **4 Delegations of authority**

### **4.1 Delegation to committees**

Under the Company's constitution, the Board may delegate responsibility to committees to consider certain issues in further detail and then report back to and advise the Board.

Standing committees established by the Board will adopt charters setting out the authority, responsibilities, membership and operation of the committee. There are currently no standing committees. The Company may establish committees from time to time to consider other matters of special importance.

Directors are entitled to attend committee meetings and receive committee papers. Committees will maintain minutes of their meetings and are entitled to obtain professional or other advice in order to effectively carry out their proper functions. The chairperson of each committee will report back on committee meetings to the Board at the next full Board meeting.

### **4.2 Delegation to CEO and management**

The Board has delegated to the CEO the authority to manage the day to day affairs of the Company and the authority to control the affairs of the Company in relation to all matters other than those responsibilities reserved to itself in this charter or in the Company's constitution.

The Board may impose further specific limits on CEO delegations. These delegations of authority will be maintained by the company secretary and will be reviewed by the Board as appropriate from time to time.

The CEO has authority to sub-delegate to the senior management team.

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## **5 Membership**

### **5.1 Composition and size**

The Board will initially consist of four members, namely:

- (a) two persons nominated by PPS SA, including the chairman, who will initially be:
  - (i) Michael J Jackson (Chairman); and
  - (ii) Tiffany-Ann Boesch; and
- (b) two persons nominated by Ausmanco, who will initially be:
  - (i) Michael G Pillemer; and
  - (ii) Brian Pillemer.

### **5.2 Conduct of individual directors**

Directors must at all times act in accordance with legal and statutory requirements, and discharge all their duties as directors. Directors must:

- (a) discharge their duties in good faith and in the best interests of the Company and for a proper purpose;
- (b) act with care and diligence, demonstrate commercial reasonableness in their decision making and act with the level of skill and care expected of

- a director of a major company, including applying an independent and enquiring mind to their responsibilities;
- (c) avoid conflicts of interest except in those circumstances permitted by the Corporations Act;
  - (d) not make improper use of information gained through their position as a director;
  - (e) not take improper advantage of their position as a director;
  - (f) notify other directors of a material personal interest when a conflict arises;
  - (g) make reasonable enquiries if relying on information or advice provided by others;
  - (h) undertake any necessary inquiries in respect of delegates;
  - (i) give the Company all the information required by the Corporations Act; and
  - (j) not permit the Company to engage in insolvent trading.

### **5.3 Interests of appointing party**

Subject to clause 5.2 Directors appointed by a particular party may have regard to, and act in the interests of, the party that appointed them.

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## **6 Board process**

### **6.1 Meetings**

All Board meetings will be conducted in accordance with the Company's constitution and the Corporations Act.

Directors are committed to collective decision making, but have a duty to question and raise any issues of concern to them. Matters are to be debated openly and constructively amongst the directors. Individual directors must utilise their particular skills, experience and knowledge when discussing matters at Board meetings.

Directors must keep Board discussions and resolutions confidential, except where they are required to be disclosed.

All directors are generally expected to prepare adequately, attend and participate at each Board meeting. All directors should actively consider the sufficiency of the contents of the board papers that they have been provided for consideration. The Board should assess the information that it receives and the timing of its distribution to ensure the Board has sufficient time to examine the material provided to it for approval.

The Board may request or invite management or external consultants to attend Board meetings, where necessary or desirable.

The Board may conduct meetings by telephone or video conference.

## **6.2 Independent professional advice**

Following consultation with the chairperson, directors may seek independent professional advice at the Company's expense. Generally, this advice will be available to all directors.

## **6.3 Access to management**

The directors have complete and open access to management following consultation with the chairperson and CEO.

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## **7 Review and publication of charter**

The Board is responsible for reviewing this charter and the division of functions and responsibilities in the Company to determine its appropriateness to the needs of the Company from time to time. The charter may only be amended in accordance with the provisions of the Company's constitution.

**Approved by the Board on 8<sup>th</sup> June 2016**