



**DATED 4 April 2024**

***CORPORATIONS ACT 2001***

**PROPRIETARY COMPANY LIMITED BY SHARES**

**NGS SUPER PTY LIMITED**

**(COMPANY)**

**COMPANY CONSTITUTION**

**(adopted by circulating resolution effective on and from 4 April 2024)**

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## SECTION A

- A The name of the Company is NGS Super Pty Limited.
- B Subject to the provisions of the Corporations Act the Company shall have the rights, the powers and the privileges of a natural person.
- C The liability of the Shareholders is limited.
- D There shall be no distribution of assets, property, income, or capital to the Shareholders.
- E The Company is formed for the purpose of acting solely as the trustee of a regulated superannuation fund within the meaning of section 19 of the SIS Act, and to ensure at all times that the fund of which it is trustee is operated as a regulated superannuation fund in accordance with the requirements of the SIS Act.

## SECTION B

### 1. PRELIMINARY

#### 1.1 Definitions

Unless a contrary intention appears:

**"Alternate Director"** means any person appointed in accordance with this Constitution to act as an alternate of a Director.

**"Auditor"** or **"Auditors"** means the auditor or auditors for the time being of the Company.

**"Board Nomination & Appointment Policy"** means the policy adopted by the Board in relation to the nomination and appointment of Directors, as determined from time to time under clause 20.6.

**"Chairperson"** means the Chairperson appointed pursuant to clause 25.6.

**"Committee"** means any Director or Directors acting as a committee of Directors appointed under clause 25.9(a).

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

**"Complying Superannuation Fund"** has the same meaning as in section 45 of the SIS Act.

**"Conflicts Policy"** means the policy adopted by the Board from time to time in relation to the management of conflicts under clause 20.6.

**"Constitution"** means this document as amended from time to time.

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

**"Director"** means a person duly appointed as a director of the Company from time to time.

**"the Directors"** and **"the Board"** means the Directors for the time being or such number of them as have authority to act for the Company, acting as a body.

**"Disqualified Person"** means a person who is disqualified from office by the Relevant Law or any other law.

**"Employer Representative"** has the same meaning as under the SIS Act.

**"Fit and Proper Person"** means a person that is fit and proper as determined by the Board in accordance with the Fit & Proper Policy.

**"Fit & Proper Policy"** means the policy adopted by the Board from time to time for the purposes of assessing the fitness and propriety of a Responsible Officer under clause 20.6.

**"Fund"** means the superannuation fund known as NGS Super or such other superannuation Fund for which the Company is trustee.

**"Fund Member"** means a person who is for the time being a member of the Fund.

**"Governing Rules"** means the trust deed or any other document governing the Fund, as amended from time to time.

**"Independent Director"** means a person the Board has resolved is 'independent' within the meaning of the Relevant Law.

**"Member Representative"** has the same meaning as under the SIS Act.

**"Officer"** has the meaning ascribed to it in the Corporations Act.

**"Register"** means the Company's register of Shareholders kept in accordance with the Corporations Act.

**"Registered Address"** of a Shareholder means the address of the Shareholder stated in the Register, or, if a Shareholder has given notice in writing to the Company of a changed address, the last address of which the Shareholder has given such notice.

**"Registered Office"** means the Company's registered office for the time being.

**"Regulator"** has the meaning given under section 10 of the SIS Act.

**"Relevant Law"** means the requirements set out in:

- (a) the SIS Act;
- (b) the Income Tax Assessment Act 1936;
- (c) the Income Tax Assessment Act 1997;
- (d) the Superannuation (Resolution of Complaints) Act 1993;
- (e) the Corporations Act;
- (f) any regulations made under any of those Acts; and
- (g) any other present or future law of the Commonwealth of Australia or any State or Territory of Australia or any other requirement of or by a governmental authority responsible for administering the laws or other rules governing superannuation funds, which:
  - (i) are imposed on the Company or the Fund;
  - (ii) the Company must comply with or satisfy in order for the Fund to remain a Complying Superannuation Fund or to secure a concession for the Fund in respect of taxation; or
  - (iii) in the opinion of the Company, to avoid a penalty, detriment or disadvantage to the Company or to the Fund.

**"Responsible Officer"** means:

- (a) a Director;
- (b) the Secretary; or
- (c) an executive officer of the Company, being a person who is concerned, or takes part, in the management of the Company, including the chief executive officer of the Company.

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

**"Secretary"** means a person appointed under clause 27.

**"Shareholder"** means a person or entity who holds a share in the Company.

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

**"Trust Deed"** means the trust deed establishing the Fund dated 10 June 1988, as amended from time to time.

## 1.2 Interpretation

Unless a contrary intention appears:

- (a) expressions referring to writing shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing any gender include all genders;
- (d) words importing natural persons include corporations;
- (e) references to notices in clause 31.6 include not only formal notices of meeting but also all documents and other communications from the Company to its Shareholders but do not include cheques;
- (f) references to any officer of the Company include any person acting for the time being as such officer;
- (g) references to any statutory enactment, regulation, rule, by-law or other law or a provision thereof (hereinafter collectively called a "law") shall include that law as amended or re-enacted from time to time and any law which replaces the same or has the same effect in whole or in part (whether or not passed or approved by the same legislative body or other authority and whether or not incorporating or adopting any law previously in force) and shall also include any regulation, or any effective and enforceable determination or ruling, made under the authority of such a law;
- (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 Relevant Law; and
  - (ii) if an expression is given different meanings for the purposes of different provisions of the Relevant Law, the expression has, in a provision of this Constitution which relates to a matter dealt with by a particular provision of the Relevant Law, the same meaning as in that provision of the Relevant Law.
- (i) 'paid up' includes credited as paid up;
- (j) 'present' when referring to a Shareholder in relation to a meeting means present in person, or by representative appointed pursuant to the Corporations Act or by attorney and when referring to a Director in relation to a meeting means present in person or deemed presence in person under clause 25.3.
- (k) 'representative' in relation to a Shareholder of the Company means a representative appointed pursuant to Section 250D of the Corporations Act; and
- (l) the headings and any index shall not affect the construction of this Constitution.

## 1.3 Object of the Company

- (a) The object of the Company is to act as the trustee of:
  - (i) the Fund 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. CORPORATIONS ACT**

- 2.1 An expression used in a particular Part or Division of the Corporations Act that is given by that Part or Division a special meaning for the purposes of that or any other Part or Division has, in this Constitution that deals with a matter dealt with by the relevant Part or Division, the same meaning as applies in or in respect of that Part or Division.
- 2.2 The replaceable rules contained in the Corporations Act are excluded and do not apply to the Company (except insofar as they are repeated in this Constitution).

## **3. PROPRIETARY COMPANY RESTRICTIONS**

The Company is a proprietary company and accordingly:

- (a) the right to transfer shares is restricted in the manner set out in this Constitution;
- (b) the number of its non-employee Shareholders is limited to not more than 50;
- (c) any invitation to the public to subscribe for, and any offer to the public to accept subscriptions for, any shares in, or debentures of, the Company is prohibited; and
- (d) any invitation to the public to deposit money with, and any offer to the public to accept deposits of money with, the Company for fixed periods or payable at call, whether bearing or not bearing interest is prohibited.

## **4. EXERCISE OF POWERS**

The Company may by resolution or special resolution as the Corporations Act requires exercise from time to time any power which by the Corporations Act a company limited by shares may exercise if authorised by its constitution.

## **5. CAPITAL AND SHARES**

- 5.1 Subject to clause 6 and without prejudice to any special rights previously conferred on the holders of existing shares or class of shares but subject to the Corporations Act, shares in the Company may be issued by the Board and any such share may be issued with such preferred, deferred or other special rights, or subject to such restrictions, whether in regard to voting, return of capital or other matters, as the Board may from time to time determine.
- 5.2 If at any time the capital of the Company is divided into different classes of shares, the rights and privileges attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound up, be varied with the sanction of a unanimous resolution passed at a separate general meeting of the holders of the shares of that class or the written consent of all Shareholders of that share class. The provisions of this Constitution relating to general meeting shall apply to every such meeting, except that the necessary quorum shall be Shareholders present holding or representing three fourths of the nominal amount of the issued shares of the class and that any Shareholder present holding shares of that class may demand a poll.

- 5.3 Except as required by law, the Company shall not recognise a person as holding a share upon any trust.
- 5.4 The Company is not bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any share or unit of a share or (except as otherwise provided by this Constitution or by law) any other right in respect of a share except an absolute right of ownership in the registered holder.

## 6. SHAREHOLDER QUALIFICATION

### 6.1 Classes of shares

The Board may issue shares in any of the following classes:

- (a) Class A ordinary shares;
- (b) Class B ordinary shares;
- (c) Class C ordinary shares;
- (d) Class D ordinary shares;
- (e) Class E ordinary shares;
- (f) Class F ordinary shares; and
- (g) Class G ordinary shares.

### 6.2 Rights of shares

Each class of shares issued under clause 6.1 are ordinary shares which shall rank equally with regard to voting rights and confer on the holders:

- (a) the right to attend and vote at meetings of the Shareholders; and
- (b) no right to any distribution of assets, property, income or capital of the Company.

### 6.3 Overriding Restrictions

Notwithstanding any other provision of the 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; and
- (b) immediately following such issue, transfer or sale, the total number of Class A ordinary shares, Class D ordinary shares and Class F ordinary shares shall be equal to the total number of Class B ordinary shares, Class C ordinary shares, Class E ordinary shares and Class G ordinary shares.

### 6.4 Holders of shares

- (a) The only person(s) or entity/entities entitled to be a holder of any Class A ordinary shares shall be:
  - (i) The Association of Independent Schools of New South Wales; and
  - (ii) The Province of Sydney and Archdiocese of Canberra & Goulburn (previously the Trustees for the Roman Catholic Province of Sydney).
- (b) The only person entitled to be a holder of any Class B ordinary shares shall be the Independent Education Union of Australia (New South Wales and Australian Capital Territory).
- (c) The only person entitled to be a holder of any Class C ordinary shares shall be the Independent Education Union of Australia (Victoria and Tasmania).



- (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 Incorporated; and
  - (ii) the Association of Independent Schools of South Australia.
- (e) The only person entitled to be a holder of any Class E ordinary shares shall be the Independent Education Union (South Australia) Incorporated.
- (f) The only person entitled to be a holder of any Class F ordinary shares shall be Community Management Solutions.
- (g) The only person entitled to be a holder of any Class G ordinary shares shall be the Queensland Independent Education Union.

## 7. CERTIFICATES

- 7.1 A person whose name, is entered as a Shareholder in the Register is entitled without payment to receive a certificate in respect of the share in accordance with the Corporations Act.
- 7.2 If a share certificate is defaced, lost or destroyed it may be renewed on payment of such fee (if any) prescribed pursuant to the Corporations Act, and subject to the Corporations Act, on such terms (if any) as to evidence and indemnity as the Directors think fit.

## 8. TRANSFER AND TRANSMISSION OF SHARES

- 8.1 Subject to clause 6.4 and unless otherwise authorised by law, the instrument of transfer of any share shall be executed by or on behalf of the transferor and the transferee and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the Register in respect thereof.
- 8.2 Shares may be transferred in any form which the Directors approve.
- 8.3 Every instrument of transfer shall be left at the Registered Office or at such other place as the Directors shall determine accompanied by the certificate of the shares to be transferred and such other evidence as the Company may require to prove the title of the transferor or his right to transfer the shares and to prove the title of the transferee to be registered as the owner of the shares.
- 8.4 No fee shall be charged by the Company for any transfer of shares.
- 8.5 All instruments of transfer which shall be registered shall be retained by the Company but any instrument of transfer which the Directors may decline to register shall except in the case of fraud be returned to the person who deposited it with the Company.

## 9. ALTERATION OF CAPITAL

- 9.1 Subject to the Corporations Act, the Company may:
  - (a) consolidate and divide all or any of its authorised share capital into shares of larger amount than its existing shares;
  - (b) subdivide its shares or any of them into shares of a smaller amount, provided that the subdivision the proportion between the amount paid and the amount (if any) unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
  - (c) reduce its share capital in accordance with the Corporations Act.

## 10. GENERAL MEETINGS

- 10.1 Subject to the Corporations Act, general meetings are to be held at the times and places determined by the Directors from time to time.
- 10.2 The Directors may, whenever they think fit, and upon a requisition made in accordance with section 249D of the Corporations Act, convene a general meeting of the Company.
- 10.3 A Shareholder may also request or call and arrange to hold a general meeting in accordance with the procedures and requirements set out in the Corporations Act.
- 10.4 A general meeting may be held at two or more venues simultaneously using any technology that gives the Shareholders as a whole a reasonable opportunity to participate.

## 11. NOTICE OF GENERAL MEETINGS

- 11.1 A notice of general meeting be given to each Shareholder in accordance with the Corporations Act and shall:
- (a) specify the place, the day and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
  - (b) state the general nature of the business to be transacted at the meeting;
  - (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
  - (d) include such statements about the appointment of proxies as are required by the Corporations Act;
  - (e) specify a place and an electronic address for the purposes of proxy appointments; and
  - (f) comply with any other requirements of the Corporations Act.
- 11.2 Subject to the Corporations Act relating to agreements for shorter notice, meetings of the Company shall be convened by notice in writing of at least 21 days.

## 12. BUSINESS OF MEETING

Anything that under this Constitution or under the Corporations Act may be done by the Company in general meeting may be done at a general meeting provided that due notice is given accordance with this Constitution.

## 13. SHAREHOLDER

In clauses 14, 15 and 16 'Shareholder' includes a Shareholder present in person or by proxy, attorney or representative.

## 14. PROCEEDINGS AT GENERAL MEETINGS

- 14.1 No business shall be transacted at any general meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum of Shareholders is two thirds (2/3) of all Shareholders.
- 14.2 If a quorum is not present within half an hour from time appointed for the meeting, the meeting shall be dissolved.
- 14.3 The Chairperson shall be entitled to take the chair at every general meeting but if there is no Chairperson, or if at any meeting that Chairperson is not present within fifteen (15) minutes after the time appointed for holding the meeting or is unwilling to act as Chairperson, the Directors will

choose another Director as chairperson and, if no other Director is so chosen or if all of the Directors present decline to take the chair, the Shareholders present and entitled to vote shall elect the chairperson of the meeting.

- 14.4 The Chairperson may, but need not, seek the approval of the Shareholders, to adjourn the meeting from time to time and from place to place but so that:
- (a) when a meeting is adjourned for one month or more, notice of the adjourned meeting shall be given as in the case of an original meeting; and
  - (b) except as provided in paragraph (a), it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 14.5 All business arising at any general meeting shall be determined only by resolution put to the vote of the meeting.
- 14.6 In the case of an equality of votes the Chairperson of the meeting shall not be entitled to a second or casting vote.

## 15. VOTES OF SHAREHOLDERS

- 15.1 Subject to this Constitution and the terms of issue of any share:
- (a) every Shareholder present may vote on a resolution;
  - (b) subject to the Corporations Act, on a show of hands every Shareholder has one (1) vote; and
  - (c) on a poll every Shareholder has one (1) vote for each share held by that Shareholder.
- 15.2 Subject to the Corporations Act, a poll may be demanded by one (1) Shareholder present at the general meeting, immediately before a vote is taken.

## 16. WRITTEN RESOLUTION

Subject to the Corporations Act, a statement signed by all the Shareholders that they are in favour of a resolution is effective as if it has been passed at a general meeting at the time the resolution was last signed. A written resolution may consist of several documents in like form each signed by one or more of the Shareholders and may be signed by electronic acceptance in the form of an email.

## 17. PROXIES

- 17.1 A Shareholder who is entitled to vote at a general meeting of the Company may appoint a proxy to attend and vote at the general meeting on that Shareholder's behalf.
- 17.2 The appointment of a proxy by a Shareholder is governed by the Corporations Act.

## 18. CORPORATIONS ACTING BY REPRESENTATIVES

A Shareholder of the Company may by resolution of its directors authorise any person whom it thinks fit to act as its representative at any meeting of the Company, and, if it thinks fit, to exercise (whether at a meeting or not) the same powers (including the giving of any consent and the signing of any resolution appointment or other document) as the corporation could exercise if it were an individual Shareholder of the Company and also to exercise all such other powers as are conferred by the instrument of appointment.

## 19. ATTORNEYS OF SHAREHOLDERS

- 19.1 Each Shareholder may appoint an attorney to act for and on the Shareholder's behalf at all meetings of the Company at which it is not present and to give any consent and sign any appointment or resolution or other document which the Shareholder could give or sign.
- 19.2 Any such appointment shall be made by power of attorney duly executed by the Shareholder and attested by one or more witness or witnesses, or if the Shareholder is a corporation then under its common seal or under section 127(1) of the Corporations Act and the power of attorney shall at least forty- eight hours before the attorney becomes entitled to act thereunder be deposited at the Registered Office accompanied by such evidence of its due execution and non-revocation as the Directors require
- 19.3 The power of attorney shall be in a form approved by the Directors.
- 19.4 No act done or vote given by an attorney shall be rendered invalid by the revocation of the appointment of the attorney by death or otherwise unless and until a duly authenticated notice of such revocation is received at the Registered Office.
- 19.5 The attorney so appointed may during the absence of the Shareholder and while the power of attorney remains un-revoked attend at and take part in the proceedings and vote at all meetings of the Company and demand or join in the demand for a poll in the same manner as the Shareholder could do if personally present, and may give any consent and sign any appointment or resolution or other document which the Shareholder could give or sign.

## 20. DIRECTORS

### 20.1 Number of Directors

Subject to the Relevant Law, the Board will determine the appropriate number of Directors following consultation with the Shareholders. Any change to the size of the Board needs to be approved by at least two thirds (2/3) of the Shareholders, and is subject to clause 20.2(c) below.

### 20.2 Appointment of Directors

- (a) Subject to clause 20.2(b):
- (i) the Shareholders shall appoint the Directors in the proportions set out in clause 20.2(c) ; and
  - (ii) the Board shall appoint two (2) Independent Directors.
- (b) A person may not be appointed or reappointed as a Director (including an Alternate Director) unless:
- (i) the person has consented in writing to the appointment;
  - (ii) the Board has resolved, that the person is not a Disqualified Person;
  - (iii) the person has disclosed any material personal interest in a matter that relates to the affairs of the Company and any office or property held by the person by which, directly or indirectly, duties or interests might be created in conflict with his or her duties as Director in accordance with and as required by the Relevant Law;
  - (iv) the Board has resolved that the person has satisfied the requirements of the Company's Fit & Proper Policy and any other policies that may be determined by the Board from time to time; and
  - (v) if the person is appointed or reappointed as an Independent Director, the Board has resolved that the person is 'Independent' in accordance with any requirements or policy that may be determined by the Board from time to time and in accordance with the Relevant Law.

- (c) The Board must comprise of a Director(s) appointed by each Shareholder in the following proportions, unless that Shareholder has consented to a reduction in their proportion:
- (i) the Association of Independent Schools of New South Wales may appoint one (1) Director;
  - (ii) the Province of Sydney and Archdiocese of Canberra & Goulburn (previously the Trustee of the Roman Catholic Province of Sydney) may appoint one (1) Director;
  - (iii) the Independent Education Union of Australia (New South Wales and Australian Capital Territory) may appoint one (1) Director;
  - (iv) the Independent Education Union of Australia (Victoria and Tasmania may appoint one (1) Director;
  - (v) the holders of Class D ordinary shares may jointly appoint one (1) Director on an alternating basis as set out in clause 20.2(d);
  - (vi) the Independent Education Union (South Australia) Inc may appoint one (1) Director;
  - (vii) Community Management Solutions may appoint one (1) Director; and
  - (viii) Queensland Independent Education Union may appoint one (1) Director.

in accordance with the Board Nomination & Appointment Policy.

- (d) The office of Director referred to in clause 20.2(c)(v) shall be filled on an alternating basis such that each holder of a Class D ordinary shares takes a turn in appointing the Director for each term of office on an alternating basis, the first such appointment, following the date that the inclusion of this clause 20.2(d) in this Constitution became effective being made by the South Australian Commission for Catholic Schools Incorporated.

### 20.3 Removal of Directors

- (a) Each Shareholder may:
- (i) at any time request the removal of a Director appointed by that Shareholder by giving written notice to the Company; or
  - (ii) may appoint a person to fill any vacancy in the office of a Director appointed by that Shareholder in accordance with clause 20.4.
- (b) A Director ceases to hold office if:
- (i) the Director resigns by notice in writing to the Company;
  - (ii) the Director reaches the end of their term of office under clause 20.5 and is not reappointed;
  - (iii) the other Directors resolve that the Director has become mentally ill or incapable of carrying out the responsibilities of a Director;
  - (iv) the Director dies;
  - (v) the Director is absent without the consent of the Directors from Directors' meetings held during any continuous period of six (6) months;
  - (vi) the Director is removed by the Board at the request of the Shareholder that appointed the Director in accordance with clause 20.3(a); and
  - (vii) the Director:
    - (A) is a Disqualified Person or otherwise becomes prohibited from being a Director under the Relevant Law;
    - (B) no longer satisfies the requirements of the Company's Fit & Proper Policy; or
    - (C) holds the office of an Independent Director and, pursuant to a resolution of the Board, the person no longer satisfies the criteria for being

'independent' within the meaning of the Relevant Law, unless the Board resolves that the Director does not vacate the office.

- (c) If a Director ceases to hold office under clause 20.3(b)(vii), then the following will apply:
  - (i) the Directors will hold a Directors' meeting or pass a written resolution in accordance with clause 16 within fourteen (14) days of notification to confirm the removal of the affected Director; and
  - (ii) the affected Director will be notified in writing by a notified representative of the Company.

#### 20.4 Vacancies

A vacancy among the Directors must be filled as soon as reasonably practicable, but no later than ninety (90) days after it occurs in accordance with the procedures set out in clause 20.2. The remaining Directors may continue to act until the vacancy is filled.

#### 20.5 Term of appointment

- (a) Subject to this clause, a Director may only be appointed for a term of three (3) years, or any other period in the case of an Independent Director, determined by the Board, and in the case of any other Director, determined by the Shareholders, from time to time (**Term**).
- (b) At the end of a Director's Term and subject to clause 20.2, that Director may be reappointed for a further Term and serve a maximum of four (4) Terms not exceeding twelve (12) years in total (**Maximum Tenure**).

#### 20.6 Board's power to formulate and adopt policies

The Board must (if required by Relevant Law), or otherwise may, from time to time:

- (a) **Board Nomination & Appointment Policy:** formulate and adopt a policy in relation to the nomination and appointment of Directors;
- (b) **Conflicts Policy:** formulate and adopt a policy in relation to the management of conflicts;
- (c) **Fit and Proper Policy:** formulate and adopt a policy for the purposes of assessing the fitness and propriety of a Responsible Officer; and
- (d) **Other policies and registers:** formulate, adopt and maintain additional or replacement policies or registers in relation to holding office as a Responsible Officer.

## 21. REMUNERATION AND EXPENSES

### 21.1 Remuneration

The Directors and Officers shall be paid such remuneration and on such terms as is determined by the Board from time to time.

### 21.2 Expenses

Subject to clause 35, the Directors may also be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the Directors or general meetings of the Company or otherwise in connection with the business of the Company.

## 22. DIRECTORS' INTERESTS

### 22.1 Declaration of Interest

Each Director must disclose to the Board their interests (whether direct or indirect) in a matter that relates to the affairs of the Company, and any office or property held by the Director by which, directly or indirectly, duties or interests might be created in conflict with their duties or interests as a Director, in accordance with and as required by the Relevant Law and in accordance with the Conflicts Policy adopted by the Board from time to time. The Secretary must record the declaration in the minutes of the relevant meeting.

## 22.2 **Contracts in which Director has a material personal interest**

The following provisions of this clause 22.2 are subject to clause 35:

- (a) Subject to clause 22.1, a Director may only:
  - (i) be present and vote in respect of; and
  - (ii) execute, or attest the affixing of the Company's common seal to, a contract in which the Director has (directly or indirectly) a material personal interest if this is consistent with and permitted by the Conflicts Policy.
- (b) A Director may, subject to the Conflicts Policy, and despite the Director's office and the fiduciary relationship established by it:
  - (i) hold an office or place of profit (except that of Auditor) under the Company, a Related Body Corporate of the Company or any other body corporate in which the Company is a member or otherwise interested;
  - (ii) hold shares in a Shareholder;
  - (iii) be a Fund Member;
  - (iv) enter into a contract with the Company as vendor, purchaser or otherwise and participate in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company, a Related Body Corporate of the Company or any of their respective predecessors in business or their dependants or persons connected with them; and
  - (v) retain for the Director's own benefit any profit arising from any such office, place of profit or contract and any pension, allowance or other benefit received because of that participation.
- (c) A contract entered into by or on behalf of the Company is not void or voidable by reason only that a Director is in any way directly or indirectly interested in it.
- (d) In this clause 22.2 where the context admits, "contract" includes an arrangement and a proposed contract or arrangement.

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

- 23.1 Subject to the Corporations Act and to any other provisions of this Constitution, the Company shall be managed by the Directors, who may pay all expenses incurred in promoting and forming the Company, and may exercise all the powers of the Company that are not by the Corporations Act or by this Constitution or otherwise required to be exercised by the Company in general meeting.
- 23.2 Without limiting the generality of clause 23.1 and without prejudice to the other powers conferred by this Constitution it is hereby expressly declared that the Directors shall have the powers necessary to enable the Company to carry out its trusteeship of the Fund in accordance with the Governing Rules and Relevant Law.
- 23.3 Despite any other provision of this Constitution, the Board can only exercise its powers (whether in this Constitution or otherwise) with the approval of at least two thirds (2/3) of the Directors

23.4 The Directors may pay out of the assets of the Company all properly incurred expenses relating to the Company.

## 24. MINUTES

24.1 The Directors shall cause minutes to be made of:

- (a) all appointments of Directors and officers;
- (b) the names of the Directors present at each meeting of the Directors;
- (c) all resolutions made by the Directors;
- (d) any decision by the Board to increase or decrease the remuneration payable to any Director pursuant to clause 21;
- (e) all declarations made or notices given by any Director (either generally or specially) of his or her interest in any contract or proposed contract or of his or her holding of any office or property whereby any conflict of duty or interest may arise; and
- (f) all resolutions and proceedings of meetings of the Shareholders of the Company and of the Directors.

24.2 Any such minutes so entered of any meeting of the Directors or of any general meeting of the Company, if purporting to be signed by the Chairperson of the meeting or of the next succeeding meeting of the same body, shall be receivable as prima facie evidence of the matters stated in the minutes of that meeting of the meeting having been duly held and convened and of the validity of all proceedings and appointments at such meetings.

## 25. PROCEEDINGS OF DIRECTORS

### 25.1 Meetings

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

### 25.2 Quorum

- (a) The quorum is the number of Directors required to pass a resolution under clause 23.3.
- (b) Subject to clauses 22.1, 22.2(a)(i) and 35, an interested Director is to be counted in a quorum notwithstanding the Director's interest if this is consistent with and permitted by the Relevant Law.

### 25.3 Use of technology

A meeting of the Directors at which a quorum is present in person, by telephone or by other means of instantaneous communication shall be competent to exercise all or any of the Company's powers and discretions for the time being vested in or exercisable by the Directors.

### 25.4 Convening Meetings

- (a) A Director may, and the Secretary on the request of a Director must, convene a meeting of the Directors.
- (b) A director is entitled to notice of a meeting of Directors unless the Director is not in Australia. Accidental failure to give notice to a Director who is entitled to receive it does not invalidate the meeting.

### 25.5 Appointing of proxy



A Director may attend and vote by proxy at a meeting of the Directors if the proxy is a Director and has been appointed by the appointor in writing. Such an appointment may be general or for any particular meeting or meetings.

#### **25.6 Chairperson**

The following provisions of this clause 25.6 are subject to clause 35:

- (a) The Directors may elect or re-elect (as the case may be):
  - (i) one person appointed as a Director under clause 20.2(a)(i) ; or
  - (ii) one person appointed as an Independent Director under clause 20.2(a)(ii), with the approval of two thirds (2/3) of the Directors,  
  
as Chairperson of Directors' meetings for a period of three (3) years and on such terms as they think fit.
- (b) The Directors may, with the approval of two thirds (2/3) of the Directors, remove the Chairperson at any time. The Chairperson may resign at any time. If a Chairperson is removed or resigns, that person retains their office as a Director, unless they cease to hold office in accordance with clause 20.3(b).
- (c) The Chairperson may preside at meetings of the Directors.
- (d) If the Chairperson is not present within fifteen (15) minutes after the time appointed for a meeting or is unable or unwilling to act, a Director chosen by a majority of the Directors present may preside.

#### **25.7 Voting**

25.8 Subject to this Constitution, a resolution of a meeting of Directors is valid if at least two thirds (2/3) of the total number of Directors vote in favour of it. Each Director, including the Chairperson is entitled to one deliberative vote. Neither the Chairperson nor any other Director has a second or casting vote.

#### **25.9 Delegation**

The following provisions of this clause 25.9 are subject to clause 35:

- (a) The Directors may delegate any of their powers (including the power of delegation) to any person or persons or to any Committee consisting of such persons and on such terms as they think fit, and they may revoke that delegation at any time.
- (b) In the exercise of the powers so delegated, a person or Committee must comply with any regulations imposed by the Directors.

#### **25.10 Written resolution**

Subject to the Corporations Act and this Constitution, a written resolution signed by all of the Directors (excluding Alternate Directors except for an Alternate Director who signs in place of a Director) is effective as if it had been passed at a Directors' meeting duly called and constituted. Such a resolution may consist of several documents in like form each signed by one or more of the Directors.

#### **25.11 Validity of acts of Directors**

All acts of the Directors, a Committee or a person acting as a Director or Committee or member of a Committee are valid even if it is afterwards discovered that:

- (a) there was some defect in the appointment, election or qualification of them or any of them; or
- (b) that they or any of them were disqualified or had vacated office.

## 26. ALTERNATE DIRECTORS

### 26.1 Appointment of Alternate Director

- (a) A Director may appoint another Director as an Alternate Director to exercise some or all of the appointing Director's powers for a specified period.
- (b) A Director may act as Alternate Director to represent more than one Director.
- (c) When an Alternate Director exercises the appointing Director's powers, the exercise of the powers is just as effective as if the powers were exercised by the appointing Director.
- (d) An Alternate Director:
  - (i) is entitled to receive notice of meetings of the Directors and to attend and vote if the Director for whom the Alternate Director is appointed is not present;
  - (ii) may sign a written resolution in place of the relevant Director; and
  - (iii) whilst acting as a Director, is responsible to the Company for the Alternate Director's own acts and defaults and the Director for whom the Alternate Director is appointed is not responsible for them.

### 26.2 Termination of Alternate Directors

- (a) The appointing Director may terminate the Alternate Director's appointment at any time.
- (b) An appointment or termination of an Alternate Director must be in writing. A copy must be given to the Company.
- (c) An Alternate Director will automatically cease to be an Alternate Director if:
  - (i) the appointing Director vacates office; or
  - (ii) the Alternate Director:
    - (A) is a Disqualified Person or otherwise becomes prohibited from being a Director under the Relevant Law; or
    - (B) no longer satisfies the requirements of the Company's Fit & Proper Policy.

### 26.3 Notice of Meetings

- (a) If the appointing Director requests the Company to give the Alternate Director notice of Directors' meetings, the Company must do so.
- (b) Directors must notify the Secretary of any expected absence and of the attendance of their Alternate Director before a meeting.

## 27. SECRETARY

The Secretary of the Company holds office on such terms and conditions, as to remuneration and otherwise, as the Directors determine.

## 28. THE SEAL AND EXECUTION OF DOCUMENTS

- 28.1 Every instrument to which the Seal is affixed shall be signed by a Director and shall be countersigned by the Secretary or by a second Director or by some other person appointed by the Directors for the purpose.
- 28.2 All documents which of legal necessity need not be under seal and which the Company is capable in law of entering into shall be legally binding on the Company if signed by one of the Directors or other person authorised by the Directors in accordance with a resolution of Directors.

- 28.3 Promissory notes, cheques or other negotiable instruments shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be, for or on behalf of the Company by one of the Directors and the Secretary or in such other manner as the Directors may from time to time determine.

## 29. INSPECTION OF RECORDS

- (a) Subject to the Relevant Law and any resolution of the Company in general meeting, the Directors may determine whether and to what extent and at what times and places and under what conditions and regulations the books and documents of the Company or any of them will be open to inspection.
- (b) A person other than a Director has no right to inspect any of the books or documents of the Company except as conferred by statute or authorised by the Directors or by a resolution of the Company in general meeting and is not entitled to require or receive any information concerning the affairs of the Company

## 30. RESERVES AND PROVISIONS

- 30.1 The Directors may set aside out of the profits of the Company such sums as they think proper as reserves or provisions to be applied for such purposes as the profits of the Company may be properly applied.
- 30.2 Pending such application the Directors may invest any such reserve or provision or may dispose of all or any part of it for the benefit of the Company.

## 31. USE OF PROPERTY BY COMPANY

### 31.1 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.

### 31.2 No Dividends

The Company is prohibited from distributing any assets, property, income, or capital (**Assets**) of the Company to Shareholders, including by way of payment of dividends.

### 31.3 Payment of capital

The Directors may from time to time apply the Assets of the Company for any purpose consistent with the Company's objects set out in clause 1.3.

### 31.4 Division of assets

For the purposes of this clause 31, each of the following is a **Trustee Cessation Event**:

- (a) **Trustee Cessation Event 1:** if:
- (i) the Company ceases to be the trustee of the Fund;
  - (ii) another person (**New Trustee**) is appointed as the trustee of the Fund in place of the Company; and
  - (iii) the constituent document of the New Trustee prohibits the distribution of its Assets to its shareholders.
- (b) **Trustee Cessation Event 2:** if:

- (i) the Company is wound up or dissolved;
  - (ii) another person (**New Trustee**) is appointed as the trustee of the Fund in place of the Company; and
  - (iii) the constituent document of the New Trustee prohibits the distribution of its Assets to its shareholders.
- (c) **Trustee Cessation Event 3:** if:
- (i) some or all of the assets and liabilities of the Fund are transferred to another superannuation fund that is a successor fund (within the meaning of the SIS Act) (a **Receiving Fund**); and
  - (ii) the constituent document of the trustee of the Receiving Fund (the **Receiving Trustee**) prohibits the distribution of its Assets to its shareholders.
- (d) **Trustee Cessation Event 4:** if:
- (i) the Fund is wound up in accordance with its governing rules; or
  - (ii) the Company ceases to be the trustee of the Fund in circumstances other than Trustee Cessation Event 1, 2 or 3.

### 31.5 Vesting of assets

Upon the occurrence of a Trustee Cessation Event:

- (a) the Shareholders have no right to participate in any distribution of the Assets of the Company; and
- (b) any Assets 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.
<b>Trustee Cessation Event 2</b>	Net Assets must be transferred to the New Trustee.
<b>Trustee Cessation Event 3</b>	<p>If all of the assets and liabilities of the Fund are transferred to one Receiving Fund – the Net Assets must be transferred to the Receiving Trustee.</p> <p>If all of the assets and liabilities of the Fund are transferred to more than one Receiving Fund – the Net Assets must be transferred to each Receiving Trustee in proportion to the value of the assets (net of liabilities) of the Fund transferred to the Receiving Fund of which they are the trustee.</p>
<b>Trustee Cessation Event 4</b>	The Net Assets of the Company must be paid back into the Fund to be distributed in accordance with the governing rules of the Fund.

- 31.6 Nothing in this clause 31 prevents the Company from agreeing to terms with a New Trustee or a Receiving Trustee that provide for an indemnity in favour of the Company in its corporate capacity against any liabilities that cannot, for any reason, be paid out of the assets of the Fund.

## 32. NOTICES

- 32.1 A notice may be given by the Company to the Shareholders either by serving it on each Shareholder personally, by email to each Shareholder or by sending it by post to each Shareholder at the Shareholder's Registered Address.
- 32.2 When a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected in the case of a notice of a meeting on the day after the date of the posting, and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- 32.3 When notice is sent by email, service of the notice shall be deemed to be effected when the email (including any attachment) is sent to the receiving party at that email address, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent.
- 32.4 Notice of every general meeting shall be given in any manner hereinbefore authorised to:
- (a) each Shareholder; and
  - (b) every Director of the Company.

## 33. INDEMNITY

### 33.1 When the Company must indemnify officers

To the extent permitted by law and subject to the restrictions in section 199A of the Corporations 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).

### 33.2 Indemnity for legal costs

To the extent permitted by law and subject to the restrictions in section 199A of the Corporations 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).

### 33.3 Indemnity cover

Subject to this clause 33 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.

### 33.4 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 clause 33.2, 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 clause 33.2 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.

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

- (a) To the extent permitted by law, and without limiting a person's rights under this clause 33, the Company may enter into an agreement (including a deed) with a person who is or agrees to become or has been an officer:
  - (i) of the Company; and
  - (ii) where the Directors consider it appropriate, an associated entity,to give effect to the rights of the person under this clause 33, or to the exercise of a discretion under this clause 33, on any terms and conditions that the Directors think 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 clause 33.

### 33.6 **Benefit of indemnity**

The benefit of each indemnity given in clauses 33.1 and 33.2 continues despite any amendment or deletion in respect of a liability arising out of acts or omissions occurring before the amendment or deletion.

### 33.7 **Tax**

- (a) The amount of any indemnity payable under this clause 33 (**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.

## 34. **PARAMOUNT PROVISION**

Notwithstanding anything to the contrary expressed or implied in this Constitution the Company, the management, administration and operation thereof (whether internal or otherwise) including without limitation the appointment and powers of Directors, transfer, redemption and transmission of shares (if any), the conduct of business of the Company and the amendment of this Constitution shall at all times comply with the Relevant Law.

## 35. **APPLICATION OF RELEVANT LAW**

### 35.1 **When the Relevant Law applies**

This clause 35 will apply, notwithstanding anything in this Constitution to the contrary.

### 35.2 **Constitution is subject to the Relevant Law**

This Constitution is to be read subject to the Relevant Law and to the extent of any inconsistency between a requirement of the Relevant Law and a provision of this Constitution:

- (a) the Relevant Law will prevail;
- (b) where possible, the provision of this Constitution must be read down, changed, construed or severed to avoid the inconsistency; and
- (c) to the extent the inconsistency cannot be avoided, that provision will be of no effect and will not affect the remainder of this Constitution.

### 35.3 **Company and the Directors to comply with the Relevant Law**

The Company and the Directors must comply with the requirements of the Relevant Law.

### 35.4 **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 Relevant Law.
- (b) Any mandatory provision of the Relevant Law shall be incorporated into, and shall apply instead of any provision of, this Constitution in the event of any conflict.

### 35.5 **Actions authorised under the Relevant Law**

Where the Relevant Law 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.