

**DATED 10 November 2021**

***CORPORATIONS ACT 2001***

**PROPRIETARY COMPANY LIMITED BY  
SHARES**

**NGS SUPER PTY LIMITED  
(COMPANY)**

**COMPANY CONSTITUTION  
(adopted by circulating resolution  
effective on and from 10 November 2021)**

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*Corporations Act 2001*

A proprietary company limited by shares  
taken to be registered in New South Wales

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**CONSTITUTION**

of

**NGS SUPER PTY LIMITED**  
**ACN 003 491 487**

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**1. GENERAL**

**1.1 Definitions**

The following definitions apply in this Constitution unless the context otherwise requires.

**Act** means the *Corporations Act 2001* (Cth) and the *Corporations Regulations 2001* (Cth) as amended from time to time.

**Appointing Entity** means the holder or holders of shares or any other entity entitled to appoint a director under this Constitution.

**Board** means the Company's board of directors.

**Company** means NGS Super Pty Limited ACN 003 491 487.

**Constitution** means this Constitution as amended from time to time and a reference to a particular rule has a corresponding meaning.

**Director** means a person appointed or elected to the office of director of the Company in accordance with this Constitution and includes any alternate Director duly acting as a Director.

**Mandated Board Composition Standard** means a standard that the Board must:

- (a) consist of less than fourteen (14) Directors; or
- (b) include a mandated number or proportion of directors other than the directors that may be appointed by the Appointing Entities in a manner other than as contemplated under this Constitution (such as, for example independent directors howsoever defined),

with which the Board determines the Company must comply:

- (c) under the Act, the SIS Act, or other law or Regulatory Standard;
- (d) in order for NGS Super to maintain its status as a complying superannuation fund (as defined in the SIS Act); or
- (e) in order to maximise the growth and longevity of NGS Super.

**Member Present** means, in connection with a meeting, the member present in person at the venue or venues for the meeting or by proxy, by attorney and, where the member is a body corporate, by representative.

**NGS Super** means the superannuation fund of that name created by Trust Deed dated 10 June 1988, of which the Company is appointed as trustee.

**Prescribed Rate** means the rate determined by the Directors for the purpose of this Constitution, and in the absence of determination means 10%.

**QIEC Employer Organisation** means the Australian Community Services Employers Association, Union of Employers, otherwise known as Community Management Solutions.

**QIEC Union** means the Queensland Independent Education Union of Employees.

**Regulator** means the Australian Prudential Regulatory Authority, or its successor or any other governmental authority responsible for administering the laws or any other rules governing the operation of superannuation funds or the availability of income tax concessions to them.

**Regulatory Standard** means any standard, or other instrument issued by a Regulator with which the Company must comply.

**Relevant Date** means the date when the Constitution was amended to insert a Retirement Date for Directors.

**Retirement Date** has the meaning described in Clause 7.5(b).

**Seal** means any common seal or duplicate common seal of the Company.

**Secretary** means a person appointed to the office of secretary of the Company and secretary of NGS Super in accordance with this Constitution.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993 (Cth)* and the *Superannuation Industry (Supervision) Regulations 1994 (Cth)*, as amended from time to time.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (a) A **gender** includes all genders.

- (b) The word **person** includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority.
- (c) A reference to an entity or person includes their executors, administrators, successors and permitted assigns and substitutes.
- (d) The **singular** includes the plural and conversely.
- (e) Where a **word** or **phrase** is defined, its other grammatical forms have a corresponding meaning.
- (f) A reference to a **paragraph** or **sub-paragraph** is to a paragraph or sub-paragraph, as the case may be, of the rule or paragraph, respectively, in which the reference appears.
- (g) A reference to any **legislation** or to any **provision** of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- (h) Except in so far as a contrary intention appears in this Constitution:
  - (i) an expression has in this Constitution the same meaning as in the Act; and
  - (ii) if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this Constitution which relates to a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (i) A mention of anything after **include, includes or including** does not limit what else might be included.
- (j) A power, an authority or a discretion reposed in a Director, the Directors, the Company in general meeting or an Appointing Entity may be exercised at any time and from time to time.
- (k) A reference to an amount paid on a share includes an amount credited as paid on that share.
- (l) Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

### 1.3 Replaceable rules

The replaceable rules contained in the Act are displaced by this Constitution and accordingly do not apply to the Company.

#### **1.4 Proprietary company provisions**

- (a) The Company at the time of adoption of this Constitution is registered under the Act as a proprietary company limited by shares.
- (b) The Company must not engage in any activity that would require the lodgement of a prospectus, other than as permitted by the Act.

#### **1.5 Legal Compliance**

- (a) The rules of the Company specified in the provisions of this Constitution shall apply subject to and in compliance with any mandatory provision of the Act or the SIS Act.
- (b) Any mandatory provision of the Act or the SIS Act shall be incorporated into, and shall apply instead of any provision of, this Constitution in the event of any conflict.

#### **1.6 Actions authorised under the Act**

Where the Act authorises or permits a company to do any matter or thing if so authorised by its constitution, the Company is and shall be taken by this rule to be authorised or permitted to do that matter or thing, despite any other provision of this Constitution.

#### **1.7 Object of the Company**

- (a) The object of the Company is to act as the trustee of:
  - (i) NGS Super being a regulated superannuation fund (within the meaning of section 19 of the SIS Act), and of which the Company acts as trustee;
  - (ii) any other superannuation entity (within the meaning of section 10 of the SIS Act); or
  - (iii) any other trust, where acting as trustee of that trust is necessary or reasonably incidental to the Company's activities as trustee of a superannuation entity.
- (b) In carrying out its object, the Company has all the powers of a natural person and may do all things necessary, desirable or expedient in relation to, in connection with, arising from or incidental to the carrying out of its object.
- (c) The income and property of the Company:
  - (i) must be applied by the Company for the purpose of carrying out its object; and
  - (ii) must not be distributed to the members of the Company.



## **2. SHARE CAPITAL**

### **2.1 Power of Directors to issue securities**

- (a) The Directors may issue shares or options over shares in the Company subject to the provisions of this rule 2.
- (b) Any share may be issued for such consideration as the Directors may decide subject to rule 2.3.
- (c) It shall be the condition of issue of any shares of the Company that the whole amount of the issue price be payable in full on issue.

### **2.2 Classes of Shares**

The share capital of the Company shall comprise the following specified share classes:

- Class A ordinary shares
- Class B ordinary shares
- Class C ordinary shares
- Class D ordinary shares
- Class E ordinary shares

### **2.3 Overriding Restrictions**

Notwithstanding any other provision of this Constitution, shares may only be issued, transferred or sold if:

- (a) the proposed issue, transfer or sale has been approved by **all** of the members holding shares of the class in respect of which such issue, transfer or sale is proposed to be taken;
- (b) immediately following such issue, transfer or sale, the total number of Class A ordinary shares and Class D ordinary shares shall be equal to the total number of Class B ordinary shares, Class C ordinary shares and Class E ordinary shares.;
- (c) rule 7.2 will be complied with regarding the appointment of directors; and
- (d) immediately following such issue, transfer or sale there shall not be any classes of shares other than Class A ordinary shares, Class B ordinary shares, Class C ordinary shares, Class D ordinary shares and Class E ordinary shares.

### **2.4 Further Restrictions on the issue of shares**

If the Directors wish to issue further shares in the Company, they must comply with the following provisions, in addition to rule 2.3:

- (a) the directors shall, by resolution, specify the number of shares of each class proposed to be issued and the terms of any premium or discount upon which the shares are to be offered;
- (b) the total number of shares proposed to be issued for Class A ordinary shares and Class D ordinary shares shall equal the total number of shares proposed to be issued for Class B ordinary shares, Class C ordinary shares and Class E ordinary shares;
- (c) the shares of each class shall first be offered to the existing members in proportion to the number of issued shares of that class held by them respectively (disregarding fractions);
- (d) such an offer shall be made in identical terms in respect of each class of share by a notice to each member:
  - (i) setting out the terms of the Directors' resolution under paragraph (a);
  - (ii) specifying the number of shares of a class to be issued to which the member is entitled;
  - (iii) specifying the period (being not less than 21 days from the date of the notice) within which the offer, if not accepted, will be deemed to be declined;
  - (iv) requesting the member to state the number of shares of a class, in excess of his or her proportion, which that member requires;
- (e) subject to paragraph (f), if all the shares of one class are not taken up by the members of that class entitled to do so, the shares not taken up shall be used to satisfy a member's requirement for shares of that class in excess of that member's proportion;
- (f) any member to whom an offer is made under paragraph (d) may assign to any other member holding shares of the same class, the right to take up all or any of the shares offered to the first mentioned member;
- (g) any shares not taken up by the members under paragraphs (c) to (f) shall be at the disposal of the Directors who may, subject to rule 2.3, issue, grant options over or otherwise dispose of such shares to such persons and at such a price as the Directors think fit.

## **2.5 Holders of Shares**

- (a) The only person(s) entitled to be a holder of any Class A ordinary shares shall be:
  - i. The Trustees for the Roman Catholic Province of Sydney; or

- ii. The Association of Independent Schools of NSW Limited ACN 003 509 073.
- (b) The only person(s) entitled to be a holder of any Class B ordinary shares shall be:
  - i. NSW/ACT Independent Education Union; or
  - ii. Any person nominated by the NSW/ACT Independent Education Union.
- (c) The only person(s) entitled to be a holder of any Class C ordinary shares shall be:
  - i. The Victorian Independent Education Union
- (d) The only person(s) entitled to be a holder of any Class D ordinary shares shall be:
  - i. The South Australian Commission for Catholic Schools Inc; and
  - ii. The Association of Independent Schools of South Australia Incorporated ABN 37 819 228 078.
- (e) The only person(s) entitled to be a holder of any Class E ordinary shares shall be:
  - i. Independent Education Union (South Australia) Branch ABN 26 954 644 024.

## **2.6 Variation of Class Rights**

- (a) This rule 2.6 shall apply, if at any time the share capital of the Company is divided into different share classes.
- (b) The rights attached to any share class (unless otherwise specified by the terms of issue of the shares of that class) may be varied or cancelled, whether or not the Company is in liquidation, with:
  - (i) the written consent of **all** of the shareholders of that share class; or
  - (ii) the consent of a unanimous resolution passed at a separate general meeting of the shareholders of that share class.
- (c) The provisions of this Constitution relating to general meetings apply in so far as they are capable of application and with the necessary changes to every separate class except that any holder of shares of the class, present in person, by proxy, attorney or representative, may demand a poll.

- (d) The rights conferred on the holders of the shares of any class shall, unless otherwise provided by this Constitution or by the terms of issue of the shares of that class, be taken to be varied by the creation or issue of further shares of that class.

## **2.7 Brokerage and commission**

- (a) The Company may exercise the powers to pay brokerage or commission conferred by the Act in such manner as may be provided by the Act.
- (b) The brokerage or commission may be satisfied by:
  - (i) the payment of cash;
  - (ii) the allotment of fully or partly paid shares; or
  - (iii) partly by the payment of cash and partly by the allotment of fully or partly paid shares.

## **2.8 Recognition of Trusts**

- (a) In the event of a person holding a share upon any trust, howsoever created, notice of the said trust shall be given in writing by that person to the Company and the Company shall be bound to recognise that person as holding such share upon such trust.
- (b) Whether or not it has notice of the rights or interests concerned, the Company is not bound to recognise:
  - (i) any equitable, contingent, future or partial interest in any share or unit of a share; or
  - (ii) any other right in respect of a share,except an absolute right of ownership of the member or as otherwise provided by this Constitution or by law.
- (c) If the Company is required by law or by this Constitution to recognise a person as holding a share upon any trust, the member shall be registered in the register of members as a shareholder in his or her capacity as trustee.

## **3. CERTIFICATES FOR SHARES**

### **3.1 Share certificates**

- (a) The Company shall issue to any shareholder whose name is entered as a holder in the register of members, without payment by that shareholder, a certificate in respect of the shareholder's shares in accordance with the Act.

- (b) The Company is not bound to issue more than one certificate in respect of a share or shares held jointly by two or more persons.
- (c) Delivery of a certificate for a share to one of two or more joint holders is sufficient delivery to all of those joint holders.

### **3.2 Form of share certificates**

A certificate for shares shall be in a form that the Directors from time to time decide.

### **3.3 Replacement share certificates**

- (a) Subject to paragraph (b), the provisions of the Act with respect to certificates which are lost or destroyed shall apply to certificates which are worn out or defaced. The Directors may exercise all the powers in relation to certificates which are lost, destroyed, worn out or defaced as are exercisable by the Company or its Directors under the Act in relation to certificates that are lost or destroyed.
- (b) The Company:
  - (i) shall issue a certificate in replacement of a worn out or defaced certificate only if the certificate to be replaced is received by the Company for cancellation and is cancelled; and
  - (ii) may require the payment of any amount as the Directors determine in connection with the issue of a replacement certificate.

## **4. TRANSFER OF SHARES**

### **4.1 Transferability of certificated shares**

- (a) Subject to this Constitution (in particular rule 2.3 and rule 4.4) and the Act, a member's shares may be transferred by instrument in writing, in any form authorised by the Act or in any other form that the Directors approve.
- (b) A transferor of shares remains the holder of the shares transferred until the transfer is registered.

### **4.2 Registration of transfers**

- (a) The following documents must be lodged for registration at the registered office of the Company or the location of the relevant share register:
  - (i) the instrument of transfer;
  - (ii) the certificate (if any) for the shares; and

- (iii) any other information that the Directors may require to establish the transferor's right to transfer the shares.
- (b) On compliance with paragraph (a), the Company shall, subject to the powers of the Company to refuse registration, register the transferee as a member.
- (c) The Directors may waive compliance with paragraph (a)(ii) on receipt of satisfactory evidence of loss or destruction of the certificate.

#### **4.3 Restriction on transfer of shares**

- (a) Subject to rule 4.4, the Directors may in their absolute discretion refuse to register any transfer of shares and may decline to give their reasons for doing so.
- (b) Where the Directors resolve to refuse to register a transfer of shares, the Directors shall notify the transferee not later than 2 months after the date on which the transfer was lodged with the Company.
- (c) The Directors may at any time suspend the registration of share transfers for any period not exceeding in aggregate 30 days in any calendar year.

#### **4.4 Pre-emptive rights**

- (a) If a member (**Seller**) wishes to transfer any of its shares in the Company, the Seller must give to the Company (acting through the Board) notice (**Transfer Notice**) to that effect, and must also comply with rule 2.3.
- (b) The Transfer Notice constitutes the Board as the agent of the Seller to sell the shares to other members at the price nominated by the Seller (being the price at which a bona fide third party offeree is prepared to buy the shares (**Offer Price**)) or if no such price is nominated, at a fair value.
- (c) The fair value of a share is the price determined by an independent auditor agreed between the members, or, failing agreement, by an auditor appointed by the Institute of Chartered Accountants in the State of New South Wales (**Fair Value**). The basis for the valuation shall be the fair selling value of the shares as between a willing but not too willing seller and a willing but not too willing buyer. In determining the Fair Value, the auditor acts as an expert, not an arbitrator. The decision of the auditor binds the Seller, the Company, the Board and the other members. The Seller and the Company must each pay one half of the costs of the auditor undertaking the valuation.
- (d) The Seller cannot revoke a Transfer Notice without the consent of the Board.

- (e) After receipt of the Transfer Notice, when an Offer Price is nominated or when the Fair Value is determined (if no Offer Price is nominated), the Board must give notice to the other members:
- (i) stating the number and price of the shares for sale; and
  - (ii) inviting each of those other members to notify the Board within 30 days after the date of the Board's notice whether or not they wish to buy any of the shares, and, if so, the maximum number.
- (f) After that period of 30 days ends, the Board must allocate the shares to such of the other members (each a **Buyer**) who wish to buy them. If two or more members offer to buy the shares and there are not enough shares to fill their offers, the Directors must allocate the shares to those members in proportion to the number of shares already held by each of them. However, the Board must not allocate to a member more than the maximum number of shares the member specified.
- (g) If the Board allocates a share to a Buyer and the Buyer pays the price, the Seller must transfer the share to the Buyer. If the Seller does not do so, the Seller is deemed to appoint the chairperson, or any other Director nominated by the Board for that purpose, as the Seller's attorney:
- (i) to execute, complete and deliver the transfer in the Seller's name;
  - (ii) to receive the price in the Seller's name; and
  - (iii) to give an effective receipt for the price in the Seller's name.
- (h) After:
- (i) the transfer is executed and delivered by or for the Seller; and
  - (ii) the Buyer pays the stamp duty on the transfer,
- the Company must register the Buyer as the holder of the share.
- (i) If the Board (as agent of the seller) does not sell all the shares within 3 months after the transfer notice is given, the Seller may transfer any remaining shares to a third party offeree or any person at the Offer Price or Fair Value (as the case may be) as long as:
- (i) the sale takes place within a further 3 months; and
  - (ii) the third party offeree or other person has agreed to become a party to, and to be bound by, this

Constitution (such agreement to be in form and substance satisfactory to the Company's legal advisers).

- (j) This rule 4.4 does not apply:
  - (i) if all the other members consent in writing; or
  - (ii) where the Seller is a body corporate, to a transfer from the Seller to a related body corporate (as defined in the Act) of the Seller, where the related body corporate has agreed to become a party to and be bound by this Constitution (such agreement to be in form and substance satisfactory to the Company's legal advisers); or
  - (iii) where the Seller holds the shares as a trustee, to a transfer from the Seller to any new, additional or substituted trustee, where such new, additional or substituted trustee has agreed to become a party to and be bound by this Constitution (such agreement to be in form and substance satisfactory to the Company's legal advisers).

## **5. TRANSMISSION OF SHARES**

### **5.1 Entitlement to shares when a member dies**

- (a) Where a member dies:
  - (i) the survivor or survivors, where the member was a joint holder; and
  - (ii) the legal personal representatives of the deceased, where the member was a sole holder,

shall be the only persons recognised by the Company as holding the legal interest in any share held by that deceased member.

- (b) The Directors may require evidence of a member's death or the entitlement of any legal representative of a sole member, as they think fit.
- (c) This rule does not release the estate of a deceased joint holder from any liability in respect of a share that had been jointly held by the holder with other persons.

### **5.2 Registration of persons entitled**

- (a) Subject to the *Bankruptcy Act 1966* (Cth) and to the production of any information that is properly required by the Directors, a person becoming entitled to a share in consequence of the death or bankruptcy of a member may elect to:



- (i) be registered personally as holder of the share; or
  - (ii) have another person registered as the transferee of the share.
- (b) All the limitations, restrictions and provisions of this Constitution relating to:
- (i) the right to transfer;
  - (ii) the registration of the transfer of; and
  - (iii) the issue of certificates with respect to,
- shares are applicable to any transfer as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

### **5.3 Other rights where a member dies or becomes bankrupt**

- (a) Where a member dies or becomes bankrupt, the member's legal personal representative or the trustee of the member's estate (as the case may be) is, on the production of all information as is properly required by the Directors, entitled to the same entitlements and other advantages and to the same rights (whether in relation to meetings of the Company or to voting or otherwise) as the member would have been entitled to if the member had not died or become bankrupt.
- (b) Where 2 or more persons are jointly entitled to any share as a result of the death of a member, they shall, for the purposes of this Constitution, be taken to be joint holders of the share.

## **6. GENERAL MEETINGS**

### **6.1 Power of Directors to convene a general meeting**

- (a) Any Director may convene a general meeting whenever the Director thinks fit.
- (b) General meetings may be held at 2 or more venues using technology that gives the members as a whole a reasonable opportunity to participate.
- (c) Any Director may cancel by notice in writing to all members any meeting convened by the Director, except that a meeting convened on the requisition of a member or members shall not be cancelled without their consent.
- (d) The Directors may postpone a general meeting or change the place at which it is to be held by notice, not later than 72 hours prior to the time of the meeting, to all persons to whom the notice of meeting (the **first notice**) was given. The postponing notice shall specify the place, date and time of the meeting.

The meeting shall be taken to have been duly convened under the first notice.

## **6.2 Meeting Notification**

- (a) The Company shall give notice of any general meeting to each shareholder, each director, any legal representative entitled to any share of any shareholder and any auditor.
- (b) Subject to paragraph (c), the Company may call any general meeting by providing at least 21 days' notice to shareholders.
- (c) The Company may call on shorter notice any general meeting, with the consent of all shareholders entitled to attend and vote at that meeting, except for any meeting at which any resolution will be moved to remove any auditor.
- (d) The non-receipt of a notice convening a general meeting by or the accidental omission to give notice to any person entitled to receive notice shall not invalidate the proceedings at or any resolution passed at the meeting.

## **6.3 Notice contents**

Each notice convening a general meeting shall contain the information required by the Act.

## **6.4 Business of general meetings**

No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

## **6.5 Quorum of general meeting**

- (a) No business except the election of a chairperson and the adjournment of a meeting shall be transacted at any general meeting unless there is a quorum of Members Present at the time when the meeting proceeds to business.
- (b) To satisfy the quorum requirement, there must be 100% of Members Present.

## **6.6 If quorum not present**

If a quorum is not present within 60 minutes after the time appointed for the meeting:

- (a) where the meeting was convened on the requisition of members under the Act, the proposed meeting shall be dissolved (subject to rule 6.8(a));
- (b) in any other case:
  - (i) the meeting stands adjourned to a day and at a time and place as the Directors decide or, if no decision

is made by the Directors, to the same day in the next week at the same time and place; and

- (ii) if at the adjourned meeting a quorum is not present within 60 minutes after the time appointed for the meeting, the meeting shall be dissolved.

#### **6.7 Chair of meetings**

- (a) Subject to paragraph (b), the chair of Directors or, in the chair's absence, the deputy chair shall preside as chair at every general meeting.
- (b) Where a general meeting is held and:
  - (i) there is no chair or deputy chair; or
  - (ii) the chair or deputy chair is not present within 30 minutes after the time appointed for the meeting or does not wish to act as chair of the meeting,

the Directors present shall choose one of their number or, in the absence of all Directors or if none of the Directors present wishes to act, the Members Present shall by a majority of the Members Present elect one of their number to be chair of the meeting.

#### **6.8 Adjournments**

- (a) The chair may and shall if so directed by the meeting adjourn the meeting from time to time and from place to place.
- (b) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (d) Except as provided by paragraph (c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

#### **6.9 Voting at general meetings**

- (a) Any resolution to be considered at a meeting shall be decided on a show of hands unless a poll is demanded.
- (b) A declaration by the chair that a resolution has on a show of hands been carried or lost and an entry to that effect in the minutes of the meeting shall be taken as conclusive evidence of the fact without the need to show the number or proportion of the votes recorded in favour of or against the resolution.

- (c) Despite the Act, a poll for a resolution may be demanded by the chair or by at least 1 Member Present and entitled to vote on the resolution.
- (d) A poll may be demanded at any time prior to any voting decision being taken or the declaration of that decision, or immediately subsequent to that declaration.

#### **6.10 Procedure for polls**

- (a) The Chair shall, following any poll demand, direct the manner in and at the time at which the poll shall be taken, except that a poll on the election of the chair or on the question of an adjournment shall be taken immediately.
- (b) The result of the poll shall be a resolution of the meeting at which the poll was demanded.
- (c) The demand for a poll shall not prevent a meeting from continuing for the transaction of any business other than that on which a poll has been demanded.

#### **6.11 Chair's casting vote**

In the case of an equality of votes on a show of hands or on a poll the chair of the meeting shall not have a casting vote in addition to any vote to which the chair may be entitled as a member.

#### **6.12 Representation and voting of members**

Subject to this Constitution and any rights or restrictions for the time being attached to any class or classes of shares:

- (a) at meetings of members or classes of members, each member entitled to attend and vote may attend and vote in person or by proxy or attorney and (where the member is a body corporate) by representative;
- (b) on a show of hands, every Member Present having the right to vote at the meeting has one vote; and
- (c) on a poll, every Member Present having the right to vote at the meeting has one vote for each fully paid share held by the member.

#### **6.13 Voting by Joint holders**

Where more than one joint holder votes, the vote of the holder whose name appears first in the register of members shall be accepted to the exclusion of the others whether the vote is given personally, by attorney or proxy.

#### **6.14 Members of unsound mind and minors**

- (a) If a member is:

- (i) of unsound mind;
- (ii) a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
- (iii) a minor,

the member's committee or trustee or any other person who properly has the management or guardianship of the member's estate or affairs may, subject to paragraph (b), exercise any rights of the member in relation to a general meeting as if the committee, trustee or other person were the member.

- (b) Any person with powers of management or guardianship shall not exercise any rights under paragraph (a) unless and until the person has provided the Directors with satisfactory evidence of the person's appointment and status.

#### **6.15 Objections to qualification to vote**

- (a) An objection to the qualification of a person to vote may be raised only at the meeting or adjourned meeting at which the vote objected to is tendered.
- (b) Any objection shall be referred to the chair of the meeting, whose decision shall be final.
- (c) A vote allowed after an objection shall be valid for all purposes.

#### **6.16 Proxy Appointment**

- (a) Any member may by written document appoint a proxy to attend, vote or demand a poll at any general meeting, instead of and on behalf of that member. A proxy need not be a member.
- (b) If the member is entitled to cast 2 or more votes at a meeting, a member may appoint 2 proxies.
- (c) If a member appoints 2 proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy shall exercise the proportion of voting rights specified by the Act.
- (d) A proxy shall have the same right as the member by whom he or she is appointed to attend and vote, and the same right to speak and to demand or join in demanding a poll, and to vote (whether on a show of hands or on a poll). However, if the member appoints two proxies, neither proxy shall be entitled to vote on a show of hands.

#### **6.17 Form of proxy**

- (a) Any proxy document shall be in any form decided or accepted by the directors.

- (b) A proxy document shall be executed:
  - (i) by the appointing shareholder or any attorney of that appointing shareholder; or
  - (ii) in relation to any corporate shareholder, under seal or by any authorised officer or attorney of that corporate shareholder.
- (c) Any proxy may vote as the proxy decides on any motion or resolution, in the absence of any voting direction in the proxy document.

#### **6.18 Lodgement of proxies**

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

#### **6.19 Validity of proxies**

A vote exercised in accordance with the terms of an instrument of proxy, a power of attorney or other relevant instrument of appointment is valid despite:

- (a) the previous death or unsoundness of mind of the principal;
- (b) the revocation of the instrument (or of the authority under which the instrument was executed) or the power; or

- (c) the transfer of the share in respect of which the instrument or power is given,

if no notice in writing of the death, unsoundness of mind, revocation or transfer has been received by the Company at its registered office at least 1 hour before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

#### **6.20 Where proxy is incomplete**

- (a) No instrument appointing a proxy shall be treated as invalid merely because it does not contain:
  - (i) the address of the appointor or of a proxy;
  - (ii) the proxy's name or the name of the office held by the proxy; or
  - (iii) in relation to any or all resolutions, an indication of the manner in which the proxy is to vote.
- (b) Where the instrument does not specify the name of a proxy, the instrument shall be taken to be given in favour of the chair of the meeting.

#### **6.21 Right of officers and advisers to attend general meeting**

- (a) A Director who is not a member shall be entitled to be present and to speak at any general meeting.
- (b) A Secretary who is not a member shall be entitled to be present and, at the request of the chair, to speak at any general meeting.
- (c) Any other person (whether a member or not) requested by the Directors to attend any general meeting shall be entitled to be present and, at the request of the chair, to speak at that general meeting.

#### **6.22 Single member and circulating resolutions**

- (a) Nothing in this Constitution limits the Company's power under the Act to pass a resolution as a circulating resolution or, while the Company has only one member, to pass a resolution by recording the resolution and signing the record.
- (b) Where the Company has one member only, a document signed by that member which records a decision of the member:
  - (c) constitutes a decision of the Company and is valid and effective as if it were a resolution duly passed at a meeting of members; and
  - (d) has effect as a minute of that decision.

## **7. APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS**

### **7.1 Number of Directors**

(a) Subject to the Act, the SIS Act and this Constitution, the Appointing Entities may at any time by unanimous resolution passed at a meeting of Appointing Entities determine the number of Directors to hold office from time to time, provided that:

- (i) the number of Directors shall not be less than four (4);
- (ii) the number of Directors shall always be an even number; and
- (iii) pending any such determination, the number of directors shall be fourteen (14).

The provisions of rules 6 and 13 shall apply mutatis mutandis to any meeting of Appointing Entities contemplated by this rule 7.1(a) on the basis that each reference to 'shareholders', 'member' or 'Members Present', in those provisions, is deemed to be a reference to 'Appointing Entities' or 'Appointing Entity', as required, and each reference to 'general meeting' is deemed to be a reference to the meeting of Appointing Entities.

(b) While any class of shares has Director appointing powers, any alteration to the provisions of this rule shall, for the purposes of rule 2.6, be deemed a variation of the rights attached to that class.

(c) Subject to rule 7.3, in addition to compliance with the requirements set out in the Act regarding the modification or repeal of any provision of this Constitution:

- (i) the definition of QIEC Union in rule 1.1, rule 7.2(f) and rule 7.2(h) (insofar as rule 7.2(h) relates to any power or entitlement conferred upon the QIEC Union) may only be modified, altered or repealed if the QIEC Union has first provided its written approval to the Company for that modification, alteration or repeal (as applicable); and
- (ii) the definition of QIEC Employer Organisation in rule 1.1, rule 7.2(g) and rule 7.2(h) (insofar as rule 7.2(h) relates to any power or entitlement conferred upon the QIEC Employer Organisation) may only be modified, altered or repealed if the QIEC Employer Organisation has first provided its written approval to the Company of that modification, alteration or repeal (as applicable).

(d) Subject to rule 7.3, rule 7.1(a), rule 7.1(c) and this rule 7.1(d) may only be modified, altered or repealed if both the QIEC



Union and the QIEC Employer Organisation have first provided their respective written approval to the Company in relation to that modification, alteration or repeal (as applicable).

- (e) Subject to rule 7.3, the requirements set out in rule 7.1(c) for the modification, alteration or repeal of the provisions referred to in it are further requirements to the Company's ability to modify, alter or repeal those provisions of the Constitution as contemplated by section 136(3) of the Act. The requirements set out in rule 7.1(d) for the modification, alteration or repeal of rule 7.1(c) and rule 7.1(d) are further requirements to the Company's ability to modify, alter or repeal those provisions of the Constitution as contemplated by section 136(4) of the Act.

## **7.2 Appointment of Directors**

- (a) Each class of shares shall have Director appointment and removal powers as follows:
  - (i) the holders of the Class A ordinary shares may appoint four(4) Directors;
  - (ii) the holders of the Class B ordinary shares may appoint three (3) Directors;
  - (iii) the holders of the Class C ordinary shares may appoint one (1) Director;
  - (iv) the holders of the Class D ordinary shares may appoint two (2) Directors;
  - (v) the holders of the Class E ordinary shares may appoint two (2) Directors.
- (b) Holders of classes of shares having Director appointing power may by notice in writing to the Company appoint such Directors (subject to the requirements of the SIS Act) as they may be entitled to and may from time to time remove any such Directors, and if at any time any Director for any reason ceases to be or act as Director, such holders may appoint another person to act as Director in his or her place.
- (c) Every appointment and removal of a Director shall take effect when such written notice of the appointment or removal is received at the office of the Company and, in the case of appointment of a Director, when his or her written consent to act as Director is similarly received.
- (d) Where there are two (2) or more holders of a particular class of ordinary shares who do not agree as to the appointment of a Director, each holder of that class shall be entitled to appoint the number of Directors as is equal to  $X / Y \times Z$  where:  
  
X is the number of ordinary shares of that class held by the relevant member;

Y is the total number of ordinary shares on issue in that class;  
and

Z is the total number of Directors able to be appointed by the holders of that class of ordinary shares pursuant to rule 7.2(a).

- (e) Any Director who is appointed pursuant to Clause 7.2(b) on or after the Relevant Date shall be appointed for a period of 3 years after the date when the notice of appointment is received subject to his or her removal prior to this date pursuant to Clause 7.5(a).
- (f) QIEC Union may by notice in writing to the Company appoint one Director (subject to the requirements of the SIS Act) (a **QIEC Member Director**) and may from time to time remove the QIEC Member Director, and if at any time the QIEC Member Director for any reason ceases to be or act as Director, the QIEC Union may appoint another person to act as QIEC Member Director in his or her place or reappoint that person as QIEC Member Director in accordance with clauses 7.5(c) and (d).
- (g) QIEC Employer Organisation may by notice in writing to the Company appoint one Director (subject to the requirements of the SIS Act) (a **QIEC Employer Director**) and may from time to time remove the QIEC Employer Director, and if at any time the QIEC Employer Director for any reason ceases to be or act as Director, the QIEC Employer Organisation may appoint another person to act as QIEC Employer Director in his or her place or reappoint that person as QIEC Employer Director in accordance with clauses 7.5(c) and (d).
- (h) Any QIEC Member Director who is appointed pursuant to clause 7.2(f) or any QIEC Employer Director who is appointed pursuant to clause 7.2(g), shall be appointed for a period of 3 years after the date when the notice of appointment is received subject to his or her removal prior to this date pursuant to Clause 7.5(a).

### **7.3 Mandated Board Composition Standard**

- (a) If the Board or the Company becomes subject to a Mandated Board Composition Standard, then the Appointing Entities will, if a request is made by any Appointing Entity to the others (**AE Request**), use their best endeavours to negotiate in good faith changes to the requirements for the Board's composition or method of appointment of Directors so that the Company will thereafter comply with the Mandated Board Composition Standards (**Agreed Board Change**).
- (b) If the Appointing Entities are unable to agree on an Agreed Board Change within 60 days after an AE Request (**AE Request Expiry**), the changes needed to achieve compliance with the Mandated Board Composition Standards

will be decided by a resolution of the Appointing Entities which is approved by at least 75% of them on the basis that each Appointing Entity has, for the purpose of that resolution, one vote regardless of the number of shares held by them (**Appointing Entities' Resolution**).

- (c) For the purpose of clause 7.3(b), any Appointing Entity may propose the terms of an Appointing Entities' Resolution for Appointing Entities to consider at a meeting of them in a notice (**AE Notice**) to the Company at any time within 30 days after the AE Request Expiry. If an AE Notice is received by the Company, the Board must call a meeting of Appointing Entities within seven days after receiving the AE Notice. The provisions of rules 6 and 13 shall apply mutatis mutandis to any meeting of Appointing Entities contemplated by this rule 7.3(c) on the basis that each reference to 'shareholders', 'member' or 'Member Present' in these provisions is deemed to be a reference to 'Appointing Entities' or 'Appointing Entity' as required, and each reference to 'general meeting' is deemed to be a reference to the meeting of Appointing Entities.
- (d) Where the Appointing Entities either:
  - (i) unanimously agree on an Agreed Board Change; or
  - (ii) approve by the required majority an Appointing Entities' Resolution,the Constitution may be modified as necessary to give effect to the Agreed Board Change or the Appointing Entities' Resolution (as applicable) notwithstanding rules 7.1(a), 7.1(c), 7.1(d) and 7.1(e).
- (e) The provisions of rules 7.1 and 7.2 are subject to changes which may be made to the Constitution contemplated by rule 7.3(d).
- (f) The provisions of this rule 7.3 may only be modified, altered or replaced with the unanimous approval of all Appointing Entities.

#### **7.4 No Share Qualification**

Directors are not required to hold shares in the capital of the Company.

#### **7.5 Vacation of office**

- (a) In addition to the circumstances in which the office of a Director becomes vacant under the Act, the office of a Director becomes vacant if the Director:
  - (i) becomes of unsound mind or a person whose person or assets are liable to be dealt with in any way under the law relating to mental health;

- (ii) resigns by notice in writing to the Company delivered to its registered office;
- (iii) is absent without the consent of the Directors from meetings of the Directors held during any continuous period of six months;
- (iv) dies; or
- (v) is removed by the Appointing Entity that appointed him or her.

(b) Where the circumstances in Clause 7.5(a) do not apply to a Director, the Director shall cease to be a Director on the Retirement Date which for any Director referred to in Clauses 7.2(e) or 7.2(h) (as applicable) shall be the date on which his or her appointment expires in accordance with that provision and in any other case shall be a date determined in accordance with the following formula:

$RD = (N \times 3) + 3$  years from the third anniversary of the Commencement Date immediately preceding the Calculation Date, where

RD means the Retirement Date,

N means the number of third anniversaries of the Commencement Date calculated from the Commencement Date until the Calculation Date,

Commencement Date means the date of appointment of the Director, and

Calculation Date means the date when this formula is applied to determine the RD being a date not later than one week after the Relevant Date.

(c) Upon the retirement of a Director pursuant to Clause 7.5(b) the Appointing Entity that appointed that Director may reappoint that Director for a further term of 3 years in which case that Director shall retire on a date being the earlier of when any circumstance described in Clause 7.5(a) applies or 3 years from the date of reappointment of that Director.

(d) The reappointment of a Director pursuant to Clause 7.5(c) does not preclude the Appointing Entity that appointed that Director from reappointing that Director for any number of subsequent terms of 3 years provided that the Retirement Date in respect of such a Director shall be in accordance with the date prescribed in Clause 7.5(c).

## 7.6 Remuneration of Directors

- (a) The Directors shall be entitled to payment of any fees for their service as Directors determined in accordance with this clause 7.6.
- (b) The remuneration of Directors will be calculated by reference to a base rate determined by the Directors from time to time (**Base Rate**).
- (c) Any proposal to increase the Base Rate shall be specified in a notice to all members. The members may within 30 days of receipt of such notice object in writing to the proposed increase. Provided no objection is made by any member during the 30 day notice period, the proposed increased to the Base Rate will be deemed approved and shall be effective as at the date of the expiry of the notice period.
- (d) In the event that an objection is raised by a member the proposed increase to the Base Rate must be decided by the Company in general meeting. The proposed increase shall be specified in the notice calling any general meeting to pass that resolution.
- (e) Fees payable under this provision shall be allocated among the Directors according to the positions held by those Directors set out as follows:

Position	Remuneration
Board Chair	Base Rate plus 100%
Board Deputy Chair	Base Rate plus 50%
Chair of Committee	Base Rate plus 35%
Member of Committee	Base Rate plus 25%

A maximum of any two positions held by a Director as a member of a Committee so appointed by the Board may be counted in determining remuneration payable to that Director.

- (f) Appointment of either the Chair or Deputy Chair to any Committee in accordance with that Committee's Charter is not to be included in determining the remuneration payable to that Director pursuant to clause 7.6(e).
- (g) Any Director engaged as an executive director and remunerated under an engagement agreement shall not be paid fees under this provision.
- (h) Fees payable under this provision shall be exclusive of any benefit provided by the Company to Directors in compliance with any legislative scheme, including any superannuation

guarantee or similar scheme, or any other benefit permitted by the *Corporations Act 2001* or this Constitution.

- (i) Any Director engaged as an executive director and remunerated under an engagement agreement shall not be paid fees under this provision.
- (j) Any Director shall be entitled to payment or reimbursement of any travelling and other cost properly incurred by that Director in attending and returning from any meeting of Directors, or committee of Directors, or general meeting or otherwise in connection with the business of the Company.
- (k) The Company may decide to pay any special and additional remuneration to any Director, who performs any extra service or makes any special effort for the benefit of the Company.
- (l) Any special or additional remuneration shall not comprise any commission on or percentage of profits, operating revenue or turnover.
- (m) A Director may be engaged as an agent of the Company in any other capacity, except as an auditor, upon any provisions as to remuneration, engagement period and otherwise as decided by the Directors.

#### **7.7 Retiring allowance for Directors**

- (a) The Company may pay or provide any benefit to any Director or any other person in connection with the retirement, or resignation from or loss of office, or death while in office, as a Director.
- (b) The Company may effectuate this provision by:
  - (i) creation and performance of any agreement with any present or prospective Director under which that Director, or any person nominated by that Director, is paid or provided with any lump sum payment, pension, retiring allowance or other benefit upon or subsequent to cessation of office for any reason; or
  - (ii) creation and funding of any fund or scheme to pay or provide any previously specified benefit to any Director, upon cessation of office, or any person, including any person nominated by any Director, in the event of the death of that Director while in office.
- (c) The Company may decide to impose any condition or restriction under any agreement, fund or scheme specified in this provision.
- (d) The Company may consent to the creation, performance and funding by the Company of any equivalent agreement, fund or scheme in relation to Directors of the Company.

## **8. POWERS AND DUTIES OF DIRECTORS**

### **8.1 Powers of Directors**

- (a) Subject to the Act and this Constitution, the business of the Company shall be managed by the Directors, who may exercise all powers of the Company which are not, by the Act or this Constitution, required to be exercised by the Company in general meeting.
- (b) Without limiting the generality of paragraph (a), the Directors may exercise all the powers of the Company:
  - (i) to borrow money, to charge any property or business of the Company or all or any of its uncalled capital; and
  - (ii) to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

### **8.2 Appointment of attorneys**

- (a) The Directors may, by power of attorney, appoint any person to be the attorney of the Company for any purpose, with any powers, authorities and discretions vested in or exercisable by the Directors, for any period and subject to any conditions as they think fit.
- (b) Any appointment under paragraph (a) may be made on terms for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

### **8.3 Negotiable instruments**

All negotiable instruments of the Company shall be executed by the persons and in the manner that the Directors decide from time to time.

## **9. PROCEEDINGS OF DIRECTORS**

### **9.1 Notice and convening of board meetings**

- (a) The Directors may meet together to perform any business and adjourn and otherwise regulate their meetings as they think fit.
- (b) A Director may at any time, and on the request of a Director a Secretary shall, convene a meeting of the Directors.
- (c) Reasonable notice must be given to every Director of the place, date and time of every meeting of the Directors. Where any Director is for the time being outside of Australia, notice need only be given to that Director if contact details have been given,

but notice shall always be given to any alternate director in Australia whose appointment by that Director is for the time being in force.

## **9.2 Meetings by technology**

- (a) For the purposes of the Act, each Director, on becoming a Director (or on the adoption of this Constitution), consents to the use of the following technology for calling or holding a Directors' meeting:
- (i) video;
  - (ii) telephone;
  - (iii) electronic mail;
  - (iv) any other technology which permits each Director to communicate with every other Director; or
  - (v) any combination of the technologies described in the above paragraphs.

A Director may withdraw the consent given under this rule 9.2(a) in accordance with the Act.

- (b) Where the Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors:
- (i) the participating Directors shall, for the purpose of every provision of this Constitution concerning meetings of the Directors, be taken to be assembled together at a meeting and to be present at that meeting; and
  - (ii) all proceedings of those Directors conducted in that manner shall be as valid and effective as if conducted at a meeting at which all of them were present.

## **9.3 Quorum at meetings of Directors**

At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is two-thirds of the Directors entitled to vote. Unless the Directors determine otherwise, the quorum need only be present at the time when the meeting proceeds to business.

## **9.4 Chair of Directors**

- (a) The Directors, may elect one of their number as their chair and may decide the period for which the chair is to hold office as chair.
- (b) Where a meeting of Directors is held and:



- (i) a chair has not been elected as provided by paragraph (a); or
- (ii) the chair is not present at the time appointed for the holding of the meeting or does not wish to chair the meeting,

the Directors present shall elect one of their number to be a chair of the meeting.

## **9.5 Voting**

- (a) All business arising at any meeting of the Directors shall be determined only by resolution and no such resolution shall be effective unless carried by at least a two-thirds majority of Directors.
- (b) Any majority decision shall be treated as a decision of all of the Directors for any purpose.
- (c) In the case of an equality of votes, the chair of the meeting shall not have a casting vote in addition to the chair's deliberative vote.

## **9.6 Disclosure of Directors' interests**

- (a) A Director is not disqualified by the Director's office from contracting with the Company in any capacity.
- (b) A contract or arrangement made by the Company with a Director or in which a Director is in any way directly or indirectly interested shall not be invalid merely because the Director is a party to or interested in it.
- (c) A Director is not liable to account to the Company for any profit derived in respect of a matter in which the Director has a material interest, merely because of the Director's office or the fiduciary relationship it entails, if the Director has:
  - (i) declared the Director's interest in the matter as soon as practicable after the relevant facts have come to the Director's knowledge; and
  - (ii) not contravened this Constitution or the Act in relation to the matter.
- (d) Any general notice from any Director that that Director is an officer or member of a specified body corporate or firm, which specifies the nature and extent of the interest, shall, in relation to a matter involving the Company and that body corporate or firm, be a sufficient declaration of the Director's interest, provided the extent of that interest is no greater at the time of first consideration of the relevant matter by the Directors than was stated in the notice.

- (e) Subject to compliance with the Act, a Director may vote in respect of a matter in which that Director has a material personal interest.
- (f) The fact that a Director has executed on behalf of the Company, or signed as a witness to the execution under Seal by the Company, any agreement in which the Director is in any manner interested shall not invalidate that agreement, if the Director has complied with this rule 9.6 and the Act.

## **9.7 Alternate Directors**

- (a) Alternate Directors may be appointed and removed in the same manner as Directors and the provisions of Rules 7.2 and 7.5 shall equally apply to the appointment and removal of alternate Directors.
- (b) An alternate Director is entitled to notice of meetings of the Directors and, if the Director to whom he or she is alternate is not present at such a meeting, is entitled to attend and vote in the Director's stead.
- (c) Subject to the Act, an alternate Director may exercise any powers that the Director to whom he or she is alternate may exercise and the exercise of any such power by the alternate Director shall be taken to be the exercise of the power by the Director to whom he or she is alternate. The exercise of any power by the alternate Director shall be as agent of the Company and not as agent of the Director to whom he or she is alternate.
- (d) Where the alternate is another Director, that Director shall be entitled to cast a deliberative vote on the Director's own account and on account of each person by whom the Director has been appointed as an alternate Director.
- (e) Subject to paragraph (f), an alternate Director shall not be entitled to be remunerated otherwise than out of the remuneration of, and by agreement with, the Director to whom he or she is alternate, and in respect of such remuneration (if any) the rights of the alternate Director shall be against the Director to whom he or she is alternate only and not against the Company.
- (f) An alternate Director may be reimbursed for all expenses referred to in Rule 7.6(e).

## **9.8 Committees**

- (a) The Directors may delegate any of their powers to a committee or committees consisting of such number of them and/or other persons as they think fit. A committee may consist of one or more persons.
- (b) A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the Directors. A power so exercised shall be taken to have been exercised by the Directors.

- (c) Rules 9.1, 9.2 and 9.4 shall apply to any committee as if each reference in those rules to the Directors were a reference to the members of the committee and each reference to a meeting of Directors was to a meeting of the committee.
- (d) The number of members whose presence at a meeting of the committee is necessary to constitute a quorum is the number determined by the Directors and, if not so determined, is 2. Unless the Directors determine otherwise, the quorum need only be present at the time when the meeting proceeds to business.
- (e) Minutes of all the proceedings and decisions of every committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Directors are required by the Act to be made, entered and signed.

## **9.9 Written resolutions of Directors**

- (a) If a document:
  - (i) is sent to all those entitled to receive notice of a meeting at which a resolution could be put;
  - (ii) contains a statement that the signatories to it are in favour of that resolution;
  - (iii) the terms of the resolution are set out or identified in the document; and
  - (iv) has been signed by at least two-thirds majority of Directors entitled to vote on that resolution,

a resolution in those terms is passed on the day on which and at the time at which the document was signed by at least two-thirds majority of the Directors and the document has effect as a minute of the resolution.
- (b) For the purposes of paragraph (a):
  - (i) two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be taken to constitute one document containing a statement in those terms signed by those Directors at the time at which the last of those documents to be signed was signed by a Director;
  - (ii) a reference to a Director does not include a reference to an alternate director, whose appointor has also signed the document; and
  - (iii) a fax which is received by the Company or an agent of the Company and is sent for or on behalf of a

Director or alternate director shall be taken to be signed by that Director or alternate director not later than the time of receipt of the fax by the Company or its agent in legible form.

#### **9.10 Defects in appointments**

- (a) All acts done by any meeting of the Directors, committee of Directors, or person acting as a Director are as valid as if each person were duly appointed, continued to be appointed and qualified to be a Director or a member of the committee.
- (b) Paragraph (a) applies even if it is afterwards discovered that there was some defect in the appointment or the continuance of the appointment of a person to be a Director or a member of a committee or to act as a Director or that a person so appointed was disqualified.

#### **9.11 Where Company a wholly-owned subsidiary**

If the Company is the wholly-owned subsidiary of a body corporate, a Director may act in the best interests of the holding company and in doing so will be taken to act in good faith in the best interests of the 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 does not become insolvent because of the Director's act.

### **10. CORPORATE OFFICERS**

#### **10.1 Secretaries**

- (a) A Secretary may be appointed by the Directors and holds office on the terms and conditions, as to remuneration and otherwise, as the Directors decide.
- (b) Any person appointed as Secretary shall be deemed to be Secretary of the Company and Secretary of NGS Super.
- (c) The Directors may at any time terminate the appointment of a Secretary.
- (d) All acts done by a Secretary or person acting as a Secretary are as valid as if the person were duly appointed, continued to be appointed and qualified to be Secretary, even if it is afterwards discovered that there was some defect in the appointment or the continuance of the appointment of a person to be a Secretary or to act as Secretary, or that a person so appointed was disqualified.

#### **10.2 Executive Officers**

- (a) The Directors may at any time:

- (i) Create the position of chief executive officer of the Company with the powers and responsibilities as the Directors may from time to time confer;
  - (ii) create any other position or positions in the Company with the powers and responsibilities as the Directors may from time to time confer; and
  - (iii) appoint any person, whether or not a Director, to any position or positions created under paragraph 10.2(a)(i) and (ii).
- (b) Without limiting the generality of paragraph (a)(i), the Directors may, on the terms and conditions as they think fit, confer on the chief executive officer any of the powers exercisable by them. Such delegation must be recorded in the Company's minute book.
  - (c) Any powers conferred on the chief executive officer may be concurrent with or exclude certain powers of the Directors and the Directors may at any time withdraw or vary any powers so conferred.
  - (d) The chief executive officer shall, subject to the terms of any agreement entered into in a particular case, receive such remuneration as the Directors from time to time determine.
  - (e) Subject to the terms of any agreement entered in a particular case, the Directors may at any time terminate the appointment of a person holding a position created under paragraph (a)(i) and (ii) and may abolish the position.

## **11. SEALS AND EXECUTING DOCUMENTS**

- (a) The Company may have a common seal. If the Company has a common seal, it may also have a duplicate common seal.
- (b) A Seal shall be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the Seal.
- (c) Every document to which the Seal is affixed shall be signed by:
  - (i) 2 Directors; or
  - (ii) a Director and a Secretary (or another person appointed by the Directors to countersign that document or a class of documents in which that document is included).

This rule does not limit the ways in which the Company may execute a document.

## **12. INSPECTION OF RECORDS**

- (a) The Directors may authorise a member to inspect books of the Company to the extent, at the time and places and under the conditions the Directors consider appropriate.
- (b) A member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors.

### **13. NOTICES**

#### **13.1 Notices generally**

- (a) Any member who has not left at or sent to the registered office a place of address, facsimile number or an electronic mail address (for registration in the register) at or to which all notices and documents of the Company may be served or sent shall not be entitled to receive any notice.
- (b) A notice may be given by the Company to any member by:
  - (i) serving it on the member personally;
  - (ii) sending it by post to the member or leaving it at the member's address as shown in the register or the address supplied by the member to the Company for the giving of notices;
  - (iii) serving it in any manner contemplated in this paragraph (b) on a member's attorney as specified by the member in a notice given under paragraph (c);
  - (iv) fax to the fax number supplied by the member to the Company for the giving of notices; or
  - (v) transmitting it electronically to the electronic mail address given by the member to the Company for the giving of notices.
- (c) A member may by written notice to the Secretary left at or sent to the registered office require that all notices to be given by the Company or the Directors be served on the member's attorney at an address specified in the notice.
- (d) Notice to a member whose address for notices is outside Australia shall be sent by airmail, fax or electronic mail.
- (e) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected:
  - (i) in the case of a notice of a meeting, on the day after the date of its posting; and

- (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (f) Where a notice is sent by fax or electronic transmission, service of the notice shall be taken to be effected by properly addressing and sending or transmitting the notice and to have been effected on the day it is sent.
- (g) A notice may be given by the Company to a person entitled to a share in consequence of the death or bankruptcy of a member:
  - (i) by serving it on the person personally;
  - (ii) by sending it by post addressed to the person by name or by the title of representative of the deceased or assignee of the bankrupt or by any like description at the address (if any) within Australia supplied for the purpose by the person;
  - (iii) if such an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred;
  - (iv) by sending a fax to the fax number supplied by the person to the Company;
  - (v) if such a fax number has not been supplied, to the fax number to which the notice might have been sent if the death or bankruptcy had not occurred; or
  - (vi) by transmitting it to the electronic mail address supplied by the person to the Company.

### **13.2 Notices of general meeting**

- (a) Notice of every general meeting shall be given in the manner authorised by rule 13.1:
  - (i) subject to rule 14, to every member and to each Director and alternate director;
  - (ii) to every person entitled to a share in consequence of the death or bankruptcy of a member who, but for death or bankruptcy, would be entitled to receive notice of the meeting; and
  - (iii) to the auditor to the Company (if any).
- (b) No other person is entitled of receive notice of general meetings.

### **14. JOINT HOLDERS**

- (a) Joint holders of a share shall give to the Company notice of a single address for the purpose of all notices given by the Company under rule 13.2.
- (b) Where the Company receives notice under paragraph (a), the giving of notice to the address so notified shall be deemed given to all joint holders of the relevant share.
- (c) Where joint holders of a share fail to give notice to the Company in accordance with paragraph (a), the Company may give notice to the address of the joint holder whose name first appears in the register of members.

## **15. USE OF PROPERTY BY COMPANY**

### **15.1 Establishment and application of reserves**

Any profits of the Company must be set aside as reserves to be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied.

### **15.2 No Dividends**

The Company is prohibited from distributing any income or capital of the Company to members, including by way of payment of dividends.

### **15.3 Payment of capital**

The Directors may from time to time apply the capital of the Company for any purpose consistent with the Company's objects.

### **15.4 Division of assets**

If:

- (a) **Trustee Cessation Event 1:** the Company ceases to be the trustee of NGS Super;
- (b) **Trustee Cessation Event 2:** the Company is wound up or dissolved;
- (c) **Trustee Cessation Event 3:** all of the assets and liabilities of NGS Super are transferred to one or more other superannuation funds; or
- (d) **Trustee Cessation Event 4:** NGS Super is wound up in accordance with its governing rules,

(each a **Trustee Cessation Event**) the members have no right to participate in any distribution or payment of the assets or property of the Company.

### **15.5 Vesting of assets**



Upon the occurrence of a Trustee Cessation Event, any assets or property of the Company after satisfaction of all debts and liabilities (**Net Assets**), must be dealt with in accordance with the following table:

<b>Trustee Cessation Event</b>	<b>How the Net Assets are to be dealt with</b>
<b>Trustee Cessation Event 1</b>	Net Assets must be transferred to the new trustee person ( <b>New Trustee</b> ) who is appointed as the trustee of NGS Super in place of the Company provided that the constituent document of the New Trustee prohibits the distribution of its income or capital to its members.
<b>Trustee Cessation Event 2</b>	Net Assets must be transferred to the new trustee person ( <b>New Trustee</b> ) who is appointed as the trustee of NGS Super in place of the Company provided that the constituent document of the New Trustee prohibits the distribution of its income or capital to its members.
<b>Trustee Cessation Event 3</b>	<p>If all of the assets and liabilities of NGS Super are transferred to another superannuation fund – the Net Assets must be transferred to the trustee of the superannuation fund to which all of the assets and liabilities of NGS Super are transferred.</p> <p>If all of the assets and liabilities of NGS Super are transferred to more than one superannuation fund –the Net Assets must be transferred to the trustees of the superannuation funds to which the assets and liabilities of NGS Super are transferred in proportion to the value of the assets (net of liabilities) of the NGS Super transferred to that superannuation fund.</p>
<b>Trustee Cessation Event 4</b>	The liquidator may, with the sanction of a special resolution, vest the Net Assets of the Company in trustees on such trusts as are consistent with a wind up of NGS Super under its governing rules.

## 16. INDEMNITY

### 16.1 When the Company must indemnify officers

To the extent permitted by law and subject to the restrictions in section 199A of the Act, the Company must indemnify any present or previous officer of the Company, and where the Directors consider it appropriate, of an associated entity, against any liability incurred by the officer in or arising out of the conduct of the business of the Company or of the associated entity (as the case may be).

### 16.2 Indemnity for legal costs

To the extent permitted by law and subject to the restrictions in section 199A of the Act, the Company must indemnify each officer of the Company, and where the Directors consider it appropriate, of an associated entity,

against any liability for legal costs incurred by the officer in or arising out of the conduct of the business of the Company or of the associated entity (as the case may be).

### **16.3 Indemnity cover**

Subject to this rule 16 and to the extent permitted by law, the Company may by decision of the Directors create any:

- (a) indemnity in favour of; or
- (b) insurance for the benefit of,

any present or previous director, secretary, auditor, employee or other officer of the Company and, where the Directors consider it appropriate, of an associated entity.

### **16.4 Advances**

- (a) To the extent permitted by law and subject to any applicable statutory restrictions, the Company may advance to a person who is or has been an officer of:

- (i) the Company; or
- (ii) where the Directors consider it appropriate, an associated entity,

an amount that it might become liable to pay to the person under rule 16.2, on such terms and conditions as the Directors decide, before the outcome of any claim or proceedings to which the amount relates (and whether the Company is in fact liable to indemnify the person under rule 16.2 in respect of the amount) is known.

- (b) If, after the Company makes any such advance, the Directors form the view that the Company is not liable to indemnify the person for the relevant amount, the Company may recover any advance from the person as a debt due by the person to the Company.

### **16.5 Entry into agreements and access rights**

- (a) To the extent permitted by law, and without limiting a person's rights under this rule 16, the Company may enter into an agreement (including a deed) with a person who is or agrees to become or has been an officer of

- (i) the Company; and
- (ii) where the Directors consider it appropriate, an associated entity,

to give effect to the rights of the person under this rule 16, or to the exercise of a discretion under this rule 16, on any terms and conditions that the Directors thinks fit.

- (b) Any such agreement may also give the person rights to inspect and obtain copies of the books of the Company for the purposes, and on such other terms and conditions, as the Directors decide.
- (c) For the avoidance of doubt, the Directors may authorise the Company to enter into any agreement (including a deed) permitted by this rule 16.

#### **16.6 Benefit of indemnity**

The benefit of each indemnity given in rules 16.1 and 16.2 continues despite any amendment or deletion in respect of a liability arising out of acts or omissions occurring before the amendment or deletion.

#### **16.7 Tax**

- (a) The amount of any indemnity payable under this rule 16 (**Indemnity Payment**) will include any additional amount required to ensure that the total amount retained by the officer being indemnified (**Indemnified Officer**) after allowing for any tax (including GST) payable by the Indemnified Officer (less any tax deduction, tax benefit or input tax credit claimable by the Indemnified Officer) in connection with the Indemnity Payment is equal to the amount that would have been retained by the Indemnified Officer if such tax was not imposed in respect of the Indemnity Payment.
- (b) Payment of any such additional amount is conditional on the Indemnified Officer providing the Company with all information (including GST tax invoices in respect of GST) and assistance reasonably required to enable the Company to calculate and verify the amount.