

## Constitution of Eco Villages Australia Ltd

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## Table of Contents

<b>1. Definitions and Interpretation .....</b>	<b>6</b>
1.1. Definitions .....	6
1.2. Interpretation .....	7
1.3. Actions authorised under the Act .....	8
1.4. Corporations Act prevails .....	9
1.5. Invalidity .....	9
1.6. No limit on powers .....	9
<b>2. Effect of Constitution .....</b>	<b>9</b>
<b>3. Objects .....</b>	<b>9</b>
<b>4. Public Company .....</b>	<b>10</b>
<b>5. Powers.....</b>	<b>10</b>
<b>6. Contribution on Winding Up .....</b>	<b>10</b>
<b>7. Promotion of Objects .....</b>	<b>10</b>
7.1. Not-for-profit.....	10
7.2. Exception .....	11
<b>8. Membership .....</b>	<b>11</b>
8.1. Members .....	11
8.2. Membership Classes.....	11
8.3. Eligibility Requirements .....	12
8.4. Application for provisional membership .....	12
8.5. Application for full membership .....	12
8.6. Further information .....	13
8.7. Determination of Directors .....	13
8.8. Entrance fees .....	13
8.9. Notification of determination .....	13
8.10. Certificates.....	13
8.11. Membership not transferable .....	13
<b>9. Fees and Levies.....</b>	<b>13</b>
9.1. Fees .....	13
9.2. Levies .....	14
9.3. Different fees or levies payable.....	14
9.4. Financial contributors.....	14
<b>10. Varying Members' Rights – Special Resolution .....</b>	<b>14</b>
<b>11. Cessation of Membership.....</b>	<b>14</b>
11.1. Non-payment of fees or levies .....	14
11.2. Cessation of membership .....	14
11.3. Continuing rights, liabilities, etc. ....	15
11.4. Non-compliance with Constitution, misconduct .....	15
<b>12. General Meetings .....</b>	<b>15</b>
12.1. Director may convene .....	15
12.2. Member's request .....	15
12.3. Form of request .....	16

12.4.	Refusal to convene .....	16
12.5.	Notice of meeting .....	16
12.6.	Quorum .....	16
12.7.	Determine a quorum .....	17
12.8.	Procedure where no quorum .....	17
12.9.	Election of chairperson .....	17
12.10.	No casting vote .....	17
12.11.	Adjournment .....	18
12.12.	Show of hands or poll .....	18
12.13.	Declaration on show of hands .....	18
12.14.	Demand for poll .....	18
12.15.	Withdraw demand .....	18
12.16.	Poll for chairperson .....	18
12.17.	Voting .....	18
12.18.	Members not to vote unless fully paid .....	19
12.19.	Objection to qualification .....	19
12.20.	Circular resolution .....	19
12.21.	Only Members entitled to vote may vote .....	19
12.22.	Rights of third parties to attend general meetings .....	19
12.23.	Minutes .....	19
<b>13.</b>	<b>Rules for Voting by Proxy .....</b>	<b>20</b>
13.1.	Proxies .....	20
13.2.	Attorneys .....	20
13.3.	Representatives of corporations .....	20
13.4.	Representative need not be a Member .....	20
13.5.	In writing .....	20
13.6.	How to vote .....	20
13.7.	Authority .....	21
13.8.	Form of proxy .....	21
13.9.	Delivery before meeting .....	21
13.10.	Validity .....	21
13.11.	Instrument not valid .....	21
<b>14.</b>	<b>Appointment, Removal and Remuneration of Directors .....</b>	<b>21</b>
14.1.	Number of Directors .....	21
14.2.	Appointment of Directors and Non-Executive Directors .....	21
14.3.	Non-Executive Directors .....	22
14.4.	Rotation of Directors .....	22
14.5.	Re-election of retiring Directors .....	22
14.6.	Removal of Member Directors .....	22
14.7.	Director's expenses .....	22
14.8.	Vacation of office .....	23
<b>15.</b>	<b>Powers and Duties of Directors .....</b>	<b>23</b>
15.1.	Directors manage .....	23

15.2.	All powers of Company .....	23
15.3.	Appointment of attorney .....	23
15.4.	Provisions of power of attorney .....	24
15.5.	Cheques and promissory notes .....	24
<b>16.</b>	<b>Proceedings of Directors.....</b>	<b>24</b>
16.1.	Use of technology .....	24
16.2.	Directors' meetings .....	24
16.3.	Quorum .....	24
16.4.	Directors to continue .....	25
16.5.	Election of chairperson .....	25
16.6.	Chairman not present .....	25
16.7.	No casting vote .....	25
16.8.	Circular resolution .....	25
16.9.	Validity of acts .....	25
16.10.	Decisions of the Directors .....	25
16.11.	Minutes .....	26
<b>17.</b>	<b>Alternate Directors .....</b>	<b>26</b>
17.1.	Appointment.....	26
17.2.	Notice of meetings .....	26
17.3.	Power of alternate .....	26
17.4.	Termination of appointment .....	26
17.5.	Responsibility .....	26
17.6.	No remuneration .....	26
<b>18.</b>	<b>Interested Directors .....</b>	<b>27</b>
18.1.	Notice requirements.....	27
18.2.	Director must not vote.....	27
18.3.	Exception to Rule.....	27
18.4.	No quorum available .....	27
18.5.	Director not disqualified .....	27
18.6.	Standing notice .....	28
18.7.	Other office may be held.....	28
18.8.	Professional Director may act.....	28
<b>19.</b>	<b>By-laws .....</b>	<b>28</b>
<b>20.</b>	<b>Indemnity and Insurance .....</b>	<b>28</b>
20.1.	Indemnity against liability .....	28
20.2.	Insurance .....	29
20.3.	Resolution .....	29
<b>21.</b>	<b>Common Seal .....</b>	<b>29</b>
21.1.	Election may adopt .....	29
21.2.	Duplicate .....	29
21.3.	Prohibited use .....	29
<b>22.</b>	<b>Execution of Documents .....</b>	<b>29</b>
22.1.	Execution of with or without common seal.....	29

22.2.	Execution of deeds .....	30
22.3.	No limitation .....	30
<b>23.</b>	<b>Committee .....</b>	<b>30</b>
23.1.	Delegation to committee .....	30
23.2.	Powers of committee .....	30
23.3.	Committee chairperson .....	30
23.4.	Election of chairperson .....	30
23.5.	Decision by majority .....	30
23.6.	Casting vote .....	30
<b>24.</b>	<b>Managing Director .....</b>	<b>30</b>
24.1.	Appointment .....	31
24.2.	Termination .....	31
24.3.	Remuneration .....	31
24.4.	Powers .....	31
<b>25.</b>	<b>Secretary .....</b>	<b>31</b>
<b>26.</b>	<b>Accounts and Audit.....</b>	<b>31</b>
26.1.	Proper records kept .....	31
26.2.	Auditor .....	31
<b>27.</b>	<b>Inspection of Records .....</b>	<b>31</b>
27.1.	Conditions .....	31
27.2.	Members have no right unless authorised .....	32
27.3.	Directors' right.....	32
<b>28.</b>	<b>Reserves .....</b>	<b>32</b>
28.1.	Make reserve .....	32
28.2.	Deal with reserve .....	32
<b>29.</b>	<b>Notices .....</b>	<b>32</b>
<b>1.</b>	<b>Form of Proxy .....</b>	<b>34</b>

# Constitution of Eco Villages Australia Ltd

## Agreed Terms

### 1. Definitions and Interpretation

#### 1.1. Definitions

In this Constitution, unless the context otherwise requires, the following terms have the corresponding meanings:

- (a) **Act** means the *Corporations Act 2001* (Cth).
- (b) **Company** means the company whose Members have adopted this Constitution.
- (c) **Constitution** means this document containing the rules for the operation of the Company.
- (d) **Director** means a Director of the Company.
- (e) **Electronic Transactions Legislation** means the following:
  - (i) *Electronic Transactions (Queensland) Act 2001* (Qld);
  - (ii) *Electronic Transactions Act 2000* (Nsw);
  - (iii) *Electronic Transactions (Victoria) Act 2000* (Vic);
  - (iv) *Electronic Transactions Act 2001* (Act);
  - (v) *Electronic Transactions Act 2011* (Wa);
  - (vi) *Electronic Communications Act 2000* (Sa);
  - (vii) *Electronic Transactions Act 2000* (Tas);
  - (viii) *Electronic Transactions (Northern Territory) Act* (Nt),or their equivalent.
- (f) **Entry Requirements** has the meaning given in Rule 8.3.
- (g) **Full Member** means a person admitted into the membership class of that name.
- (h) **Full Membership Eligibility Requirements** has the meaning given in Rule 8.3.
- (i) **Major Director Resolution** means a resolution passed by not less than 75% of all Directors present at a meeting and entitled to vote.
- (j) **Major Member Resolution** means a resolution passed by not less than 67% of all Members present at a meeting and entitled to vote.
- (k) **Member** means each person whose name appears in the Register as a Member of the Company, and includes Provisional Members and Full Members.
- (l) **Member Director** means a Director who is a Full Member.
- (m) **Non-Executive Director** means a Director who is not a Member.

- (n) **Notice Address** means the last address specified by a person in the records of the Company and includes:
- (i) each address listed for each relevant person in the records of the Australian Securities and Investments Commission;
  - (ii) any other address nominated by the relevant person as an additional, alternative or substituted Notice Address for the purposes of this Constitution; and
  - (iii) the then current facsimile number or email address nominated as a Notice Address by a person.
- (o) **Ordinary Resolution** means a resolution passed by a majority of votes.
- (p) **Prescribed Rate** means the rate specified by the Company from time to time expressed as a rate per cent per annum or if no rate is specified, the Prescribed Rate is 8% per annum.
- (q) **Provisional Member** means a person admitted into the membership class of that name.
- (r) **Register** means the register of Members of the Company required to be kept by section 169 of the Act.
- (s) **Related Body Corporate** means, in relation to a body corporate, the body corporate which is related to that body corporate within the meaning of the Act.
- (t) **Rules** means the provisions of this Constitution, and **Rule** means any one of them.
- (u) **Secretary** means the secretary, and any assistant or acting secretary, and any other person appointed to perform, whether alone or in addition to any other person or persons, the duties of secretary of the Company.
- (v) **Special Resolution** has the meaning given in section 9 of the Act.

## 1.2. Interpretation

In this Constitution, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words of any gender include all genders;
- (c) alternate grammatical forms of a defined term have a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule, annexure, or appendix is a reference to a clause or paragraph of, and a schedule, annexure, or appendix to this Constitution, and each paragraph and sub-paragraph in a list is to be read independently from the others in a list;
- (e) a reference to an agreement or document (including this Constitution) includes the document as novated, varied, or substituted from time to time, and includes all recitals, background, schedules, appendices and exhibits to it;
- (f) a reference to a person includes a natural person, firm, partnership, body corporate, association, joint venture, trust, trustee, charity and governmental body, authority, agency or other entity;

- (g) a reference to a person or party includes that person or party's estate, personal representatives, executors, administrators, successors, permitted substitutes (including by novation) and permitted assigns;
- (h) a reference to two or more persons is to any of them together and each of them individually;
- (i) a reference to statutes, legislation or regulations includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them, and includes a reference to all orders-in-council, rules, by-laws and ordinances made under them;
- (j) a reference to a section of a statute, or a term defined in a statute, refers to corresponding section/s or defined term/s in amended, consolidated or replacement statutes;
- (k) "including" and similar expressions do not limit the generality of any provision of this Agreement;
- (l) costs and expenses include legal costs and expenses on a full indemnity basis;
- (m) conduct includes an omission, statement or undertaking, whether or not in writing;
- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
- (o) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (p) a reference to "writing" includes printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible or electronic form, in English;
- (q) a reference to "signature" or "signing" means due execution of a document and includes signing by an agent or attorney or representative, or by digital signature;
- (r) a reference to "property" or "asset" includes any real or personal, present or future, tangible or intangible property or asset and any right, interest, revenue or benefit in, under or derived from the property or asset;
- (s) where a person is entitled to vote or holds the right to vote on any matter under this Constitution, that person may vote by proxy or attorney or representative, and a reference to a person being present means present in person or by proxy;
- (t) a word or expression defined in the Act has the meaning given to it in that Act;
- (u) a reference to time is to time at the registered office of the Company;
- (v) a reference to "month" means calendar month;
- (w) a reference to A\$, AUD\$, dollar or \$ is to Australian currency;
- (x) headings and table of contents are for ease of reference only and do not affect interpretation.

### **1.3. Actions authorised under the Act**

Subject to Rule 3, where the Act authorises or permits a company to do any thing if authorised by its constitution, the Company is authorised or permitted by this Constitution to do that thing despite any other provision of this Constitution.



#### 1.4. Corporations Act prevails

Where any provision in this Constitution conflicts with or is inconsistent with any provision of the Act, that provision will be read and interpreted as being subject to the provisions of the Act and will be ineffective, but only to the extent of any conflict or inconsistency.

#### 1.5. Invalidity

This Constitution will, to the extent possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect. If a provision, on its true interpretation or construction is found to be illegal, invalid or unenforceable:

- (a) that provision will, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in the circumstances to give it a valid operation; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it will be deemed to be void and severable and the remaining provisions of this Constitution will not in any way be affected or impaired and will continue regardless of that illegality, invalidity or unenforceability.

#### 1.6. No limit on powers

Where the Company or the Directors or any other person is given a Right under this Constitution:

- (a) the Right is exercisable absolutely and with unfettered discretion and without restriction unless the Right is expressly limited;
- (b) any exercise of that Right on any occasion will not restrict the further exercise of the Right on any other occasion or at any time; and
- (c) this Rule 1.6 applies, subject to any provision of this Constitution, the Act or any other law, to the contrary.

## 2. Effect of Constitution

This Constitution will have effect as a contract:

- (a) between the Company and each Member;
- (b) between the Company and each Director and Secretary; and
- (c) between a Member and each other Member,

under which each Member agrees to observe and perform the Rules so far as they apply to that Member.

## 3. Objects

The Company is established to be a not-for-profit whose purpose is to advance social and public welfare, education, culture and the natural environment by undertaking activities such as:

- (a) establishing, promoting, facilitating, or sponsoring environmentally and economically sustainable residential communities and social enterprises, involving multi-generational affordable housing;

- (b) promoting and advocating environmental and economic sustainability generally, including relevant technologies and practices;
- (c) promoting and advocating the protection, conservation and regeneration of the natural environment;
- (d) promoting, facilitating, sponsoring, or providing educational and community programs relating to environmental and economic sustainability and environmentalism; and
- (e) promoting, sponsoring, engaging, or collaborating with other local and international groups with similar views and purposes.

## 4. Public Company

The Company is registered as a public company limited by guarantee and accordingly:

- (a) the number of Members of the Company must not be less than one (1); and
- (b) the minimum number of Directors that the Company must have at any time is three (3).

## 5. Powers

The Company may by Ordinary Resolution or Special Resolution as the Act requires, exercise any power which by the Act a company limited by guarantee may exercise if authorised by its Constitution.

## 6. Contribution on Winding Up

- (a) Every Member of the Company undertakes to contribute to the property of the Company the amount which is agreed to be paid by each Member to be applied:
  - (i) to payment of the debts and liabilities of the Company contracted before ceasing to be a Member; and
  - (ii) to the costs, charges and expenses of winding up; and
  - (iii) for the adjustment of the rights of the contributors among themselves.
- (b) The liability of each Member under Rule 6(a), will terminate on the day which is one (1) year after the date on which the Member's membership of the Company ceases.
- (c) Until otherwise determined, the amount to be contributed by each Member under this Rule 6 will be \$20.

## 7. Promotion of Objects

### 7.1. Not-for-profit

Except as authorised under Rule 7.2, the income and property of the Company must be applied solely for the benefit and promotion of the Company's objects and no part of the income or property will be:

- (a) paid or transferred directly or indirectly by way of dividends, bonus or otherwise to the Members; or
- (b) paid to Directors as fees or other remuneration or other benefit in money or money's worth.

## **7.2. Exception**

The following payments may be authorised with the prior written approval of the Directors:

- (a) payment in good faith of reasonable and proper remuneration to any Director, officer or servant of the Company or to any Member in return for any services rendered to the Company;
- (b) the payment of interest at a rate not exceeding the rate charged by the Company's bankers on overdrawn accounts on any money lent to the Company by any Member, Director or officer;
- (c) in the case of any Director who is engaged by the Company as a consultant or servant, any reasonable and proper remuneration for services provided to the Company;
- (d) the repayment of reasonable out-of-pocket expenses properly incurred by any Director; or
- (e) payment of a reasonable rental for premises demised or let by any Member to the Company.

## **8. Membership**

### **8.1. Members**

The Members will be made up of any persons that the Directors admit to membership in accordance with these Rules.

### **8.2. Membership Classes**

- (a) There are two classes of Members:
  - (i) Provisional Members:
    - (A) who have no right to vote at any meeting of the Company;
    - (B) who are prohibited from being appointed as a Director;
    - (C) who may, subject to satisfying the Full Membership Eligibility Requirements, apply to become Full Members; and
    - (D) whose membership may, at any time, be terminated by:
      - (1) resolution of the Directors; or
      - (2) Ordinary Resolution of the Members passed at a general meeting; and

- (ii) Full Members:
  - (A) who have a right to vote at all meetings of the Company;
  - (B) who are eligible to apply to be elected as a Director; and
  - (C) whose membership may, at any time, be terminated by Major Member Resolution passed at a general meeting.
- (b) Subject to Rule 5, the Directors may create other classes of Members and determine the rights and privileges attaching to those classes including, but not limited to, the voting rights of the Members in each class.

### 8.3. Eligibility Requirements

- (a) The Directors may, from time to time, determine by Major Director Resolution:
  - (i) the requirements which must be satisfied by a person in order to be eligible to apply to the Company to become a Provisional Member (**Entry Requirements**); and
  - (ii) the requirements which must be satisfied by a person in order to be eligible to apply to the Company to become a Full Member (**Full Membership Eligibility Requirements**).
- (b) Without limitation, the Entry Requirements and the Full Membership Eligibility Requirements may include requirements relating to:
  - (i) the extent and duration of a person's involvement with the Company and its activities (including time commitment);
  - (ii) whether a person is applying alone, or together with others in a joint application;
  - (iii) the extent of financial contributions made by a person to, or for the benefit of, the Company and/or its activities;
  - (iv) the extent to which a person may, or is likely to, contribute to the Company and its activities;
  - (v) the extent to which the Members approve a person to be an eligible applicant; and
  - (vi) for membership applications to become a Full Member, the period of time which a person has been a Provisional Member.

### 8.4. Application for provisional membership

- (a) Any person who meets the Entry Requirements will be eligible for membership of the Company as a Provisional Member.
- (b) In order to be admitted as a Provisional Member, every applicant for membership must:
  - (i) execute and deliver to the Company an application for membership in the form which the Directors determine; and
  - (ii) pay to the Company an entrance fee (if any) determined by the Directors.

### 8.5. Application for full membership



- (a) Any person who meets the Full Membership Eligibility Requirements will be eligible for membership of the Company as a Full Member.
- (b) In order to be admitted as a Full Member, every applicant must:
  - (i) execute and deliver to the Company an application for membership in the form which the Directors determine; and
  - (ii) pay to the Company an entrance fee (if any) determined by the Directors.

#### **8.6. Further information**

An applicant for membership must provide in writing, any other information in addition to that contained in the application, as the Directors require.

#### **8.7. Determination of Directors**

- (a) The Directors will determine the outcome of each membership application within a reasonable time after receipt.
- (b) The Directors may approve or reject any applicant for membership in the Directors' absolute discretion.
- (c) The Directors are not required to give or assign any reason or explanation for the approval or rejection of any application for membership.

#### **8.8. Entrance fees**

The Directors may determine the entrance fee payable by any person applying for membership of the Company. Different entrance fees may apply for different classes of membership. The Directors may at any time and as many times as they decide, change the entrance fees payable. Until the Directors otherwise determine, no entrance fees are payable.

#### **8.9. Notification of determination**

- (a) When an application for membership has been accepted, the Secretary will send to the applicant written notice of the acceptance and will enter the applicant's name in the Register.
- (b) When an application for membership is rejected, the Secretary will send to the applicant written notice of the rejection.

#### **8.10. Certificates**

A certificate of membership may be issued by the Company to any Member. Any certificate issued will remain the property of the Company and must be returned to the Company on written demand by the Secretary.

#### **8.11. Membership not transferable**

Membership of the Company is not transferable by operation of law or otherwise. All rights and privileges of membership of the Company will cease immediately upon a person ceasing to be a Member for any reason.

## **9. Fees and Levies**

### **9.1. Fees**

Members must pay annual membership fees and other fees in the amounts and at the times determined by the Directors from time to time.

## **9.2. Levies**

In order to provide additional funds required for the operation of the Company, the Directors may determine that levies are to be paid by Members and may fix the amount and the dates for payment of them. Until determined by the Directors, no levies will be payable by Members.

## **9.3. Different fees or levies payable**

In determining fees or levies under this Rule, the Directors may differentiate between classes of Members as to the amounts and timing of fees or levies payable.

## **9.4. Financial contributors**

The Directors may by resolution determine to waive or reduce the membership fees or levies payable by Members who make financial contributions exceeding the threshold amount specified by the Directors in their resolution.

# **10. Varying Members' Rights – Special Resolution**

- (a) If the membership of the Company is divided into different classes of Members, the rights attached to any class of membership may be varied with the written consent of 75% of the Members in that class, or with the sanction of a Special Resolution passed at a meeting of the Members of that class.
- (b) The right to vary membership rights in Rule 10(a) may be exercised unless otherwise provided by the terms of acceptance of the Members of that class and whether or not the Company is being wound up.

# **11. Cessation of Membership**

## **11.1. Non-payment of fees or levies**

- (a) If any fees or levies payable by a Member remain unpaid for a period, determined by the Directors, after the due date for payment, the Directors may by resolution suspend the Member's rights and privileges (including the right to vote) or terminate the Member's membership of the Company. The Directors may reinstate the Member on payment of all arrears if the Directors think fit to do so.
- (b) Until otherwise determined by the Directors, the period during which the Member's fees or levies must remain unpaid under Rule 11.1(a) will be two (2) calendar months.

## **11.2. Cessation of membership**

A Member's membership of the Company will cease immediately:

- (a) if the Member resigns or surrenders that membership by written notice to the Secretary;
- (b) if the Member's membership is terminated under these Rules;
- (c) in the case of a Member who is an individual, if the Member:
- (d) dies;

- (e) is found to be of unsound mind;
- (f) has his or her personal estate administered or it becomes liable to be dealt with in any way under the law relating to mental health;
- (g) commits an act of bankruptcy;
- (h) is declared bankrupt; or
- (i) makes any arrangement or enters into a composition with creditors generally;
- (j) in the case of a Member who is not an individual, if the Member:
  - (i) has a receiver or receiver and manager appointed, or enters into official management, administration or liquidation; or
  - (ii) being a corporation, has a petition for its winding up presented to a Court having appropriate jurisdiction, or passes a resolution of its members for its winding up, or enters into a scheme or arrangement (not being merely for the purpose of amalgamation or reconstruction).

### 11.3. Continuing rights, liabilities, etc.

The termination of a Member's membership will not prejudice, lessen or affect the rights, duties, liabilities and obligations of the Member whether they:

- (a) arise under these Rules or otherwise; or
- (b) exist at the date of the termination or arise or crystallise after that date,

and in particular, (but without limitation) that termination will not relieve a Member from any obligation to record or account for or pay any levies or fees referred to in these Rules.

### 11.4. Non-compliance with Constitution, misconduct

- (a) If any Member wilfully refuses or neglects to comply with this Constitution or is, does or fails to do any act or thing which, in the opinion of the Directors, is unacceptable or prejudicial to the interests of the Company, the Directors may by resolution suspend or expel the Member from the Company.
- (b) Prior to exercising the right in Rule 11.4(a), the Directors must give the Member at least one (1) weeks' notice of the meeting of the Directors at which that resolution is to be put and of what is alleged against them and of the intended resolution. The Member must be given the opportunity of giving orally or in writing the Member's explanation or defence before the passing of such resolution.

## 12. General Meetings

### 12.1. Director may convene

Any Director may convene a general meeting of Members whenever that Director decides. A Director may cancel any meeting convened by that Director.

### 12.2. Member's request



The Directors must call and arrange to hold a general meeting on the request of:

- (a) any Member or Members holding at least 5% of the votes that may be cast at a general meeting; or
- (b) at least 20 Members who are entitled to vote at a general meeting.

### **12.3. Form of request**

The request from the Members must:

- (a) state any resolution to be proposed at the meeting;
- (b) be signed by the Members making the request; and
- (c) be given to the Company.

### **12.4. Refusal to convene**

The Directors may refuse to convene the general meeting if the voting on the proposed resolution is not within the power of the Members.

### **12.5. Notice of meeting**

- (a) A general meeting can only be convened by giving the Members notice of the meeting.
- (b) A notice of general meeting does not need to be given to Members who are not entitled to notice of meetings.
- (c) A notice of a general meeting must:
  - (i) be given at least 21 days before the date of the meeting;
  - (ii) specify the place, the day and the time of the meeting;
  - (iii) describe the nature of the business to be transacted at the meeting; and
  - (iv) contain any other information required by the Act.
- (d) The Directors may postpone a general meeting or change the venue for the meeting by giving written notice to all Members who received the original notice of meeting at least 48 hours before the appointed time. That notice must specify the time and place for the postponed meeting.
- (e) If a Member does not receive a meeting notice or the Directors accidentally omit to give the Member a meeting notice, that omission will not invalidate the proceedings or any resolution passed at the meeting.
- (f) No business is to be transacted at any general meeting except that contained in the meeting notice unless all the Members agree otherwise.

### **12.6. Quorum**

- (a) Business must not be transacted at a general meeting if a quorum of Members is not present when the meeting proceeds to business.
- (b) A quorum will be:



- (i) if the Company has only one Member entitled to receive notice of and vote at the meeting, that Member; or
  - (ii) in every other case, two Members who are entitled to receive notice of and vote at the meeting.
- (c) A quorum of Members must be present throughout each general meeting. If a quorum is not present at any time, the meeting is not validly convened but without affecting the validity of any business conducted before the absence of a quorum occurs.

#### **12.7. Determine a quorum**

In determining whether a quorum is present, a person attending as a proxy, or representing a body corporate that is a Member, is deemed to be a Member.

#### **12.8. Procedure where no quorum**

- (a) If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting will be adjourned.
- (b) The adjourned meeting will be rescheduled to take place on a day and time and at the place that the Directors decide.
- (c) If no Directors are present at the meeting or if no decision is made by the Directors, the meeting will take place on the same day and at the same time and place as originally notified, but in the next succeeding week.
- (d) If at the rescheduled meeting a quorum is not present within 30 minutes after the appointed time, then:
  - (i) where the meeting is convened on the requisition of Members, the meeting will be dissolved unless it is adjourned under Rule 12.11; or
  - (ii) in any other case, the Members present will be deemed to constitute a quorum or, if no Members are present, the meeting will be dissolved.

#### **12.9. Election of chairperson**

- (a) The Directors will elect one Director to preside as chairperson at every general meeting. If the Directors have elected a chairperson of Directors, that person will be deemed to be elected as the chairperson at each general meeting.
- (b) Where a general meeting is held and:
  - (i) a chairperson of Directors has not been elected;
  - (ii) the chairperson of Directors is not present within 15 minutes after the appointed time; or
  - (iii) the chairperson of Directors is unwilling to act,

the Members present will elect one Member to be chairperson of the meeting.

#### **12.10. No casting vote**

The chairperson does not have a casting vote in addition to any vote the chairperson has as a Member.

### 12.11. Adjournment

- (a) The chairperson may adjourn any meeting of Members.
- (b) An adjournment of a meeting of Members must only be made:
  - (i) with the consent of the meeting provided a quorum is present;
  - (ii) in the case of an adjournment under Rule 12.8(d), with the consent of Members present and entitled to vote; or
  - (iii) if directed by the meeting to do so.
- (c) Any adjournment may change the time or the venue for the meeting.
- (d) Only business left unfinished from the meeting adjourned must be transacted at any rescheduled meeting.
- (e) If a meeting is to be adjourned for:
  - (i) 30 days or more, notice of the adjourned meeting must be given as if it was an original meeting; and
  - (ii) less than 30 days, a notice of meeting is not required to be given.

### 12.12. Show of hands or poll

Any vote taken at a general meeting is decided on a show of hands unless a poll is demanded:

- (a) by the chairperson; or
- (b) by at least two (2) Members present in person or by proxy; or
- (c) Members with at least 5% of the votes that may be cast on the resolution on a poll, present in person or by proxy.

### 12.13. Declaration on show of hands

If a poll is not demanded, the chairperson's declaration that a resolution has been carried or lost with an entry to that effect in the minute book is conclusive evidence of that fact. It is not necessary to record the number or proportion of votes recorded for or against the resolution.

### 12.14. Demand for poll

A poll will be taken immediately if one is demanded or at any other time after an interval or adjournment or otherwise as the chairperson decides. The result of the poll will be recorded as the resolution of the meeting at which the poll was demanded.

### 12.15. Withdraw demand

The demand for a poll may be withdrawn at any time.

### 12.16. Poll for chairperson

Any poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.

### 12.17. Voting



Subject to any rights or restrictions attached to any class of membership:

- (a) at meetings of Members or classes of Members, each Member entitled to vote may vote in person or by proxy or attorney or by representative (if a body corporate); and
- (b) on a show of hands every person present who is a Member or a representative of a Member has one vote, and on a poll every person present in person or by proxy or attorney has one vote.

#### **12.18. Members not to vote unless fully paid**

A Member is only entitled to vote at a general meeting if all fees and levies and other amounts presently payable by the Member have been paid.

#### **12.19. Objection to qualification**

Any objection to the qualification of a person to vote must be made at the same meeting at which that person's vote is tendered. Any objection must be referred to the chairperson of the meeting whose decision is final and:

- (a) any vote approved will be valid for all purposes; or
- (b) any vote disallowed will be invalid and must be disregarded.

#### **12.20. Circular resolution**

The Company may pass a resolution without a general meeting if all of the Members entitled to vote on the resolution sign a document stating that they are in favour of the resolution. Duplicate copies of the document may be used for signing. The resolution is deemed to be passed when the last Member signs.

#### **12.21. Only Members entitled to vote may vote**

Only those Members who belong to a class of Members who are entitled to vote at a general meeting whether in person or by proxy will be entitled to vote.

#### **12.22. Rights of third parties to attend general meetings**

Even if they are not Members of the Company, the following persons have the right to attend any general meeting and, if requested by the Directors, to speak at the general meeting:

- (a) any Director;
- (b) any Secretary of the Company; and
- (c) any other person invited by the Directors.

#### **12.23. Minutes**

The Directors must ensure that proper minutes are made of:

- (a) all general meetings of the Company;
- (b) all appointments of officers;
- (c) the proceedings of all general meetings;
- (d) the attendance at and business transacted at general meetings,

and the minutes of any meeting, if purporting to be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting, will be conclusive evidence of the matters recorded in them without any further proof.

## **13. Rules for Voting by Proxy**

### **13.1. Proxies**

A Member who is entitled to attend and cast a vote at a general meeting may appoint a person as the Member's proxy to attend and vote for the Member at the meeting and in that case:

- (a) the appointment may specify the proportional number of votes that the proxy may exercise;
- (b) if the Member is entitled to cast two (2) or more votes at the meeting, they may appoint two (2) proxies. If the Member appoints two (2) proxies and the appointment does not specify the proportion or number of the Member's votes each proxy may exercise, each proxy may exercise half of the votes;
- (c) an appointment of a proxy may be revoked at any time before the vote to which the proxy relates is exercised by written notice delivered to the Secretary; and
- (d) any fractions of votes resulting from the application of Rules 13.1(a) or 13.1(b) must be disregarded.

### **13.2. Attorneys**

Any Member may, by power of attorney, appoint an attorney to act on the Member's behalf at all or any meetings of the Company. The power of attorney or a copy of it, verified in a manner satisfactory to the Directors, must be produced for inspection at the registered office or any other place specified for that purpose in the notice convening the meeting with evidence of proper execution as the Directors require, not less than forty-eight (48) hours before the meeting.

### **13.3. Representatives of corporations**

Any corporation which is a Member may appoint a representative to attend and vote for that corporation at a general meeting of the Company.

### **13.4. Representative need not be a Member**

A proxy, attorney or a representative need not be a Member of the Company and the appointment may be revoked at any time.

### **13.5. In writing**

An instrument appointing a proxy must be in writing and signed by:

- (a) the appointor;
- (b) the appointor's attorney; or
- (c) the person authorised under the Act or by an authorised officer or attorney of the appointor, where the appointor is a body corporate.

### **13.6. How to vote**

If the document appointing a proxy specifies how the proxy is to vote in relation to a resolution, the proxy must vote as specified in the document. Any vote tendered otherwise is invalid and must be disregarded.

### **13.7. Authority**

A document appointing a proxy confers the authority to demand a poll.

### **13.8. Form of proxy**

The appointment of a proxy must be substantially in the form in Schedule 1.

### **13.9. Delivery before meeting**

- (a) The appointment of a proxy is not valid unless the appointment document and a certified copy of any power of attorney or other authority under which that document is signed are delivered to the Company.
- (b) The relevant documents must be delivered, not less than 48 hours before the appointed meeting time.
- (c) The relevant documents must be delivered to the Company's registered office or to any other place in Australia specified in the notice convening the meeting.

### **13.10. Validity**

A vote tendered in accordance with a proxy or a power of attorney is valid even if:

- (a) the appointor or principal dies or becomes mentally incapacitated;
- (b) the proxy or power of attorney is revoked in any way,

but only if the Company had no written notice of any defect before any authority is exercised.

### **13.11. Instrument not valid**

An instrument appointing a proxy will not be valid after the expiration of twelve (12) months from the date of its execution.

## **14. Appointment, Removal and Remuneration of Directors**

### **14.1. Number of Directors**

- (a) The number of Directors must not be less than three (3). The Company may by Ordinary Resolution passed at a general meeting of the Members:
  - (i) increase or reduce the minimum number of Directors but must not reduce the minimum number of Directors below three (3); and
  - (ii) determine a maximum number of Directors, failing which there is no maximum.
- (b) At all times, at least two (2) Directors must be Full Members.

### **14.2. Appointment of Directors and Non-Executive Directors**

- (a) The Directors will be appointed by Special Resolution of the Members.

- (b) The Directors, once elected, have the power to appoint any Full Member as a Director to fill a casual vacancy or as an addition to the board, provided that the number of Directors does not exceed any maximum number of Directors fixed by this Constitution.

### **14.3. Non-Executive Directors**

Subject to Rule 14.1 being complied with, a person who is not a Member may, at any time, be appointed as a Non-Executive Director:

- (a) by resolution of the Members; or
- (b) by resolution of the Member Directors (with all Non-Executive Directors not being entitled to vote on whether a person is appointed or removed as a Non-Executive Director).

### **14.4. Rotation of Directors**

- (a) At the first annual general meeting of the Company, all the Directors must retire from office.
- (b) At every subsequent annual general meeting:
  - (i) one-third of the Member Directors, or if the number of Member Directors is not a multiple of three (3), then the number nearest to one-third, must retire from office; and
  - (ii) all Non-Executive Directors must retire from office.
- (c) The Member Directors to retire at an annual general meeting are those who have been longest in office since their election. As between persons who became Member Directors on the same date, the Member Directors to retire will be determined by lot.
- (d) A retiring Member Director is immediately eligible for re-election.

### **14.5. Re-election of retiring Directors**

The Company may, by Special Resolution, fill a vacated Member Director's office by electing a person who is a Full Member to that office. If the vacated office is not filled, the retiring Member Director must, if offering themselves for re-election, be deemed to have been re-elected unless at that meeting it is resolved not to fill the vacated office.

### **14.6. Removal of Member Directors**

- (a) The Company may remove any Member Director and appoint another Director as a replacement.
- (b) The removal or replacement of a Member Director must be effected by Special Resolution of the Company.
- (c) The removal or replacement of a Non-Executive Director may be effected by ordinary resolution of the Company.

### **14.7. Director's expenses**

The Directors will be entitled to be reimbursed all travelling and other expenses properly incurred by them:

- (a) in attending meetings of the Directors or any committee of the Directors;
- (b) in attending general meetings of the Company; or
- (c) in connection with the Company's business.

#### **14.8. Vacation of office**

The office of a Director becomes vacant if:

- (a) required by the Act;
- (b) the Director is removed under these Rules;
- (c) the Director dies or becomes mentally incapacitated or the Director's estate is liable to be dealt with under a law relating to mental health;
- (d) the Director becomes bankrupt or makes any arrangement or composition with creditors;
- (e) the Director resigns;
- (f) the Director ceases to be a Member, unless they are appointed as a Non-Executive Director;
- (g) the Director is absent from Directors' meetings for at least 6 months without the consent of the other Directors; or
- (h) the Director holds any other office of profit under the Company, except that of managing Director, without the consent of the Company in general meeting.

## **15. Powers and Duties of Directors**

### **15.1. Directors manage**

- (a) Subject to the Act and to these Rules, the Company's business will be managed by the Directors.
- (b) The Directors are entitled to pay or reimburse all expenses incurred in promoting and forming the Company.
- (c) The Directors may exercise all powers of the Company except where those powers must be exercised by the Company in general meeting under the Act or these Rules.

### **15.2. All powers of Company**

Without limiting Rule 15.1, the Directors may exercise all the powers of the Company to:

- (a) borrow money;
- (b) charge any property or business of the Company or all or any of its uncalled capital;
- (c) issue debentures; or
- (d) give any other security for a debt, liability or obligation of the Company or of any other person.

### **15.3. Appointment of attorney**



- (a) The Directors may appoint any person or persons under a power of attorney to be the attorney or attorneys of the Company.
- (b) The appointment may be:
  - (i) for any purpose; or
  - (ii) in relation to any of the Directors powers, authorities and discretions; or
  - (iii) for any period; and/or
  - (iv) subject to any conditions as the Directors decide.

#### **15.4. Provisions of power of attorney**

Any power of attorney may contain provisions for the protection and convenience of persons dealing with the attorney as the Directors decide and may authorise the attorney to delegate all or any of the powers, authorities and discretions vested in them.

#### **15.5. Cheques and promissory notes**

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed:

- (a) by any two Directors; or
- (b) in any other manner as the Directors decide.

## **16. Proceedings of Directors**

### **16.1. Use of technology**

Any Directors' meeting may be conducted at more than one venue by using any technology that gives each Director a reasonable opportunity to participate in the meeting and permits each Director present to hear and be heard by each other Director present.

### **16.2. Directors' meetings**

- (a) Any Director may convene a Directors' meeting. The Secretary must convene a meeting at the request of a Director.
- (b) A written notice of a Directors' meeting must be sent to each Director within seven (7) days after a request to convene a meeting.
- (c) The notice may be given by telephone or other electronic means of communication. The notice must specify:
  - (i) the date and time for the proposed meeting;
  - (ii) the venue for the meeting unless the meeting is conducted under Rule 16.1;
  - (iii) if the meeting is to be conducted under Rule 16.1, the method for conducting the meeting; and
  - (iv) the nature of the business to be transacted at the meeting.

### **16.3. Quorum**





- (a) A quorum at a Directors' meeting will be:
- (i) at least two (2) Directors; or
  - (ii) such other number of Directors specified by a resolution of the Directors.
- (b) A quorum of Directors must be present throughout each Director's meeting. If a quorum is not present at any time the meeting is not validly convened but without affecting the validity of any business conducted before the absence of a quorum occurs.

#### **16.4. Directors to continue**

Where a vacancy in the office of a Director occurs, the remaining Directors may continue to act. If the number of remaining Directors is insufficient to constitute a quorum, the Directors may act only for the purpose of increasing the number of Directors to that required to constitute a quorum or to convene a general meeting.

#### **16.5. Election of chairperson**

The Directors may elect one Director as chairperson of their meetings and may determine the period for which the chairperson is to hold office.

#### **16.6. Chairman not present**

Where a Directors' meeting is held and the chairperson:

- (a) has not been elected; or
- (b) is not present within 15 minutes after the appointed time; or
- (c) is unwilling to act,

then the Directors present will elect one other Director to be chairperson of the meeting.

#### **16.7. No casting vote**

The chairperson does not have a casting vote in addition to any vote the chairperson has as a Director.

#### **16.8. Circular resolution**

The Directors may pass a resolution without a Directors' meeting if all of the Directors entitled to vote on the resolution sign a document stating that they are in favour of the resolution. Duplicate copies of the document may be used for signing. The resolution is deemed to be passed when the last Director signs.

#### **16.9. Validity of acts**

All things done by any Directors' meeting or by a committee of Directors or by any person acting as a Director will be valid even though it subsequently becomes known:

- (a) that there was some defect in the appointment of a person to be a Director or a Member of the committee, or to act as a Director; or
- (b) that a person appointed was disqualified.

#### **16.10. Decisions of the Directors**

Any question arising at a Directors' meeting or any committee of Directors is determined by a simple majority of votes of the Directors unless otherwise stipulated in these Rules or the Act.

## 16.11. Minutes

The Directors will cause proper minutes to be made of:

- (a) all Director's meetings;
- (b) all appointments of officers;
- (c) the proceedings of all Director's meetings and committees of Directors;
- (d) the attendance at all meetings of the Directors and the business transacted at those meetings,

and any minutes purporting to be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting, will be conclusive evidence of the matters recorded in them without any further proof.

## 17. Alternate Directors

### 17.1. Appointment

A Member Director may appoint any person to be an alternate Director in his or her place during any period as the Director requires, but only:

- (a) with the approval of the other Directors; and
- (b) while the appointor is not available to act.

### 17.2. Notice of meetings

- (a) An alternate Director is entitled to notice of all Directors' meetings unless the appointor is available to act.
- (b) An alternate Director is entitled to vote at Directors' meetings unless the appointor is present at the meeting.

### 17.3. Power of alternate

An alternate Director may exercise any of the appointor's powers during any period that the appointor is unavailable to do so. The exercise of any power by the alternate Director is deemed to be the exercise of that power by the appointor.

### 17.4. Termination of appointment

The appointment of an alternate Director will terminate:

- (a) on notice by the appointor even though the appointment period has not expired; or
- (b) automatically if the appointor ceases to be a Director.

### 17.5. Responsibility

An alternate Director will, whilst acting as Director, be responsible to the Company for his or her own acts and defaults and will not be deemed to be the agent of the Director by whom he or she was appointed.

### 17.6. No remuneration



An alternate Director will not be entitled in that capacity to receive any remuneration from the Company.

## **18. Interested Directors**

### **18.1. Notice requirements**

- (a) If a Director has a material personal interest in any matter that relates to the affairs of the Company, the Director must disclose that interest to the other Directors unless the Director is not required to disclose the interest in the circumstances listed in Section 191(2) of the Act.
- (b) The notice disclosing the Director's material personal interest must:
  - (i) give details of the nature and extent of the interest and how it relates to the affairs of the Company;
  - (ii) be given at a Directors' meeting as soon as practicable after the Director becomes aware of the interest; and
  - (iii) be recorded in the minutes of the Directors' meeting at which the notice is given.

### **18.2. Director must not vote**

A Director who has a material personal interest in any matter being considered at a Director's meeting must not be present while the matter is being considered and must not vote on the matter.

### **18.3. Exception to Rule**

Regardless of Rule 18.2, if:

- (a) the Director is not required to disclose the interest under Section 191 of the Act;
- (b) the Director has disclosed the interest under Section 191 of the Act and the other Directors not having a material personal interest in the matter pass a resolution that:
  - (i) identifies the Director, the nature and extent of the Director's interest in the matter and its relation to the affairs of the Company; and
  - (ii) states that those Directors are satisfied that the interest should not disqualify the Director from voting on the matter or being present; or
- (c) ASIC has determined that the Director may be present and vote under Section 196 of the Act,

then the Director may be present at the meeting considering the matter and may vote in relation to it.

### **18.4. No quorum available**

If a quorum of Directors is not present at any meeting because of the operation of Rule 18.2, any Director may call a general meeting and the general meeting may pass a resolution to deal with the matter.

### **18.5. Director not disqualified**

If a Director is permitted to be present and to vote by virtue of Rule 18.3:



- (a) that Director will not be disqualified by the office from contracting with the Company either as vendor, purchaser or otherwise;
- (b) no contract made by that Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which that Director is in any way interested may be avoided by reason only of that Director holding that office or of the fiduciary relationship established by it;
- (c) that Director will not be liable to account to the Company for any profit realised under any contract or arrangement by reason only of that Director holding the office or of the fiduciary relationship established by it;
- (d) that Director may:
  - (i) execute any deed or document on behalf of the Company; and
  - (ii) count in a quorum.

### **18.6. Standing notice**

- (a) A Director may give the other Directors a standing notice that:
  - (i) the Director is a Director or Member of any specified company or firm and is to be regarded as interested in all subsequent transactions with that company or firm; or
  - (ii) the Director has any other interest in any matter,
 at any time and whether or not the matter relates to the Company's affairs at the time.
- (b) The notice under Rule 18.6(a) must comply with Section 192 of the Act and will only be effective if it has not expired at any relevant time.
- (c) If a notice is given in accordance with Rule 18.6(a) and the notice is effective at the relevant time, the notice will be sufficient disclosure under these Rules in relation to any contract, proposed contract or arrangement to be made by the Company.

### **18.7. Other office may be held**

A Director may hold any other office or place of profit, except that of auditor, in the Company in conjunction with the directorship and may be appointed upon terms of remuneration, tenure of office and otherwise as the Directors decide.

### **18.8. Professional Director may act**

Any Director may act in a professional capacity for the Company, and will be entitled to remuneration for professional services regardless of the directorship.

## **19. By-laws**

The Directors may, at any time and from time to time, by Major Director Resolution, determine a set of by-laws which apply to, and regulate the conduct of, the Members, provided that such by-laws must not be inconsistent with this Constitution.

## **20. Indemnity and Insurance**

### **20.1. Indemnity against liability**

To the extent permitted by the Act, the Company may indemnify every person who is, or who has been, a Director or officer of the Company or any Related Body Corporate against:

- (a) any liability incurred by them in their capacity as a Director or officer, to a person other than the Company or Related Body Corporate, except where the liability relates to a wilful breach of duty or a contravention of section 181-184 of the Act;
- (b) any liability for legal costs or expenses incurred by them in defending any proceedings in which judgement is given in their favour; or
- (c) any liability for legal costs or expenses incurred by them in defending any proceedings in which they are acquitted or the Court grants relief in their favour.

## **20.2. Insurance**

To the extent permitted by the Act, the Company may insure or pay any premiums on a policy of insurance for a Director or officer of the Company or of a Related Body Corporate against any liability for which the Company indemnifies the Director or officer under Rule 20.1.

## **20.3. Resolution**

A Director may vote in favour of a resolution that the Company grant an indemnity pursuant to Rule 20.1, take insurance or pay the premiums on an insurance policy pursuant to Rule 20.2 even though the Director has a direct and material interest in the outcome of the resolution.

# **21. Common Seal**

## **21.1. Election may adopt**

The Directors may resolve that the Company adopt a common seal. If the Company adopts a common seal, it will include:

- (a) only the Company's name where the Company has its ACN as its name; or
- (b) the Company's name, the expression "ACN" and its Australian Company Number in all other cases.

## **21.2. Duplicate**

The Directors may adopt a duplicate common seal. Any duplicate common seal must be a copy of the common seal with the words "Duplicate Seal", or "Certificate Seal" added to it.

## **21.3. Prohibited use**

A Director must not use, or authorise the use of, a seal which purports to be the common seal of the Company (or a duplicate of the common seal) if the common seal does not comply with the requirements of this Rule.

# **22. Execution of Documents**

## **22.1. Execution of with or without common seal**

The Company may execute a document with or without affixing a common seal (if any). The Company executes a document if the document is signed by:

- (a) two Directors; or

- (b) one Director where that Director is authorised by a resolution of a Directors' meeting;  
or
- (c) a Director and the Secretary.

## **22.2. Execution of deeds**

The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with this Rule 22.

## **22.3. No limitation**

This Rule will not be interpreted as limiting the manner in which the Company may execute a document (including a deed).

# **23. Committee**

## **23.1. Delegation to committee**

The Directors may delegate any of their powers to any committee or committees of Directors as they decide.

## **23.2. Powers of committee**

A committee to which any powers have been delegated must exercise the powers delegated in accordance with any directions of the Directors. A power exercised in accordance with those directions is deemed to have been exercised by the Directors.

## **23.3. Committee chairperson**

The members of a committee may elect one of their number as chairperson of their meetings.

## **23.4. Election of chairperson**

Where a committee meeting is held and:

- (a) a chairperson has not been elected; or
- (b) the chairperson is not present within 15 minutes after the appointed time; or
- (c) the chairperson is unwilling to act,

the committee members present may elect one of their number to be chairperson of the meeting.

## **23.5. Decision by majority**

Questions arising at a committee meeting will be determined by a majority of votes of the committee members who are present and voting.

## **23.6. Casting vote**

The chairperson has a casting vote, if necessary, in addition to any vote the chairperson has as a committee member.

# **24. Managing Director**

## **24.1. Appointment**

The Directors may from time to time appoint one or more Directors to be the managing Director of the Company. The managing Director's appointment will be for a period and on terms as the Directors decide. The Directors may revoke the managing Director's appointment.

## **24.2. Termination**

A managing Director's appointment automatically terminates if he or she ceases for any reason to be a Director.

## **24.3. Remuneration**

A managing Director will be entitled to receive remuneration determined by the Directors.

## **24.4. Powers**

- (a) The Directors may confer upon a managing Director any of the powers exercisable by them with any conditions or restrictions as the Directors decide.
- (b) Any of those powers may be made concurrent with or exclusive of the powers of the Directors.
- (c) The Directors may at any time withdraw or vary any of those powers.

## **25. Secretary**

- (a) The Secretary will be appointed by the Directors on terms and conditions determined by the Directors.
- (b) The Directors may appoint a person as an additional Secretary or as acting Secretary or as a temporary substitute for the Secretary who will, for the purposes of these Rules, be deemed to be the Secretary.
- (c) The Directors may at any time remove or replace the Secretary.

## **26. Accounts and Audit**

### **26.1. Proper records kept**

The Directors must ensure that proper accounting and other records are kept. A balance sheet and profit and loss account must be prepared and distributed to all Members at least once in each calendar year.

### **26.2. Auditor**

The Company must appoint an auditor or auditors, whose duties will be regulated in accordance with the Act.

## **27. Inspection of Records**

### **27.1. Conditions**

The Directors may determine whether and under what conditions the accounting records or other documents of the Company will be open to the inspection of Members.

**27.2. Members have no right unless authorised**

A Member does not have the right to inspect any document of the Company except as provided by the Act or authorised by the Directors or by the Company in general meeting.

**27.3. Directors' right**

The Directors have the right at any time to inspect the accounting records or other documents of the Company, whether or not they are a Member.

**28. Reserves****28.1. Make reserve**

The Directors may:

- (a) write off from the Company's earnings any amount for loss or depreciation of any property; and/or
- (b) set aside any amount out of the Company's profits,

as a reserve fund to meet contingencies or for repairing, improving and/or maintaining any of the Company's property and/or for any other purposes which are conducive to the interests of the Company.

**28.2. Deal with reserve**

The Directors may:

- (a) invest, lend or dispose of any reserved amounts in any way;
- (b) deal with, vary and dispose of any investments or parts of them for the benefit of the Company;
- (c) divide the reserve fund into special funds; and/or
- (d) employ the assets constituting the reserve fund in the business of the Company and without being bound to keep the same separate from other assets.

**29. Notices**

Any notice or other communication given in relation to this Constitution:

- (a) must be:
  - (i) in English and in legible writing;
  - (ii) addressed to the recipient's Notice Address;
  - (iii) signed by or on behalf of the party giving the notice;
- (b) must be delivered, sent by pre-paid mail, transmitted by facsimile, or sent by email to the recipient's email address, and to that end the parties consent to sending and receiving electronic communications pursuant to the Electronic Transactions Legislation;
- (c) will be deemed to be received by the recipient:



- (i) if delivered by hand, at the time of delivery;
- (ii) if sent by post, on the third Business Day after the day on which it is posted (including the day of posting);
- (iii) if sent by facsimile, on the Business Day on which the notice is received by the recipient's facsimile receiving facility, and a correct and complete transmission report is received; or
- (iv) if sent by email, at the time that would be the time of receipt under the Electronic Transactions Legislation.

# 1. Form of Proxy

I \_\_\_\_\_ / \_\_\_\_\_ We ,

o \_\_\_\_\_ f

being a Member of [COMPANY NAME] and entitled to vote appoint

- the chairperson of the meeting; OR
- \_\_\_\_\_

(Insert name and address of proxy)

or failing that appointment or the absence of that person, the chairperson of the meeting\*\*, as my/our proxy to act generally at the meeting and to vote for me on my/our behalf in accordance with the following instructions (or if no directions have been given, as the proxy sees fit and with discretion as to any business not referred to below) at the [Annual] General Meeting of the Company to be held on [insert date] and at any adjournment of that meeting.

(Voting instructions, if any, are to be indicated by placing a tick in the appropriate box. If no instruction is given the proxy may vote as that person thinks fit, or abstain.)

Business	For	Against	Abstain*
1. [Insert]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. [Insert]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AND for \_\_\_\_\_ % OR for \_\_\_\_\_ shares for this proxy form.

\* if you mark the abstain box for any item, you are directing the proxy not to vote on your behalf on a show of hands or on a poll and your votes will not be counted in calculating the required majority on a poll.

\*\* if the chairperson of the meeting is appointed as your proxy or is appointed by default and your voting direction is not indicated, the chairperson may exercise your proxy even if he or she has an interest in the outcome of those items.

## Signature of Shareholder

Shareholder 1 (Individual)

Joint Shareholder 2 (Individual)

Joint Shareholder 3 (Individual)

Sole Director / Attorney /  
Authorised Person

Director / Company Secretary

Director

## Notes

This form should be signed by the shareholder. If a joint holding, either shareholder may sign. If signed by an attorney or other authorised person, the power of attorney or written authority must have been previously noted by the Company or a certified copy attached to this form. If executed by a company, the form must be executed in accordance with the shareholders constitution and the *Corporations Act 2001* (Cth).

## Proxies

1. A member who is entitled to attend and vote at this meeting is entitled to appoint not more than two proxies to attend and vote instead of the member.
2. Where two proxies are appointed:
  - (a) A separate proxy form should be used to appoint each proxy;
  - (b) The proxy form may specify the proportion, or number, of votes that the proxy may exercise, and if it does not do so the proxy may exercise half of the votes.
3. A proxy need not be a member of the Company.
4. To be effective, proxy forms (duly completed and signed) must be received by the Company at its registered office no later than 48 hours before the time for the holding of the meeting.