

*Corporations Act 2001*

Constitution of

**SOUTHERN ACADEMY OF  
HIGHER EDUCATION PTY  
LTD**

A proprietary company limited by shares

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*Corporations Act 2001*  
**A proprietary company limited by shares**  
**SOUTHERN ACADEMY OF HIGHER EDUCATION PTY LTD**  
**ACN 645523548**  
**(Company)**

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**1 Definitions and interpretation**

**1.1 Definitions**

In this constitution, any words and expressions defined in the Act and used in this constitution have the meanings given to them in the Act, unless expressly defined below:

**Act** means the *Corporations Act 2001*(Cth) and includes any regulations and instruments made under the Act and any consolidations, amendments, re-enactments or replacements of any of them.

**Alternate Director** means a person appointed as an alternate director of the Company under clause 4.15.

**Auditor** means a person appointed as an auditor of the Company under clause 10.1.

**Board** means:

- (a) all or some of the Directors acting as a board; or
- (b) at a time when the Company has only one Director, that Director.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in your state of registration.

**Certificate** means, in relation to a share, the certificate issued by the Company recording the name of the Member registered as owner of the share.

**Chair** means the person elected under clause 6.5.

**Director** means, in relation to the Company, a person appointed under clause 4.6, 4.7 or 4.8 of this constitution.

**Managing Director** means a person appointed as the managing director of the Company under clause 4.13.

**Member** means a person entered in the Register of Members as a holder of shares in the Company.

**Officer** means a person who is a current or former Director, Secretary, executive officer of the Company or a related body corporate of the Company or a person who takes part in, or is concerned with, management of the Company or a related body corporate of the Company.

**Register of Members** means the register listing each person who is a holder or joint holder of a share which the Company maintains under the Act.

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

**Representative** means a person appointed to represent a corporate Member at a general meeting of the Company under clause 7.38 and the Act.

**Secretary** means a person appointed under clause 9.1 as a secretary of the Company and where appropriate includes an acting secretary and a person appointed by the Board to perform all or any of the duties of a Secretary of the Company.

**Sole Controller** means, at any time, the person who is the sole Director and is the sole Member at that time.

## 1.2 Interpretation

In this constitution, headings are inserted for convenience only and do not affect the interpretation of this constitution and unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other gender;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example', 'such as' or similar expressions;
- (e) a reference to a document or instrument, including this agreement, includes all of its clauses, paragraphs, recitals, parts, schedules and annexures and includes the document or instrument as amended, varied, novated, supplemented or replaced from time to time;
- (f) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a joint venture, a firm, a trust, an association (whether incorporated or not) and a government agency or authority;
- (g) a period of time dating from a given day or the day of a given act or event is to be calculated exclusive of that day; and



- (h) a reference to an amount paid on a share includes an amount credited as paid on that share.

### **1.3 Constitution and the Act**

- (a) Except as provided in clause 1.3(b), this constitution is subject to the Act and where there is any inconsistency between a clause of this constitution and the Act, the Act prevails to the extent of the inconsistency.
- (b) To the maximum extent permitted by the Act, the provisions of the Act that apply as replaceable rules are expressly displaced and do not apply to the Company.

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## **2 Nature and powers of the Company**

### **2.1 Proprietary company**

The Company is a proprietary company limited by shares and accordingly:

- (a) the number of Members of the Company is limited to no more than 50 (counting joint holders of a share in the Company as one person and not counting any person who is an employee of the Company or of a subsidiary of the Company or any person who was an employee of the Company or of a subsidiary of the Company when that person became a Member); and
- (b) the Company must not engage in anything that would require disclosure to investors under Chapter 6D of the Act other than as authorised by the Act.

### **2.2 Powers of an individual**

The Company has the legal capacity and powers of an individual both in and outside Australia.

### **2.3 Powers of a body corporate**

The Company has all the powers of a body corporate including the power to:

- (a) issue and cancel shares in the Company;
- (b) issue debentures;
- (c) grant options over unissued shares in the Company;
- (d) distribute any of the Company's property among the Members in kind or otherwise;
- (e) give security by charging uncalled capital;
- (f) grant a floating charge over the Company's property;



- (g) arrange for the Company to be registered or recognised as a body corporate in any place outside this jurisdiction; and
- (h) do any thing that it is authorised to do by any other law (including a law of a foreign country).

#### **2.4 Capacity not affected**

The Company's legal capacity to act is not affected by the fact that the Company's interests are not, or would not be, served by acting.

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### **3 Internal management of the Company**

The internal management of the Company will be governed by this constitution.

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## **4 Directors**

### **Number and eligibility of Directors**

#### **4.1 Number of Directors**

- (a) The Company must have at least one Director.
- (b) Subject to clause 4.1(c), there is no maximum number of Directors.
- (c) Despite clause 4.1(b), the Members in a general meeting may resolve to set a maximum number of Directors.

#### **4.2 Initial Directors**

The initial Directors are the persons specified in the application for the Company's registration as consenting to act in that capacity.

#### **4.3 Eligibility for appointment as Director**

- (a) To be eligible to be elected or appointed as a Director a person must:
  - (i) be an individual;
  - (ii) be at least 18 years old; and
  - (iii) not be otherwise ineligible or disqualified from holding office under this constitution or the Act.
- (b) Subject to clause 4.3(c), a person is not required to hold any shares in the Company in order to be eligible to be elected or appointed as a Director.

- (c) Despite clause 4.3(b), the Members in a general meeting may resolve that a person must hold a specified number of shares in the Company to be so eligible.

#### **4.4 Non eligibility of Auditor**

Any current or former Auditor of the Company, or partner or employee or employer of that Auditor, is ineligible to be elected or appointed as a Director.

#### **4.5 Other offices held by Directors**

A Director may hold any other office or position of profit in the Company (other than as Auditor) together with the directorship on the conditions determined by the Board.

### **Appointment of Directors**

#### **4.6 Members may appoint a Director**

The Members may appoint a person as a Director by resolution passed in a general meeting.

#### **4.7 Board may appoint other Directors**

Provided that the number of Directors does not at any time exceed the number (if any) fixed under clause 4.1(c):

- (a) the Board may appoint a person as a Director, whether to fill a casual vacancy or as an additional Director; and
- (b) a majority of the Directors may also appoint a person as a Director to make up a quorum for a Board meeting, even if the total number of Directors otherwise present is not enough to make up that quorum.

#### **4.8 Appointment of Director on death, mental incapacity or bankruptcy of Sole Controller**

If the Sole Controller:

- (a) dies;
- (b) due to his or her mental incapacity, cannot manage the Company; or
- (c) ceases to be a director under the Act because of the bankruptcy of the director; and
- (d) and a personal representative or trustee (as applicable) is appointed to administer his or her estate or property,

then the personal representative or trustee will have the power to appoint a person (including him or herself) as Director.

#### **4.9 Period of appointment of Directors**

Directors do not retire by rotation. A Director continues in office until the Director dies or vacates the office under clause 4.10.

### **Resignation, cessation, termination and suspension of Directors**

#### **4.10 Vacation of office**

A Director vacates office if the Director:

- (a) ceases to be a Director or becomes prohibited from being a Director under the Act;
- (b) ceases to hold the number of shares required to qualify for office under a resolution passed by Members under clause 4.3(b);
- (c) resigns his or her office by written notice to the Company under clause 4.11; or
- (d) is removed from the office of Director by a resolution of the Members under clause 4.12.

#### **4.11 Director may resign**

A Director may resign as a Director of the Company by written notice to the Company at the Registered Office, provided that if the resignation of a Director will cause the number of Directors to fall below the minimum number required by this constitution or by the Act, the Director must not resign or otherwise vacate his or her office voluntarily until a replacement has been appointed.

#### **4.12 Removal of a Director by Members**

- (a) The Company may, by resolution of the Members:
  - (i) remove a Director from office; and
  - (ii) appoint another person as a Director in that Director's place.
- (b) If the removal of a Director under this clause will cause the number of Directors to fall below the minimum required by this constitution or the Act, the removal under clause 4.12(a) has no effect until a replacement has been appointed.

### **Managing Director**

#### **4.13 Appointment of Managing Director and other executive Directors**

The Board:



- (a) may appoint one or more Directors to the office of Managing Director or to any other executive office for the period and on the terms (including remuneration) as the Board determines;
- (b) may confer on a Managing Director any of the powers that the Board may exercise; and
- (c) subject to the terms of appointment, may revoke or vary:
  - (i) the appointment of the Managing Director or other executive Director; or
  - (ii) any of the powers conferred on the Managing Director or other executive Director.

#### **4.14 Cessation as Managing Director or executive Director**

A person ceases to be Managing Director or other executive Director if he or she ceases to be a Director.

### **Alternate Directors**

#### **4.15 Power to appoint Alternate Director**

Each Director may at any time appoint any individual approved for that purpose by the Board to act as an Alternate Director in the appointor's place.

#### **4.16 Suspension or termination of appointment of Alternate Director**

The appointor may vary, suspend, or terminate the appointment of his or her Alternate Director at any time.

#### **4.17 Notice of appointment of Alternate Director**

Notice of each appointment, suspension or termination must be made in writing to the Alternate Director, signed by the appointor and a copy served on the Company.

#### **4.18 Role of Alternate Director**

An Alternate Director:

- (a) is not entitled to receive notice of Board meetings unless the appointor has, by written notice to the Company, required the Company to provide the notice to the Alternate Director either generally or in particular circumstances;
- (b) is not entitled to call a Board meeting or a general meeting;

- (c) may attend and vote at a Board meeting only if the appointor is not present at that meeting;
- (d) unless the appointor has, by written notice to the Company, suspended the right either generally or in particular circumstances, may sign a circulating resolution under clause 6.1 if:
  - (i) the Alternate Director reasonably believes that the appointor is unavailable to sign the document; or
  - (ii) the appointor is ineligible to sign by reason of the appointor's fiduciary and statutory duties to the Company;
- (e) is entitled to sign a document under clause 5.5, clause 5.6 or section 127 of the Act;
- (f) when acting in the appointor's place at any time, is an officer of the Company and not an agent of the appointor and, in those circumstances, is subject to the duties and has all the powers and rights of a Director (subject to the other provisions of this clause 4.18);
- (g) does not have a conflict of interest, or a material personal interest in a matter that relates to the affairs of the Company, solely by reason of the fact that the appointor has (or vice versa); and
- (h) is not taken into account in determining the number of Directors under clause 4.1.

#### **4.19 Remuneration of Alternate Director**

An Alternate Director's only rights (if any) as to remuneration for ordinary services as a Director are against the appointor and not the Company.

#### **4.20 Multiple votes**

A Director or any other individual may act as Alternate Director to represent more than one Director, and have as many votes accordingly, but for the purpose of forming a quorum counts as only one Director.

#### **4.21 Termination of appointment**

The appointment of an Alternate Director is terminated by any of the following events:

- (a) if the Alternate Director gives written notice to the Company that he or she resigns the appointment;
- (b) if the appointment of the Alternate Director is terminated by the appointor under clause 4.17;



- (c) if the appointment is to act as Alternate Director for one or more Directors and those Directors have vacated office as Directors; or
- (d) on the happening of any event which, if the Alternate Director were a Director, would cause the Alternate Director to vacate the office of Director.

## **Remuneration and reimbursement of expenses of Directors**

### **4.22 Remuneration of Directors**

- (a) The Company may pay the Directors remuneration for carrying out the duties and responsibilities of the office of Director required by the Act.
- (b) The Members in general meeting may determine the amount of remuneration to be paid to each Director under clause 4.22(a).
- (c) The remuneration that is determined by the Members to be paid under clause 4.22(b) is a debt due to the Directors, which accrues from day to day.
- (d) Remuneration under this clause 4.22 may be provided in any manner that the Board decides, including by a fixed fee, by percentage of profits, by way of non cash benefits or by contributions to a superannuation fund.
- (e) The amount of remuneration to be paid to each Director determined by the Members under clause 4.22(b) does not include any insurance premium paid or agreed to be paid for a Director under clause 17.5.

### **4.23 Remuneration of Directors for extra services**

- (a) If the Board or the Members request a Director to perform services in addition to those required by the Act, the Board may determine that the Company remunerate the Director for those services.
- (b) Remuneration under this clause 4.23 may be provided in any manner that the Board decides, including by a fixed fee, by percentage of profits, by way of non cash benefits or by contributions to a superannuation fund.
- (c) The Board may determine that the Company remunerate the Director as contemplated by this clause 4.23 in addition to or substitution for the remuneration paid or payable under clauses 4.22 or 4.24.

### **4.24 Remuneration for other offices held by a Director**

- (a) If a Director holds any other office or position of profit in the Company (other than Auditor) together with the directorship, the Board may determine the remuneration for those other offices held by that Director.



- (b) Remuneration under this clause 4.24 may be provided in any manner that the Board decides, including by a fixed fee, by percentage of profits, by way of non cash benefits or by contributions to a superannuation fund.
- (c) The Board may determine that the Company remunerate the Director as contemplated by this clause 4.24 in addition to or substitution for the remuneration paid or payable under clauses 4.22 or 4.23.

#### **4.25 Reimbursement of expenses incurred by Directors**

In addition to the remuneration paid or payable under clauses 4.22, 4.23 or 4.24, a Director is entitled to reimbursement of a Director's travelling and other expenses that the Director properly incurs:

- (a) in attending Board meetings or any meetings of a committee of Directors;
- (b) in attending any general meetings of the Company;
- (c) in connection with the Company's business; and
- (d) in the case of a Managing Director, in connection with carrying out or managing the Company's business.

#### **4.26 Payment of retirement benefit to Directors**

- (a) Subject to the Act, the Board may determine that in addition to the remuneration paid or payable under clauses 4.22, 4.23 or 4.24, the Company pay a former Director, or the personal representative, spouse, relative or dependant of a former Director, a retirement benefit or pension in recognition of past services of an amount determined by the Board or may make contributions to a superannuation, retirement or pension fund for that purpose (including any amount paid or payable for the avoidance or minimisation of any penalty, charge, tax or other impost on the Company under any applicable legislation which imposes a penalty, charge, tax or other impost on employers if a minimum level of superannuation contributions are not paid for an employee (within the meaning of the legislation)).
- (b) The Board may also determine that the Company enter into a contract with a Director providing for payment of a retirement benefit or pension.

### **Conflicts of interest**

#### **4.27 Director not disqualified**

- (a) A Director or a body or entity in which a Director has a direct or indirect interest is not, by reason only of the Director's office, disqualified from:
  - (i) entering into any agreement or arrangement with the Company;





- (ii) holding any office or place of profit (other than Auditor) in the Company; or
  - (iii) acting in a professional capacity (other than as Auditor) for the Company.
- (b) A Director or a body or entity in which a Director has a direct or indirect interest is not liable to account to the Company for any remuneration, profits or benefits received under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company by reason only of the Director's office.

#### **4.28 Contracts in which Director has an interest**

The fact that a Director holds office as a director and has fiduciary obligations arising out of that office:

- (a) does not on its own void or render voidable a contract made by the Director with the Company;
- (b) does not on its own void or render voidable a contract or arrangement entered into by or on behalf of the Company and in which the Director may have an interest; and
- (c) does not on its own require the Director to account to the Company for any profit realised by or under any contract or arrangement entered into by or on behalf of the Company and in which the Director may have an interest.

#### **4.29 Director may hold other office**

- (a) A Director is not, by reason only of the Director's office, disqualified from being or becoming a director or other officer of, or otherwise being interested in:
  - (i) any related body corporate of the Company; or
  - (ii) any other body corporate promoted by the Company or in which the Company may be interested as a shareholder or otherwise.
- (b) A Director is not accountable to the Company for any remuneration or other benefits received by the Director from having an interest in a body corporate under clause 4.29 by reason only of the Director's office.

#### **4.30 Exercise of voting power in another company**

Any Director:

- (a) may exercise the voting power conferred by the shares or other interest held by the Company in another company in favour of a resolution appointing him or herself or any Director as a director or other officer of the other company;



- (b) may vote at a Board meeting in favour of a resolution that the Company exercises its voting power conferred by the shares or other interest held by the Company in the other company to appoint that Director as a director or other officer of the other company;
- (c) may be appointed as representative of the Company and may vote at a general meeting of the other company in favour of a resolution appointing that Director as a director or other officer of the other company; and
- (d) if also a director of the other company, may vote as a director of the other company in whatever manner he or she sees fit, including voting in favour of a resolution appointing the Director to any other office in the other company and a resolution appointing any other Directors as directors or other officers of the other company.

#### **4.31 Material personal interest - Director's duty to disclose**

- (a) A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of the interest unless:
  - (i) an exception in section 191(2) of the Act applies; or
  - (ii) the Director is the only Director of the Company.
- (b) A notice required by clause 4.31(a) must be given at a Board meeting as soon as practicable after the Director becomes aware of his or her interest in the matter and must include details of:
  - (i) the nature and extent of the interest; and
  - (ii) the relation of the interest to the affairs of the Company.

#### **4.32 Director may give standing notice about a material personal interest**

- (a) A Director required to give notice under clause 4.31 may give standing notice of the nature and extent of the interest in the matter.
- (b) The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.
- (c) A notice under clause 4.32(a) may be given:
  - (i) at a Board meeting either orally or in writing; or
  - (ii) to the other Directors individually in writing.
- (d) If the standing notice is given to the other Directors individually in writing:



- (i) the notice is effective when it has been given to every Director; and
  - (ii) the notice must be tabled at the next Board meeting after it is given.
- (e) The Director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.
- (f) The standing notice ceases to have effect:
- (i) if a person who was not a Director at the time when the standing notice was given is appointed as a Director (but commences to have effect again if it is given (by someone) to the person); and
  - (ii) in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the standing notice.

#### **4.33 Voting and completion of transactions in which a Director has a material personal interest**

If a Director discloses the nature and extent of an interest under clause 4.31 or 4.32 and the Act, or the interest is one that does not need to be disclosed under clause 4.31:

- (a) the Director may vote on matters that relate to the interest;
- (b) any transactions that relate to the interest may proceed; and
- (c) if the disclosure is made before the transaction is entered into:
  - (i) the Director may retain any benefits under the transaction; and
  - (ii) the Company must not avoid the contract merely because of the existence of the interest.

#### **4.34 Wholly owned subsidiary**

If the Company is a wholly owned subsidiary, a Director may act in the best interests of the holding company if:

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

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## **5 Management of business by the Board**

### **5.1 Powers of the Board**

- (a) Unless otherwise provided by the Act or this constitution, the business of the Company is to be managed by or under the direction of the Board.
- (b) The Board may exercise all of the powers of the Company, except any powers that any provision of the Act or this constitution requires the Company to exercise in general meeting.
- (c) Without limiting the generality of clause 5.1(b), the Board may exercise all the powers of the Company to:
  - (i) borrow money;
  - (ii) charge any property or business of the Company or all or any of its uncalled capital; and
  - (iii) issue debentures or give any other security for a debt, liability or obligations of the Company or of any other person.

### **5.2 Directors must keep transactions confidential**

Every Director and other agent or officer of the Company must:

- (a) keep all aspects of all transactions of the Company confidential, except:
  - (i) to the extent necessary to enable the person to perform his or her duties to the Company;
  - (ii) as required by law; or
  - (iii) when requested by the Board to disclose information to the Auditor or a general meeting; and
- (b) if requested by the Board, sign and make a declaration that he or she will not disclose or publish any aspect of any transaction of the Company.

### **5.3 Appointment of attorney for Company**

The Board may, by power of attorney, appoint any company, firm, person or body of persons to be the attorney or representative of the Company for:

- (a) any period; and



- (b) for the purposes and with the powers, authorities and discretions vested in or exercisable by the Board under this constitution.

#### **5.4 Delegation by the Board**

- (a) The Board may delegate any of its powers to:
  - (i) a committee of Directors;
  - (ii) a Director;
  - (iii) an employee of the Company; or
  - (iv) any other person.
- (b) The delegate must exercise the powers delegated to it in accordance with any directions of the Board.
- (c) The effect of the delegate so exercising a power is the same as if the Board exercised it.
- (d) The Board may at any time revoke or vary any delegation to a person or committee.

#### **5.5 Seal and execution of documents**

- (a) The Board must provide for the safe custody of any seal of the Company.
- (b) If the Company has a common seal or duplicate common seal it must be used only by the authority of the Board, or of a committee of the Directors authorised by the Board to authorise its use and the affixing of the seal must be witnessed by:
  - (i) a Director and be countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included;
  - (ii) if the Company has only one Director and that Director is also the only Secretary, that Director; or
  - (iii) if the Company has only one Director and the Company does not have a Secretary, that Director.
- (c) The Company may execute a document without using a common seal and the document will be taken to be duly executed by the Company if it is signed by:
  - (i) a Director and countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included;



- (ii) if the Company has only one Director and that Director is also the only Secretary, that Director; or
- (iii) if the Company has only one Director and the Company does not have a Secretary, that Director.

## 5.6 Negotiable instruments

- (a) Any two Directors or, if there is only one Director, that Director, may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (b) The Board may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

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## 6 Proceedings of the Board

### 6.1 Board circulating resolution without a meeting

- (a) While the Company has only one Director, nothing in this constitution limits the powers of that Director to pass a resolution or make a declaration by recording it and signing the record.
- (b) The Board may pass a valid resolution without a Board meeting being held if all of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of the Board) sign a document (which may include a facsimile transmission) containing a statement that they are in favour of the resolution set out in the document.
- (c) 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.
- (d) The resolution is passed when the last Director signs.

### 6.2 Calling Board meetings

A Director may at any time, and the Secretary on the request of a Director must, call a Board meeting.

### 6.3 Notice of meeting

Reasonable notice of every Board meeting must be given individually to each Director under clause 15.5, but failure to give or receive reasonable notice of that meeting will not invalidate anything done or any resolution passed at the meeting provided the failure occurred by accident or inadvertent error or the Director who failed to receive notice attended the meeting or waived notice of the meeting either before or after the meeting.

#### 6.4 Conduct of Board meetings

- (a) A Board meeting may be held:
  - (i) in person;
  - (ii) by telephone;
  - (iii) by audiovisual linkup; or
  - (iv) using any technology consented to by all the Directors before or during the relevant meeting.
- (b) Any consent under clause 6.4(a)(iv) may be a standing consent.
- (c) If a Director gives his or her consent under clause 6.4(b) that Director may only withdraw the consent within a reasonable period before the meeting commences.
- (d) A Director is regarded as present at a Board meeting where that meeting is conducted by telephone, audiovisual linkup or other technology if the Director is able to hear, and to be heard by, all others attending the meeting.
- (e) A Board meeting conducted by telephone, audiovisual linkup or other technology will be deemed to be held at the place agreed on by the Directors attending that meeting provided at least one of the Directors present at the meeting was at that place for the duration of the meeting.
- (f) Subject to the Act, and provided a majority of the Directors agree, a Board meeting may be held outside Australia.
- (g) An original document, or a photocopy, facsimile or electronic copy of that document, which is in the possession of, or has been seen by, all Directors attending the Board meeting before, or at the time of, that meeting, is deemed to be a document tabled at that meeting.
- (h) Subject to this constitution, the Directors may adjourn and otherwise regulate Board meetings as they think fit.

#### 6.5 Appointment of Chair for Board meetings

- (a) The Board may elect a Director to the office of Chair of the Board.
- (b) The Board may determine the period for which the Chair is to hold office.
- (c) The Directors present at a Board meeting may elect one of the Directors present to chair that meeting, or part of it, if:



- (i) a Director has not already been elected to chair the meeting; or
- (ii) the previously elected Chair is not available or declines to act as Chair for the meeting or part of the meeting.

#### **6.6 Quorum at Board meetings**

- (a) If the Company has more than one Director and unless the Board determines otherwise, the quorum for a Board meeting is two Directors and the quorum must be present at all times during the meeting.
- (b) Subject to clause 4.20, in determining whether a quorum is present at a Board meeting, an Alternate Director is to be counted.

#### **6.7 Voting by Chair at Board meetings**

In case of an equality of votes on a resolution at a Board meeting, the Chair of that meeting does not have a casting vote on that resolution in addition to any vote the Chair of that meeting has in his or her capacity as a Director in respect of that resolution.

#### **6.8 Passing of resolutions at Board meetings**

A resolution of the Board will be passed if a majority of votes cast by Directors entitled to vote on the resolution are in favour of the resolution.

#### **6.9 Committee powers and meetings**

- (a) Any committee of Directors may exercise the powers delegated to it in accordance with any directions that may from time to time be imposed on it by the Board.
- (b) The meetings and proceedings of any committee consisting of two or more Directors will be governed by the provisions of this constitution regulating the meetings and proceedings of the Directors so far as they are applicable except to the extent they are superseded by any direction made by the Board under this paragraph.

#### **6.10 Validity of acts of Directors**

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or member of the Board or committee of Directors; or
- (b) a person appointed to one of those positions or acting as a Director was disqualified or had vacated office or was otherwise not entitled to vote or act,



all acts of the Director, the Board or the committee of Directors (as the case may be) before the discovery was made are as valid as if the person had been duly appointed and was not disqualified and was entitled to vote or act.

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## 7 General meetings

### 7.1 Members' circulating resolution without a general meeting

- (a) This clause 7.1 applies to all resolutions of Members that are required or permitted to be passed by a general meeting, other than a resolution to remove an Auditor.
- (b) Where the Company has more than one Member, the Members may pass a resolution without a general meeting being held if all of the Members (or Representatives) entitled to vote on the resolution (not being less than the number required for a quorum at a general meeting) sign a document containing a statement that they are in favour of the resolution set out in the document.
- (c) While the Company has only one Member, that Member may pass a resolution by recording it in writing and signing the record of that resolution.
- (d) Separate copies of documents may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- (e) The resolution made under clause 7.1(b) is passed when the resolution is signed by the last Member entitled to vote.
- (f) When the Members are asked to consider a resolution under this clause, the Company satisfies any requirement of the Act:
  - (i) to give Members information or a document relating to the resolution, by giving Members that information or document with the document to be signed;
  - (ii) to lodge with ASIC a copy of the notice of meeting to consider the resolution, by lodging a copy of the document to be signed by Members; and
  - (iii) to lodge a copy of a document that accompanies a notice of meeting to consider the resolution, by lodging a copy of the information or documents referred to in clause 7.1(f)(i).

### 7.2 No annual general meetings

While the Company is a proprietary company:

- (a) the Act does not require the Company to hold an annual general meeting;

- (b) no meeting of Members called or held is to be regarded as an annual general meeting under the Act, even if a meeting of Members is described as an annual general meeting; and
- (c) if a meeting of Members is described as an annual general meeting:
  - (i) it has no effect on the validity of the meeting of Members; and
  - (ii) it neither attracts nor creates any additional duties or rights as to the business to be conducted at the meeting or the conduct of proceedings at the meeting.

## Calling and attending general meetings

### 7.3 Calling a general meeting

- (a) A Director, the Directors or the Board may, by written notice, call a general meeting at a time and place as the Director, the Directors or the Board resolve.
- (b) Members may requisition the holding of a general meeting only in accordance with the Act and the Board must call a general meeting within 21 days after receiving that requisition.
- (c) Members may call and arrange to hold a general meeting only in accordance with the Act.

### 7.4 Right to attend general meetings

- (a) Each Member and any Auditor of the Company is entitled to attend a general meeting.
- (b) Each Director is entitled to attend and speak at a general meeting.
- (c) The Auditor is entitled to speak on any part of the business of the general meeting that concerns the Auditor in their capacity as Auditor.
- (d) A Member's proxy or Representative may attend a general meeting only as provided by this constitution and the Act.

## Notice

### 7.5 Amount of notice of general meetings

- (a) Subject to clause 7.5(b), at least 21 days notice must be given of a general meeting.
- (b) Except if a general meeting is called for the purpose of removing an Auditor, a general meeting may be held on shorter notice than 21 days if Members with at least 95% of the votes that may be passed at the meeting so agree before the meeting.

## 7.6 Calculation of period of notice

In computing the period of notice under clause 7.5, the day on which the notice is given or taken to be given is to be disregarded.

## 7.7 Notice of general meetings

Written notice of a general meeting must be given individually to each person entitled to receive notice under the Act, including:

- (a) each Member entitled to vote at the meeting;
- (b) each Director; and
- (c) the Auditor (if any) of the Company.

## 7.8 Content of notice

A notice calling a general meeting must comply with the Act and must:

- (a) set out the place, date and time for the general meeting (and if the general meeting is to be held in two or more places, the technology that will be used to facilitate the general meeting);
- (b) state the general nature of the general meeting's business;
- (c) if a special resolution is to be proposed at the general meeting, set out an intention to propose a special resolution and state the resolution; and
- (d) if a Member is entitled to appoint a proxy, contain a statement setting out the following information:
  - (i) that the Member has a right to appoint a proxy and that the proxy does not need to be a Member of the Company; and
  - (ii) that a Member who is entitled to cast two or more votes may appoint two or more proxies and may specify the proportional number of votes each proxy is appointed to exercise.

## 7.9 Validity of resolutions

The non receipt of notice of a general meeting by, or the accidental omission to give notice of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting.



## **Cancellation or postponement of general meetings**

### **7.10 Board may cancel or postpone a general meeting**

- (a) The Board may cancel or postpone a general meeting by giving notice not less than three Business Days before the time at which the meeting was to be held to each person entitled to be given notice of a general meeting.
- (b) Clause 7.10(a) does not apply to general meetings called by court order or in accordance with the Act:
  - (i) by the Board on the request of Members, unless the Members who requested the meeting consent to the postponement or cancellation; or
  - (ii) by Members, unless the Members who called the meeting consent to the postponement or cancellation.

### **7.11 Contents of notice postponing or cancelling a general meeting**

A notice of postponement or cancellation of a general meeting must specify:

- (a) the reasons for the postponement or cancellation; and
- (b) if the general meeting is postponed:
  - (i) the postponed date and time for the holding of the general meeting;
  - (ii) a place for the holding of the general meeting which may be either the same as or different from the place specified in the notice calling the general meeting; and
  - (iii) if the general meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the general meeting in that manner.

### **7.12 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 general 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 Act.

### **7.13 Business at postponed general meeting**

The only business that may be transacted at a general meeting the holding of which is postponed or cancelled is the business specified in the original notice calling the general meeting.



#### **7.14 Proxy or Representative at postponed general meeting**

Where:

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

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

#### **7.15 Validity of resolutions**

The non receipt of notice of cancellation or postponement of a general meeting by, or the accidental omission to give notice of cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate the cancellation or postponement of a meeting or any resolution passed at the postponed general meeting.

### **Conducting general meetings**

#### **7.16 Time and place for general meetings**

A general meeting must be held at a reasonable time and place.

#### **7.17 Technology**

A general meeting may be held at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

#### **7.18 Quorum for a general meeting**

Except where the Company has only one Member, the quorum for a general meeting or an adjourned general meeting is two Members and the quorum must be present at all times during the meeting.

#### **7.19 Determination of quorum at general meeting**

In determining whether a quorum is present at a general meeting:

- (a) Representatives and persons attending as proxies (in the case of an individual attending as proxy, that individual and in the case of a body corporate attending as proxy, that body corporate's Representative) are to be counted;



- (b) if a Member has appointed more than one proxy or Representative, only one of them is to be counted;
- (c) if an individual is attending both as a Member and as a proxy or Representative, that person is to be counted only once; and
- (d) if an individual is attending as a proxy or Representative for more than one Member, that person is to be counted only once.

#### **7.20 Absence of quorum at a general meeting**

- (a) If no quorum is present within 30 minutes after the time for the general meeting set out in the notice of general meeting, the general meeting:
  - (i) if called in accordance with the Act by a Director at the request of Members or by Members, is dissolved; and
  - (ii) in any other case, is to be adjourned to a date, time and place as specified by the Board.
- (b) If the Board does not specify one or more of the requirements in clause 7.20(a)(ii), the general meeting is adjourned to:
  - (i) if the date is not specified, the same day of the following week;
  - (ii) if the time is not specified, the same time; and
  - (iii) if the place is not specified, the same place.

#### **7.21 Adjourned meeting (quorum)**

If no quorum is present at the general meeting adjourned under clause 7.20 within 30 minutes after the time for the general meeting, the Board may, in its absolute discretion, declare the meeting dissolved or deem that those Members present in person form a quorum and may transact the business for which the meeting was called.

#### **7.22 Appointment and powers of Chair at general meetings**

The Chair of the Board will be entitled to take the chair at general meetings.

#### **7.23 Absence of Chair at general meeting**

- (a) If there is no Chair, or if the Chair is unable to chair or declines to act at a general meeting, the Board may at any time prior to the commencement of that general meeting elect a Director to take the chair at that general meeting.



- (b) If a general meeting is held and the Chair, or the person elected under clause 7.23(a), is not available within 30 minutes after the time appointed for the holding of the meeting or is unable to chair or declines to act, the following may take the chair of the meeting (in order of precedence):
- (i) the deputy chair (if any);
  - (ii) a Director chosen by a majority of the Directors present;
  - (iii) the only Director present; or
  - (iv) a Member chosen by a majority of the Members present in person or by proxy or Representative who are entitled to vote at the meeting.
- (c) If an acting chair becomes unable to chair or declines to act during the general meeting, the abovementioned persons may take the chair, in the same order of precedence, until the time (if any) as the previous acting chair becomes willing and able to take the chair at that meeting.
- (d) Any person taking the chair of the general meeting under this clause 7.23 will have all the powers and responsibilities of the Chair in respect of the general meeting as are set out in this constitution.

#### **7.24 Powers of the Chair and conduct of general meetings**

- (a) The Chair is granted the power and is responsible for the general conduct of general meetings and for the procedures to be adopted at general meetings.
- (b) Any decision of the Chair is final.
- (c) The Chair may delegate any power conferred by this paragraph to any person.

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

##### **7.25 Adjournment of general meetings**

- (a) The Chair may, during the general meeting, adjourn the meeting or any business, motion, resolution or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.
- (b) The Chair must adjourn a general meeting if the Members present in person or by proxy or Representative with a majority of votes at the meeting agree or direct that the Chair must do so.



- (c) If any general meeting is adjourned for one month or more, a new notice of the adjournment must be given to the Members in the same manner as notice was or ought to have been given of the original meeting.

#### **7.26 Resumption of adjourned general meeting**

- (a) Only unfinished business is to be transacted at a meeting resumed after an adjournment under clause 7.25.
- (b) The resumed meeting may only be adjourned by the Chair.

### **Resolutions, voting and polls at general meetings**

#### **7.27 Members' resolutions**

The Members may propose a resolution to be moved at a general meeting only in accordance with Division 4 of Part 2G.2 of the Act.

#### **7.28 Resolution determined by majority**

At a general meeting, all resolutions submitted to a general meeting will be decided by a simple majority of votes except where a greater majority is required by this constitution or the Act.

#### **7.29 Voting by Chair of general meetings**

In case of an equality of votes on a resolution at a general meeting, the Chair does not have a second or casting vote on that resolution in addition to any vote the Chair has in his or her other capacity.

#### **7.30 How voting is carried out**

- (a) A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded before, on, or immediately after, the declaration of the result of the vote on a show of hands.
- (b) Unless a poll is demanded in accordance with this constitution, on a show of hands, either a declaration by the Chair that a resolution has been carried, carried by a particular majority or not carried or an entry to that effect in the minutes signed by the Chair is conclusive evidence of the result.
- (c) Neither the Chair nor the minutes need to state the number or proportion of the votes recorded in favour or against a resolution.

#### **7.31 Matters on which a poll may be demanded at a general meeting**

A poll may be demanded on any resolution other than resolutions concerning:





- (a) the election of the Chair; or
- (b) the adjournment of the general meeting.

### **7.32 Demand for a poll**

- (a) Subject to clause 7.31, a poll may be demanded by:
  - (i) the Chair;
  - (ii) at least two Members present in person or by proxy or by Representative; or
  - (iii) any one or more Members holding shares conferring not less than five percent of the total voting rights of all Members having the right to vote on the resolution.
- (b) Any demand for a poll may be withdrawn.

### **7.33 Conduct of poll**

The Chair may decide in each case the manner in which a poll is taken and the result of the poll is the meeting's resolution of the motion on which the poll was demanded.

### **7.34 Right to vote at general meetings**

Subject to any rights or restrictions attached to any class of shares and subject to clause 7.35, at a general meeting:

- (a) on a show of hands, each Member has one vote; and
- (b) on a poll, each Member has one vote for each fully paid share they hold and a fraction of a vote (equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited) for that share, ignoring any amounts paid in advance of a call) for each partly paid share they hold.

### **7.35 Right to vote of joint holder**

If a share is held jointly, and more than one Member votes at a general meeting (either personally or by duly authorised proxy or Representative), only the vote of the Member whose name appears first in the Register of Members counts.

### **7.36 Right to vote if call unpaid on shares**

A Member is not entitled to vote on a show of hands or on a poll at any general meeting in respect of shares held by the Member for which calls or other moneys are due and payable to the Company at the time of the general meeting.

### 7.37 Objections to right to vote

A challenge to a right to vote at a general meeting:

- (a) may only be made at the general meeting; and
- (b) must be determined by the Chair whose decision is final.

### Proxies and Representatives

#### 7.38 Appointment of proxies and Representatives

- (a) A Member who is entitled to attend and cast a vote at a general meeting may appoint a person as that Member's proxy or, if the Member is a body corporate, a Representative to attend and cast a vote at that meeting.
- (b) If a proxy appointed to attend and cast a vote at a general meeting under clause 7.38(a) is a body corporate, the proxy may appoint a Representative to attend and cast a vote at that meeting.
- (c) The appointment may specify the proportion or number of votes that the proxy may exercise.
- (d) If a Member is entitled to cast two or more votes at a general meeting, that Member may appoint two proxies. If the Member appoints two proxies and the appointment does not specify the proportion or number of the Member's votes that each proxy may exercise, each proxy may exercise half of the votes. Any fractions of votes will be disregarded.
- (e) Neither the proxy nor the Representative need be a Member.
- (f) Any proxy or Representative appointed under this clause must be appointed in accordance with, and will have the rights set out in, this constitution and the Act.
- (g) An appointment of proxy or Representative received at an electronic address will be taken to be signed by the Member or proxy as applicable if the appointment has been authenticated in accordance with the Act.

#### 7.39 Validity of proxy vote

- (a) Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
  - (i) the appointing Member dies; or
  - (ii) the Member is mentally incapacitated; or



- (iii) the Member revokes the proxy's appointment; or
  - (iv) the Member revokes the authority under which the proxy was appointed by a third party; or
  - (v) the Member transfers the share in respect of which the proxy was given.
- (b) If the appointing Member attends the meeting for which a proxy has been appointed by that Member, the proxy's appointment is not revoked unless the appointing Member actually votes on any resolution for which the proxy is proposed to be used.

## Meetings of holders of a class of shares

### 7.40 General meeting provisions apply to class meetings

The provisions of this constitution relating to general meetings apply so far as they are capable of application and with any necessary changes to every separate meeting of the holders of a class of shares except that:

- (a) a quorum is constituted by at least two persons who, between them, hold or represent one third of the issued shares of the class (unless only one person holds all the shares of the class, in which case that person constitutes a quorum);
- (b) any holder of shares of the class, present in person or by proxy or by Representative, may demand a poll; and
- (c) the Auditor is not entitled to notice of the meeting or to attend or speak at the meeting.

### 7.41 Director entitled to notice of class meetings

A Director is entitled to:

- (a) receive notice of separate meetings of the holders of any class of shares in the capital of the Company;
- (b) attend all those meetings; and
- (c) speak at those meetings.

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## 8 Minutes of meetings

### 8.1 Minutes

The Directors must cause to be entered in the minute books of the Company within one month of the relevant meeting, minutes containing details of:



- (a) the names of the Directors present at each Board meeting and of any committee of Directors;
- (b) all declarations made or notices given by any Director (either generally or specifically) of its interest in any contract or proposed contract or of its holding of any office or property where any conflict of duty or interest may arise; and
- (c) all resolutions and proceedings of general meetings of the Company, Board meetings and meetings of any committee of the Directors.

### **8.2 Minutes to be signed by the Chair**

Any minutes of any general meetings of the Company, Board meetings or meetings of any committee of the Board must be signed by the Chair of the meeting or by the Chair of the next succeeding meeting and once signed will constitute prima facie evidence of the matters stated in the minutes.

### **8.3 Members' access to minutes**

- (a) The Board must ensure that the minute books for general meetings are open for inspection by Members free of charge.
- (b) If requested by a Member in writing, the Board must ensure the Company sends a copy of any minutes or extract of minutes requested within 14 days after the request or, if the Board determines that payment should be made for the copies, within 14 days after the Company receives the payment.

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## **9 Secretary**

### **9.1 Appointment of Secretary**

The Board may appoint one or more persons to the office of secretary to the Company but need not do so.

### **9.2 Terms and conditions of appointment**

- (a) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authority as the Board determines.
- (b) The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Board.

### **9.3 Suspension or termination of appointment of Secretary**

The Board may suspend, remove or terminate the appointment of a Secretary, subject to any agreement between the Company and the Secretary.

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## 10 Auditor

### 10.1 Appointment of Auditor

The Board may appoint one or more persons to the office of Auditor to the Company but need not do so unless required by the Act.

### 10.2 Auditor and meetings of Members

- (a) The Auditor, if any, is ineligible to be elected or appointed as a Director.
- (b) The Auditor (if any) is entitled to receive notice of, attend, and be heard at general meetings.

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## 11 Share capital

### Issue of shares

#### 11.1 Board to issue shares

Subject to the Act and any special rights conferred on the holders of any shares or class of shares, the Board:

- (a) may issue or dispose of shares to any person at any time and on any terms and conditions and having attached to them any preferred, deferred or other special rights or restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the Board determines;
- (b) may grant to any person an option over shares or pre-emptive rights at any time and for any consideration as the Board determines; and
- (c) has the right to settle the manner in which fractions of a share, however arising, are to be dealt with.

#### 11.2 Pre-emption for existing Members on issue of shares

- (a) Before issuing shares of a particular class, the Board must offer them to Members holding shares of that class.
- (b) As far as practicable, the number of shares offered to each Member under clause 11.2(a) must be in proportion to the number of shares of that class already held by that Member.
- (c) To make the offer, the Board must give each Member a statement setting out the terms of the offer, including:



- (i) the number of shares offered to that Member;
  - (ii) the total number of shares offered; and
  - (iii) the period for which the offer will remain open.
- (d) The Board may issue any shares not taken up under the offer under clause 11.2(a) as it sees fit.
- (e) The Members, by resolution in general meeting, may authorise the Board to make a particular issue of shares without complying with clauses 11.2(a) to 11.2(d).

## Preference shares

### 11.3 Preference shares

Subject to the Act, the Company may issue preference shares or convert issued shares into preference shares (but not redeemable preference shares) only if the rights attaching to the preference shares with respect to the following matters have been approved by special resolution of the Members:

- (a) repayment of capital;
- (b) participation in surplus assets and profits;
- (c) cumulative and non cumulative dividends;
- (d) voting; and
- (e) priority of payment of capital and dividends in relation to other shares or classes of preference shares.

### 11.4 Redeemable preference shares

The Company may issue redeemable preference shares only if the following matters have been approved by special resolution of the Members:

- (a) the rights attached to the preference shares with respect to the matters set out at 11.3(a) to 11.3(e); and
- (b) whether the preference shares are liable to be redeemed at:
  - (i) a fixed time or on the happening of a particular event;
  - (ii) the Company's option; or
  - (iii) the Member's option.



## Holders of shares

### 11.5 Registered holder to be treated as absolute owner

- (a) Unless otherwise required by the Act or this constitution, the Company must treat the registered holder of a share as the absolute owner.
- (b) Unless ordered to do so by a court, the Company is not obliged to recognise:
  - (i) any trust, equitable, contingent, future or partial interest in any share;
  - (ii) any interest in any fractional part of a share; or
  - (iii) any other right (other than an absolute right) in respect of any share.

### 11.6 Joint holders of shares

- (a) Where two or more persons are registered as the joint holders of a share:
  - (i) they are taken to hold the share as joint tenants with rights of survivorship;
  - (ii) each Member is jointly and severally liable for any payment in respect of the share, including any call made in respect of any money unpaid on the share;
  - (iii) the Member whose name first appears in the Register of Members in respect of the share is deemed to be the registered holder of the share for the purposes of this constitution and any action permitted or required by the constitution; and
  - (iv) any one of the joint holders of the share may give an effective receipt for any dividend, bonus or return of share capital payable to the joint holders.
- (b) Without limiting the above, the Company is not bound:
  - (i) to register more than three persons as joint holders of a share; or
  - (ii) to issue more than one Certificate or holding statement in respect of shares jointly held.

## Changes to shares and share capital

### 11.7 Changes to shares

- (a) Subject to the Act and this constitution, the Company may:
  - (i) convert an ordinary share to a preference share, other than to a redeemable preference share;



- (ii) convert a preference share to an ordinary share;
  - (iii) reclassify any shares into classes of shares;
  - (iv) cancel any shares; and
  - (v) buy back its own shares.
- (b) Subject to the Act, the Company may convert all or any of its shares into a larger or smaller number of shares by ordinary resolution passed at general meeting.

### **11.8 Varying and cancelling class rights**

- (a) The Company may vary or cancel the rights attaching to any class of shares only if the variation or cancellation is permitted by the Act and is approved by special resolution of each of:
- (i) the Members; and
  - (ii) the Members holding shares of the relevant class.
- (b) The Board must give written notice of the variation or cancellation to the Members holding the shares of the relevant class within seven days of the variation or cancellation.
- (c) The issue or creation of new shares in a particular class ranking equally with existing shares of the relevant class will not be considered to be a variation of the rights conferred on Members holding existing shares of the relevant class.

### **Partly paid shares, calls and forfeiture**

#### **11.9 Board to make calls**

The Board may:

- (a) make calls on a Member in respect of any money unpaid on the shares of that Member, if the money is not by the terms of issue of those shares made payable at fixed times;
- (b) make a call payable by instalments; and
- (c) revoke or postpone a call.

#### **11.10 Prepayment of calls and interest**

The Board may:





- (a) accept from a Member the whole or a part of the amount unpaid on a share even if no part of that amount has been called; and
- (b) authorise payment by the Company of interest on the whole or any part of an amount so accepted, until the amount becomes payable and at the rate as is agreed on between the Board and the Member paying the sum.

#### **11.11 Time of call**

A call is taken to be made at the time when the resolution of the Board authorising the call is passed.

#### **11.12 Members' liability**

Other than in respect of money unpaid on the shares of a Member that are payable at fixed times, each Member must, on receiving not less than 15 Business Days notice specifying the due date and place of payment, pay to the Company the amount called on that Member's shares.

#### **11.13 Non receipt of notice**

The non receipt of a notice of any call by, or the accidental omission to give notice of a call to, a Member does not invalidate the call.

#### **11.14 Interest payable if non payment of calls**

- (a) If a call is not paid by the due date, interest is payable on the amount of the call from the due date to the date of payment at the rate set by the Board.
- (b) The Board may waive any interest payable in whole or in part.

#### **11.15 Forfeiture on non payment of calls**

If a Member fails to pay any call or instalment of a call when due, the Board may serve a notice on the Member:

- (a) requiring payment by a stated date of the unpaid amount of the call or instalment together with any interest accruing under clause 11.14 and all costs and expenses that may have been incurred by the Company be reason of the failure to pay; and
- (b) stating that failure to pay by the stated date will result in the shares being forfeited.

#### **11.16 Forfeiture for failure to comply with notice**

- (a) If the requirements of the notice issued under clause 11.15 are not complied with, any share in respect of which the notice has been given may be forfeited by a resolution of the Board at any time before the payment required by the notice is received.



- (b) Forfeiture under clause 11.16(a) will include any dividend and other distribution declared or to be made in respect of the forfeited share that is not paid or distributed before the forfeiture.
- (c) The non receipt of any notice by any Member, or the accidental omission to give notice of forfeiture to any Member, will not invalidate the forfeiture.

#### **11.17 Notice of forfeiture**

If any share is forfeited under clause 11.16, notice of the forfeiture must be given to the Member whose share was forfeited and an entry of the forfeiture and its date must be made in the Register of Members.

#### **11.18 Cessation of membership and liability**

- (a) A Member whose share has been forfeited ceases to be a Member in respect of that share but remains liable to pay to the Company all amounts, including interest and costs and expenses, payable at the date of forfeiture in respect of the share plus interest at the rate set by the Board from the date of forfeiture and reasonable expenses of sale.
- (b) Liability under clause 11.18(a) will cease only when the Company receives payment in full of all outstanding money in respect of the shares.

#### **11.19 Action to recover called money**

- (a) On the hearing of any action by the Company for the recovery of money due for any call it is sufficient, as conclusive evidence of the debt, for the Company to prove that:
  - (i) the Member sued was a registered holder of the share in respect of which the call was made at the time the call was made;
  - (ii) the resolution making the call is recorded in a minute book; and
  - (iii) notice of the call was given to the Member sued in accordance with this constitution.
- (b) It will not be necessary for the Company to prove the appointment of the Directors who made the call or any other matters.

#### **11.20 Disposal of forfeited share**

Subject to the Act, the Board may cause a forfeited share to be sold, transferred or otherwise disposed of on the terms and in the manner the Board determines.



### 11.21 Cancellation of forfeited share

The Company may only cancel a forfeited share in accordance with the Act.

### 11.22 Evidence of forfeiture

A statement in writing declaring that:

- (a) the person making the statement is a Director or a Secretary; and
- (b) a share in the Company has been forfeited in accordance with this constitution on the date stated in the statement,

is prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.

### 11.23 Transfer of forfeited share

- (a) The Company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share under clause 11.20 and may execute or effect a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (b) If a forfeited share is sold, the purchaser of the forfeited share must be registered as the holder of the share by the Company and is not bound to see to the application of any money paid as consideration.

## Liens

### 11.24 First and paramount lien

Unless the Board otherwise resolves, the Company has a first and paramount lien on every share and any dividend payable in respect of the share where there is any amount payable to the Company in respect of the share at any time as a result of:

- (a) a call; or
- (b) if the shares were acquired under an employee incentive scheme, an amount owed to the Company for acquiring them; or
- (c) any payment made by the Company to any person or authority in any jurisdiction for or on behalf of the Member.

### 11.25 Company's rights to recover payments

- (a) A Member must reimburse the Company on demand in writing for all payments the Company makes to a government or taxing authority in respect of the Member, the

death of a Member or the Member's shares or any distributions on the Member's shares, including dividends, where the Company is either:

- (i) obliged by law to make the relevant payment; or
  - (ii) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxing authority that the Company is obliged by law to make the relevant payment.
- (b) The Company is not obliged to advise the Member in advance of its intention to make the payment referred to in clause 11.25(a).

#### **11.26 Reimbursement is a debt due**

- (a) The obligation of the Member to reimburse the Company is a debt due to the Company as if it were a call on all the Member's shares, duly made at the time when the written demand for reimbursement is given by the Company to the Member.
- (b) The provisions of this constitution relating to non payment of calls, including payment of interest and sale of the Member's shares under lien, apply to the debt.

#### **11.27 Sale of shares**

- (a) Subject to clause 11.27(b), the Company may sell any share over which it has a lien.
- (b) The Company must not sell a share under clause 11.27(a):
  - (i) unless a sum in respect of which the lien exists is presently payable; and
  - (ii) until 14 days has passed after written notice demanding payment of the sum referred to in 11.27(b)(i) has been given to the Member, or to the person entitled to the share by reason of the Member's death or bankruptcy.

#### **11.28 Transfer on sale under lien**

- (a) For the purpose of giving effect to a sale under clause 11.27, the Company may receive the consideration, if any, given for the share so sold and may execute a transfer of the share sold in favour of the purchaser of the share, or do all other things as may be necessary or appropriate for it to do to effect the transfer.
- (b) The purchaser is not bound to see to the application of the purchase money.

#### **11.29 Irregularity or invalidity**

The title of the purchaser to the share is not affected by any irregularity or invalidity in connection with the sale of the share.

### 11.30 Proceeds of sale

The proceeds of a sale under clause 11.27 must be applied by the Company in payment of the amount in respect of which the lien exists as is presently payable and the residue, if any, must be paid to the person entitled to the share immediately before the sale.

## Certificates

### 11.31 Issue of Certificates

- (a) The Company must issue each Member with a Certificate for any shares held by the relevant Member.
- (b) The Company may issue a single Certificate for more than one share held by a Member.

### 11.32 Form of Certificate

Every Certificate:

- (a) must include all information required by the Act; and
- (b) must be issued in the form determined by the Board.

### 11.33 Certificate of joint holders

The delivery of a Certificate in relation to a share to the registered holder of the share or to the joint holders' agent is effective delivery to all the joint holders of that share.

## Transfer of Shares

### 11.34 Pre-emption for existing Members on transfer of Shares

- (a) Except where the proposed transfer is a permitted transfer under clause 11.34(f), before transferring shares of a particular class, a Member must offer the shares to the Members holding shares of that class.
- (b) As far as practicable, the number of shares offered to each Member under clause 11.34(a) must be in proportion to the number of shares of that class that Member already holds.
- (c) To make the offer under clause 11.34(a), the Member must give the Members a statement setting out the terms of the offer, including:
  - (i) the number of shares offered;
  - (ii) the price for each share; and



- (iii) the period for which the offer will remain open.
- (d) If some of the shares offered under clause 11.34(a) have not been accepted by the end of the period specified under clause 11.34(c)(iii), the Member must re-offer the remaining shares on the same terms to those Members (if any) who accepted the offer in proportion to the number of shares of that class that they are deemed to then hold by having already accepted some of the shares on offer.
- (e) The Member may transfer any shares not taken up under the offers under clauses 11.34(a) and 11.34(d) as that Member sees fit provided that the terms, including price, are no more commercially attractive or advantageous to a third party than the terms in the offers made under clause clauses 11.34(a) or 11.34(d).
- (f) The following transfers are permitted transfers:
  - (i) in respect of a non voting share – by a Member being an individual to the wife, husband, any child or other issue, son-in-law, daughter-in-law, father, mother, brother, sister, nephew, niece, widow or widower of that Member; and
  - (ii) in all other cases:
    - (A) from a Member being the trustee of any trust on any change of trustee to the new trustee or trustees for the time being of the trust;
    - (B) from a Member being a nominee or trustee to the person beneficially entitled;
    - (C) from a Member being an individual to any relative of that Member being the wife, husband, widow, widower, child or other direct issue of that Member (**Specified Relatives**);
    - (D) from a Member to the trustee or trustees of any deed of trust or settlement made principally for the benefit of that Member and/or one or more of the Specified Relatives and controlled by that Member or any one or more of the Specified Relatives (in which case the Directors must register the transfer unless the Directors are reasonably satisfied that persons other than the Member and/or the Specified Relatives are likely to become entitled to more than 50% of the income and/or capital of the trust estate, whether directly or indirectly, after the transfer); or
    - (E) in the case of a Member being a body corporate, from that Member to a related body corporate (in which case the Directors must register the transfer unless there has been a change in control of the Member since the date the Member acquired the shares).



### 11.35 Forms of instrument of transfer

Subject to this constitution, shares in the Company are transferable by an instrument of transfer in writing in any usual or common form or in any other form that the Board approves and that is in compliance with the Act.

### 11.36 Execution and delivery of transfer

The Board must refuse to register the transfer if the transfer referred to in clause 11.35:

- (a) is not executed by or on behalf of both the transferor and the transferee;
- (b) is not left for registration at the Registered Office, accompanied by the Certificate (if any) of the share to be transferred and any other information the Board reasonably requires to establish the right of the transferor to make the transfer; or
- (c) otherwise does not comply with the requirements set out in Division 2 of Part 7.11 of the Act.

### 11.37 Registration of transfers

A person transferring a share remains the holder of the share until the transfer is registered and the name of the person to whom the share is transferred is entered in the Register of Members in respect of the share and a transfer of a share does not pass the right to any dividends declared on the share until registration.

### 11.38 Company to register transfer without charge

Any transfer registered, or Certificate issued by the Company must be registered or issued without charge except where the issue of a Certificate is to replace a lost or destroyed Certificate.

### 11.39 Power to refuse to register

- (a) The Board may refuse to register any transfer of shares for any reason except that neither the Board nor the Company may refuse to register a transfer of shares made under a valid exercise of an enforcement power under a mortgage of the shares the subject of the transfer. The Board and the Company may rely on receipt of the transfer as conclusive notice that the mortgage has become enforceable.
- (b) The Board must notify the person who deposited the instrument of transfer of any refusal to transfer the shares within six months from the date the instrument of transfer is lodged.



#### 11.40 Company to retain instrument of transfer

The Board must ensure that the Company retains every instrument of transfer that is registered for the period as the Board determines.

#### 11.41 Return of instrument of transfer

If the Board refuses registration of a transfer, and if requested by the person who deposited the instrument of transfer, the instrument of transfer must be returned to the person who deposited it within 12 months of the giving of notice of refusal to register unless there has been an allegation of fraud concerning the transfer or the transaction to which it relates.

### Transmission of shares on death, bankruptcy or lack of mental capacity

#### 11.42 Death of sole holder of share

- (a) In respect of a share owned by a Member (and not owned by several holders jointly), if that Member dies the Company must recognise only the personal representative of the deceased Member as being entitled to the deceased Member's interest in the share.
- (b) If the personal representative gives the Board the information reasonably required by the Board to establish the personal representative's entitlement to be registered as holder of the share, the personal representative is entitled, whether or not registered as the holder of the share, to the same rights as the deceased Member and:
  - (i) may, by giving a written and signed notice to the Company, elect to be registered as the holder of the share; or
  - (ii) may, by giving a completed transfer form to the Company, transfer the share to another person.
- (c) On receiving an election under clause 11.42(b)(i), the Company must register the personal representative as the holder of the share.
- (d) A transfer under clause 11.42(b)(ii) is subject to all provisions of this constitution relating to transfers of shares generally.

#### 11.43 Death of joint holder of share

- (a) If one of the registered joint holders of a share dies, the Company must only recognise the surviving holder or holders of the share as being entitled to the deceased shareholder's interest in the share.
- (b) The survivor of the joint holder or holders named first in the Register of Members will for the purposes of this constitution be treated as the first named holder of the share.





#### 11.44 Liability of estate

The estate of the deceased Member is not released from any liability in respect of the shares.

#### 11.45 Transmission of shares on bankruptcy or mental incapacity

- (a) If a person entitled to a share because of the bankruptcy of a Member or the mental incapacity of a Member gives the Board the information reasonably required by the Board to establish the person's entitlement to be registered as holder of the share, the person is entitled, whether or not registered as the holder of the shares, to the same rights as the Member and may:
  - (i) by giving a written notice to the Company, elect to be registered as the holder of the shares; or
  - (ii) by giving a completed transfer form to the Company, transfer the shares to another person.
- (b) On receiving an election under clause 11.45(a)(i), the Company must register the person as the holder of the shares.
- (c) A transfer under clause 11.45(a)(ii) is subject to all provisions of this constitution relating to transfers of shares generally.
- (d) A person registered as a Member as a consequence of this clause 11.45 must indemnify the Company to the extent of any loss or damage suffered by the Company as a result of that registration.

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## 12 Dividends and capital reserves

### Dividends

#### 12.1 Payment of dividend

Subject to the Act, this constitution and to the terms on which shares are on issue, the Board may determine that a dividend is or will be payable.

#### 12.2 Determination of dividend particulars

Without limiting the Board's discretion under clause 12.1, the Board may:

- (a) fix:
  - (i) the amount of the dividend;
  - (ii) whether or not the dividend is franked, the franking percentage and franking class;

- (iii) the time for determining entitlements to the dividend;
  - (iv) the time for payment of the dividend; and
  - (v) the method of payment of the dividend;
- (b) determine that the dividend be paid by the Company:
- (i) paying cash;
  - (ii) issuing shares;
  - (iii) granting options; or
  - (iv) transferring assets;
- (c) determine that the dividend be paid:
- (i) on shares of one class but not another class; or
  - (ii) at different rates for different classes of shares; and
- (d) set aside or carry forward profits of the Company before paying the dividend.

### 12.3 Board's discretion

Without limiting the Board's discretion under clause 12.1, the Board may resolve to:

- (a) determine that an interim dividend be paid on a stated future date;
- (b) determine that, unless revoked, a dividend will be payable on a stated future date but not before; or
- (c) declare that a dividend is payable, whether immediately or on a stated future date.

### 12.4 Interest not payable

Interest is not payable on a dividend.

### 12.5 Entitlement to receive dividends

A dividend in respect of a share must be paid to the person who is entitled to have his or her name entered in the Register of Members as the holder of that share:

- (a) where the Board has set a date under clause 12.2(a)(iii), on that date; or
- (b) where the Board has not set a date under clause 12.2(a)(iii):



- (i) if the Board has determined that a dividend is to be paid under clause 12.3(a) or clause 12.3(b), on the date the dividend is paid; or
- (ii) if the Board has declared that a dividend payable under clause 12.3(c), on the date of the declaration.

#### **12.6 Date dividend is payable**

A dividend in respect of a share must be paid to the person entitled to receive the dividend under clause 12.5:

- (a) where the Board has fixed a time under clause 12.2(a)(iv), at that time; or
- (b) in any other case, on the date the dividend is paid.

#### **12.7 Dividends proportional to paid up capital**

- (a) Subject to the Act, this constitution and any rights or restrictions attached to a class of shares, the person entitled to a dividend on a share is entitled to:
  - (i) if the share is fully paid, the entire dividend; or
  - (ii) if the share is partly paid, a proportion of that dividend equal to the proportion which the amount paid on that share is of the total amounts paid or payable on that share.
- (b) Amounts paid in advance of a call on a share are ignored when calculating the proportion under clause 12.7(a)(ii).

#### **12.8 Deductions from dividends**

The Board may deduct from any dividend payable to, or at the direction of, a Member all money (if any) presently payable by that Member to the Company whether on account of calls or otherwise in relation to shares in the Company or otherwise.

#### **12.9 Unclaimed dividends**

The Board may invest unclaimed dividends as they think fit for the benefit of the Company until claimed or until required to be dealt with under any law relating to unclaimed money.

#### **12.10 Dividend plans**

- (a) The Board may establish a dividend selection plan or bonus share plan on any terms, under which participants may elect in respect of all or part of their shares:
  - (i) to receive a dividend from the Company paid in whole or in part out of a particular fund or reserve or out of profits derived from a particular source; or



- (ii) to forego a dividend from the Company and receive some other form of distribution or entitlement (including securities) from the Company or another body corporate or a trust.
- (b) The Board may establish a dividend reinvestment plan on any terms, under which participants may elect in respect of all or part of their shares to apply the whole or any part of a dividend from the Company in subscribing for securities of the Company or a related body corporate of the Company.
- (c) The Board may implement, amend, suspend or terminate a plan established under this clause 12.10.

## **Capitalisation of reserves and profits**

### **12.11 Capitalisation of reserves and profits**

The Board may:

- (a) resolve to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to Members; and
- (b) resolve to apply the sum in any of the ways mentioned in clause 12.12 for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of that sum by way of dividend.

### **12.12 Applying a sum for the benefit of Members**

The ways in which a sum may be applied for the benefit of Members under clause 12.11 are:

- (a) in paying up any amounts unpaid on shares held by Members;
- (b) in paying up in full unissued shares or debentures to be issued to Members as fully paid; or
- (c) partly as mentioned in clause 12.12(a) and partly as mentioned in clause 12.12(b).

### **12.13 Implementing the resolution**

The Board may do all things necessary to give effect to a resolution made under clause 12.11 and, in particular, to the extent necessary to adjust the rights of the Members among themselves, may:

- (a) make cash payments in cases where shares or debentures become issuable in fractions;



- (b) authorise any person to make, on behalf of all or any of the Members entitled to any further shares or debentures on the capitalisation, an agreement with the Company providing for:
  - (i) the issue to them, credited as fully paid up, of any further shares or debentures; or
  - (ii) the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement made is effective and binding on all the Members concerned;
- (c) fix the value of specific assets; and
- (d) vest property in trustees.

### **13 Superannuation trustee**

Despite any other provision of this constitution, if the sole purpose of the Company is to act as the trustee of a regulated superannuation fund within the meaning of section 19 of the *Superannuation Industry (Supervision) Act 1993* (Cth), the Company is prohibited from distributing the income or capital of the Company to the Members, including by way of payment of dividends.

### **14 Company books**

#### **14.1 Registers**

In accordance with the Act, the Board must cause the Company to keep and maintain:

- (a) the Register of Members;
- (b) if the Company issues debentures, a register of the holders of those debentures;
- (c) a register of charges; and
- (d) any other registers required by the Act.

#### **14.2 Financial records**

- (a) The Board must cause written financial records to be kept to:
  - (i) correctly record and explain the transactions and financial position and performance of the Company;



- (ii) enable true and fair financial statements to be prepared; and
  - (iii) permit preparation of any other documents required by the Act or this constitution.
- (b) The financial records must be kept:
- (i) in a manner which will enable them to be conveniently and properly audited;
  - (ii) for seven years after the completion of the transactions or operations to which they relate; and
  - (iii) at the Registered Office or at any other place as the Board determines and at all times be open for inspection by the Directors.

#### **14.3 Financial statements and reports**

The Company is not required to prepare and cause copies of the Company's financial statements and other reports to be distributed to holders of its securities unless required by or under the Act.

#### **14.4 Inspection and copying of registers**

The Board must allow persons to inspect or copy the registers referred to in clause 14.1 as required by the Act.

#### **14.5 Inspection of Company books**

- (a) A request by a Member to inspect the books of the Company, including its financial records, must be in writing and must be delivered to the Company at its Registered Office.
- (b) Subject to the Act, the Board or the Members by special resolution may decide whether and to what extent and at what times and places and under what conditions a Member may inspect the books of the Company, including its financial records.
- (c) This clause does not alter the rights of a Director or former Director to inspect the books of the Company under the Act.

#### **14.6 Copying financial records**

- (a) After inspecting any financial records a Member may request permission to copy them.
- (b) The request under clause 14.6(a) must be in writing, must specify the financial records the Member wishes to copy and must be delivered to the Company at its Registered Office.



- (c) Subject to the Act, the Board must consider the request at the next Board meeting and may (but need not) consent to the request or any part of the request on any terms as it thinks fit.

#### **14.7 Audit**

The financial statements of the Company for each financial year need not be audited unless required by or under the Act.

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### **15 Service of documents**

#### **15.1 Document includes notice**

In clause 15.2 to 15.8, a reference to a document includes a notice.

#### **15.2 Giving a document to Members**

- (a) The Company may give a document to a Member:
- (i) in person;
  - (ii) by sending it by post to the address of the Member in the Register of Members or the alternative address (if any) nominated by that Member;
  - (iii) by sending it to the fax number or electronic address (if any) nominated by that Member;
  - (iv) by sending it to the Member by other electronic means (if any) nominated by the Member; or
  - (v) by notifying the Member under section 249J(3A) of the Act.
- (b) If the address of a Member in the Register of Members is not within Australia, the Company must send all documents to that Member by airmail, air courier, by fax, or by other electronic means nominated by the Member.
- (c) The Company must give any document to Members who are joint holders of a share to the person named first in the Register of Members in respect of that share, and that document is deemed received by all holders of that share.

#### **15.3 Giving a document to a person entitled to shares**

A person who by operation of law, transfer or other means becomes entitled to any share is absolutely bound by every document given under clause 15.2 to the person from whom that person derives title prior to registration of that person's title in the Register of Members.

#### 15.4 Evidence of service of a document on a Member

A certificate in writing signed by a Director or Secretary stating that a document was sent is prima facie evidence of service.

#### 15.5 Giving a document to a Director

The Company may give a document to a Director:

- (a) in person;
- (b) by sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person;
- (c) by sending it to the fax number or electronic address (if any) nominated by that person; or
- (d) by any other means agreed between the Company and that person.

#### 15.6 Giving a document to the Company

A person may give a document to the Company:

- (a) by leaving it at the Registered Office;
- (b) by sending it by post to the Registered Office;
- (c) by sending it to the fax number at the Registered Office;
- (d) by sending it to the electronic address (if any) nominated by the Company for that purpose; or
- (e) by any other means prescribed by the Act.

#### 15.7 Time of service of a document

- (a) A document sent by post to an address within Australia is taken to be given:
  - (i) in the case of a notice of meeting, one Business Day after it is posted; or
  - (ii) in any other case, at the time at which the document would be delivered in the ordinary course of post.
- (b) A document sent by post or airmail to an address outside Australia is taken to be given:
  - (i) in the case of a notice of meeting, five Business Days after it is posted; or



- (ii) in any other case, at the time at which the document would be delivered in the ordinary course of post.
- (c) A document sent by air courier to a place outside Australia is taken to be given five Business Days after delivery to the air courier.
- (d) A document sent by fax or to an electronic address, or by other electronic means, is taken to be given on the Business Day it is sent, provided that the sender's transmission report shows that the whole document was sent to the correct fax number or electronic address.
- (e) A document given to a Member under clause 15.2(a)(v) is taken to be given on the day on which the Member is notified that the document is available.

## 15.8 Signatures

Where, by a provision of this constitution, a document is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by the Act relating to electronic transmissions or in any other manner approved by the Board.

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## 16 Payments

### 16.1 Form of payments

The Company may pay a person entitled to an amount payable in respect of a share (including a dividend) by:

- (a) crediting an account nominated in writing by that person;
- (b) cheque made payable to bearer, to the person entitled to the amount or any other person the person entitled to the amount directs in writing; or
- (c) any other manner as the Board resolves.

### 16.2 Payment by cheque

The Company may post a cheque referred to in clause 16.1(b) to:

- (a) the address in the Register of Members of the Member in respect of the share;
- (b) if that share is jointly held, the address in the Register of Members of the Member named first in respect of the share; or
- (c) any other address which that person directs in writing.

### 16.3 Receipt

Any joint holder of a share may give effective receipt for an amount (including a dividend) paid in respect of the share.

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## 17 Proceedings involving Officers

### 17.1 Company may indemnify Officers

Subject to clause 17.2, the Board may determine that the Company indemnify any Officers:

- (a) for any liability (other than for legal costs dealt with in paragraph (b)) incurred by the Officer in the Officer's capacity as an officer of the Company; and
- (b) for legal costs incurred by the Officer in defending an action for a liability incurred by the Officer in the Officer's capacity as an officer of the Company.

### 17.2 Indemnity prohibited in certain circumstances

The indemnity in clause 17.1 does not extend to any amount in respect of which:

- (a) the Company is prohibited by the Act or any other statute from indemnifying against; or
- (b) an indemnity would otherwise be illegal, void, unenforceable or not permitted by law.

### 17.3 Company may make an advance

Subject to clauses 17.2 and 17.4, the Act and any other applicable statute, the Board may determine that the Company may pay, by way of a loan, an advance or any other payment and may be on whatever terms the Company, in its sole discretion, thinks fit, legal costs of the type referred to in clause 17.1(b) that are reasonably incurred or reasonably anticipated to be incurred by the Officer.

### 17.4 Repayment of advance in certain circumstances

An Officer must repay amounts paid by the Company under clause 17.3 to, or on behalf of, the Officer in relation to a liability incurred by Officer in the Officer's capacity as an officer of the Company if:

- (a) that liability is or becomes a liability excluded by the Act or any other statute from the indemnity in clause 17.1
- (b) a court determines that the Officer is not entitled to be indemnified by the Company for that liability; or

- (c) the liability is covered by insurance and the Officer receives payment from an insurer in respect of that liability or an insurer pays, discharges or satisfies that liability directly.

### **17.5 Company may pay insurance premium**

Subject to clause 17.6, the Board may determine that the Company pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring an Officer against liability incurred by the Officer in the Officer's capacity as an officer of the Company, including a liability for legal costs.

### **17.6 Payment of premium prohibited in certain circumstances**

The Company must not pay or agree to pay a premium under clause 17.5 where:

- (a) the Company is prohibited by the Act or any other statute from paying or agreeing to pay such a premium; or
- (b) the payment of such a premium would otherwise be illegal, void, unenforceable or not permitted by law.

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## **18 Winding Up**

### **18.1 Rights of Members on winding up**

Subject to this constitution and the rights or restrictions attached to any shares or class of shares:

- (a) if the Company is wound up and the property of the Company available for distribution among the Members is more than sufficient to pay:
  - (i) all the debts and liabilities of the Company; and
  - (ii) the costs, charges and expenses of the winding up,

the excess must be divided among the Members in proportion to the number of shares held by them, irrespective of the amounts paid or credited as paid on the shares;
- (b) for the purpose of calculating the excess referred to in clause 18.1(a), any amount unpaid on a share is to be treated as property of the Company;
- (c) the amount of the excess that would otherwise be distributed to the holder of a partly paid share under clause 18.1(a) must be reduced by the amount unpaid on that share at the date of the distribution; and

- (d) if the effect of the reduction under clause 18.1(c) would be to reduce the distribution to the holder of a partly paid share to a negative amount, the holder must contribute that amount to the Company.

## 18.2 Division of assets

- (a) If the Company is wound up, the liquidator, with the sanction of a special resolution of the Members:
  - (i) may divide among the Members, in specie or in kind, the whole or any part of property of the Company available for distribution and may, for that purpose, set the value as the liquidator considers fair on any specific assets of the Company to be divided; or
  - (ii) may vest specific assets of the Company in a trustee or trustees on trust for the benefit of any of the Members as the liquidator thinks fit but so that no Member is compelled to accept any shares or other securities in respect of which there is any liability on the part of the holder.
- (b) If the liquidator thinks fit, any division under clause 18.2(a) may be otherwise than in accordance with the legal rights of the Members and any class may be given preferential or special rights or may be excluded altogether or in part.
- (c) Where a division under clause 18.2(a) is otherwise than in accordance with the legal rights of the Members, a Member is entitled to dissent and to exercise the same rights as if the special resolution sanctioning that division were a special resolution passed under section 507 of the Act.
- (d) If a division under clause 18.2(a) involves securities that have a liability to a call, a Member entitled under the division to any such securities may, by written notice not more than 10 days after the passing of the special resolution referred to in clause 18.2(a), direct the liquidator to satisfy the call out of the proportion of securities due to the Member and to pay any balance to the Member.
- (e) Nothing in this clause 18.2 derogates from or affects any right to exercise any statutory or other power which would have existed if this rule were omitted.



## Execution

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The undersigned, being the sole or all the members of the Company are in favour of the following special resolutions:

1. The Company adopts the constitution comprising the above pages.
2. To the extent permitted by law, the Constitution take effect from the date of registration of the Company.

Each of the undersigned members having in total at least 75% of the votes in the class or classes of shares that we respectively hold, gives written consent to the variation of our rights, if any, attaching to our shares consequent on the adoption of the constitution and acknowledges this as written notice of the variation.

Signed:

The Members

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Signed by:



.....  
Man Bahadur Khatri  
Member

Dated: 01/11/2020

Signed by:



.....  
Sunita Khatri  
Member

Dated: 01/11/2020



**SPECIAL RESOLUTION OF MEMBERS**  
**SOUTHERN ACADEMY OF HIGHER EDUCATION PTY LTD (ACN 645523548)**  
**(Company)**

We, being all members of the company present for the general meeting, hereby resolve the special resolution to amend the company constitution as follows:

**1.4 The Company's Objectives:**

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- (a) To advance education through the delivery of quality higher education to domestic and international students as approved by Australia's national regulator for higher education; and
- (b) To promote academic excellence and support free intellectual inquiry in its academic endeavours

**5.1 Powers of the Board**

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- The Board shall establish a Governing Council and make the initial appointments of its members. The functions and operations of the Governing Council will be governed by the Governing Council Charter.
- The Governing Council Charter will specify the powers delegated by the Board to the Governing Council, including the power to provide strategic leadership and oversee the affairs of the Company's higher education operations.

**Constitution amendment**

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That, pursuant to section 136(1) of the *Corporations Act 2001 (Cth)*, the Company adopts as its constitution the Constitution annexed to these resolutions as 'A'.

**SIGNED BY:**

Man Bahadur Khatri



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Signature

Sunita Khatri



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Signature

Date: 06/12/2022.....