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**0** <sup>LAWYERS</sup> **Loughlins**

**CONSTITUTION**

of

**THE CREEKS PIPELINE COMPANY LIMITED**  
(effective from 20 November 2018)

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## CORPORATIONS ACT 2001

A Company Limited by Shares

### CONSTITUTION

of

### THE CREEKS PIPELINE COMPANY LIMITED

#### 1. PRELIMINARY

##### 1.1 Definitions

In this Constitution, unless the context otherwise requires:

**Act** means the Corporations Act 2001 as it applies to the Company from time to time;

**Auditor** means the auditor or auditors for the time being of the Company;

**Board** means the Board of Directors of the Company;

**Business Day** means a day which is not a Saturday, Sunday or public holiday in the State;

**Commission** means the Australian Securities and Investments Commission;

**Company** means this company whatever its name may be from time to time;

**Constitution** means the Company's Constitution as altered from time to time;

**Director** means a director for the time being of the Company (including an Alternate Director but not an Associate Director);

**Dividend** means any distribution to Members in relation to shares as a dividend or interim dividend of any property (including, without limitation, money and paid up shares or other marketable securities of the Company or of any other body corporate) and includes any bonus;

**Eligible Person** has the meaning given to that expression in Clause 6.1;

**Executive Director** means any Managing Director and any other Director who is an employee of the Company or any related body corporate of the Company;

**Financial Year** means year ending on 30 June or such other reporting period (if any) which the Company lawfully substitutes for same under the Act;

**Independent Director** means a person referred to as such in Clause 20.2;

**Member or shareholder or holder** means a person whose name is entered in the Register as the holder of a share;

**Member's Liability** means, in respect of a Member:

- (a) all money due and payable by the Member to the Company; and
- (b) all money (whether payable or not) called or payable at a fixed time in respect of shares held by that Member;

**Money Due** means, in respect of a call payment of the amount of which is not made on the day specified for its payment under Clause 11.4, the amount of money payable in respect of that call plus, subject to Clause 11.10:

- (a) interest on that amount at the Prescribed Rate from that day until payment is made; and
- (b) all costs and expenses incurred by the Company as a consequence of payment not being made on that day;

**Office** means the registered office from time to time of the Company;

**Ordinary Share** means an Ordinary Share referred to in Clause 3.1;

**Ordinary Shareholder** means a shareholder who holds Ordinary Shares;

**paid up** includes credited as paid up;

**Prescribed Rate** means, in respect of any particular Clause in which that term is used, 10% per annum or any other rate prescribed by the Board from time to time in respect of that Clause;

**Register** means the register of members kept pursuant to the Act;

**related body corporate** has the meaning given to that expression in the Act;

**Secretary** means a person appointed as a secretary of the Company from time to time (including any person appointed to perform the duties of a secretary temporarily);

**securities** has the meaning given to that expression in the Act;

**State** means the State of South Australia;

**Transmission Event** means:

- (a) in respect of a Member who is a natural person, the death or bankruptcy of the Member, or the Member becoming mentally infirm or becoming a person who is, or whose estate is, liable to be dealt with in any way under the laws relating to mental health; and
- (b) in respect of a Member which is a body corporate, the dissolution of the Member or the succession by another body corporate to the assets and liabilities of the Member;

**Voting Member** means in respect of any particular general meeting a Member entitled to be present at that general meeting, present in any of the ways set out in Clause 14.1 and not disqualified from voting on all business to be considered at that meeting;

**Voting Share** means any issued share in the capital of the Company that confers a right to vote, not being a right to vote that is exercisable only in limited circumstances as described in the definition of "voting share" in Section 9 of the Act; and

**Water Delivery Contract** means a contract or agreement between the Company and a person (whether that person is an original party to such contract or agreement or a party by way of assignment) relating to the obligation of the Company for a term which expires on 30 June 2019 or on 30 June 2029 (as the case may be), to deliver water of 5 megalitres or more per annum (for use by that person) to that person's pipeline or to a shared pipeline in which that person is a participant, via the Company's pipeline which extends from near Jervois on the River Murray to (among others) the Langhorne Creek and Currency Creek regions.

## 1.2 Interpretation

In this Constitution, unless the context otherwise requires:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;
- (b) the singular includes the plural and vice versa;
- (c) a word denoting an individual or person includes a body corporate, firm, association, authority or government and vice versa;
- (d) a word denoting any gender includes all genders;
- (e) a reference to a Clause is to a Clause of this Constitution;
- (f) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (g) an expression defined in, or given a meaning for the purposes of, the Act (except if defined in Clause 1.1) has the same definition or meaning in this Constitution where it relates to the same matters for which it is defined, or given a meaning, in the Act;
- (h) a reference to a person is also to the legal personal representative of that person;
- (i) a reference to a matter being written includes that matter being in any mode of representing or reproducing words, figures or symbols in written form;
- (j) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (k) a reference to power is also to authority and discretion;
- (l) headings are for convenience of reference only and do not affect interpretation.

**1.3 Replaceable Rules**

To the extent permitted by the Act, the replaceable rules referred to in the Act shall have no application to the Company.

**2. LIMITED LIABILITY**

The liability of the Members is limited.

**3. ORDINARY SHARES**

**3.1 Rights and Privileges**

Subject to this Constitution and the rights, privileges and conditions attached to other classes of shares, the Ordinary Shares shall confer on the holders thereof the following rights and privileges:

- (a) to receive notice of, attend and vote at all general meetings in accordance with this Constitution;
- (b) to receive dividends franked or unfranked, bonuses and other distributions; and
- (c) on a winding up to participate in the surplus assets of the Company.

**4. INITIAL REDEEMABLE PREFERENCE SHARES**

**4.1 Rights and Privileges**

Subject to this Constitution the Redeemable Preference Shares issued upon registration of the Company to the initial Members shall confer upon the holder thereof the following rights and privileges:

- (a) for as long as they are the only issued shares in the capital of the Company:
  - (i) the right *pari passu* with the holders of all other Redeemable Preference Shares to all dividends, distributions and profits;
  - (ii) the right to receive notice of, attend and vote at all general meetings as if the Redeemable Preference Shares were Ordinary Shares (and Clause 19.3 shall not apply); and
  - (iii) the right on a winding up to participate *pari passu* with the other holders of Redeemable Preference Shares in the surplus assets of the Company; and
- (b) upon them ceasing to be the only issued shares in the capital of the Company:
  - (i) the right to notices of and to attend General Meetings;
  - (ii) the right to vote (on a show of hands to one vote, and on a poll, to one vote for each Redeemable Preference Share of which he is the holder) at general meetings in the event that the matter to be decided is a proposal for the winding up of the Company, the sale or disposal of the Company's

main undertaking, the reduction or return of any part of the Company's share capital or which affects the rights attached to the Redeemable Preference Shares; and

- (iii) on winding up to participate in the surplus assets of the Company, in the proportion that the amount paid on the shares held bears to the issue price of the shares held, *pari passu* with the other holders of Redeemable Preference Shares and in priority to the holders of all other classes of shares.

#### 4.2 **Redemption**

The Redeemable Preference Shares referred to in Clause 4.1 shall be redeemed at such time as the Board may determine by the payment to the holders of the paid up issue price thereof which payment shall be made out of funds provided by and upon the subscription for a fresh issue of shares in the capital of the Company of a sufficient amount to effect the redemption and which fresh issue shall, to the extent that is required to effect the redemption, be made for the purposes of the redemption.

### 5. **SHARES**

#### 5.1 **Issue**

Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to this Constitution and the Act, shares in the Company shall be under the control of the Directors who may allot, issue or grant rights or options in respect of, or otherwise dispose of, shares to such persons, for such price, upon such conditions, at such times and with such preferred, deferred or other special rights, privileges or restrictions, whether with regard to dividends, voting, return of capital, payment of calls or otherwise.

#### 5.2 **Other Securities**

Other than Ordinary Shares and the Redeemable Preference Shares referred to in Clause 4, the Directors must not, without the prior approval of the Voting Members by special resolution, issue any other class of shares or securities.

#### 5.3 **Fractions**

The Directors shall have the right to settle the manner in which fractions of a share, however arising, are to be dealt with.

#### 5.4 **Preference Shares**

Subject to the Act, the Company may issue any preference shares that are liable to be redeemed.

#### 5.5 **Instalments**

Where a share is allotted on terms that all or any of the issue price of that share is payable by instalments, each of those instalments must be paid when due by the person who is at that time the holder of that share.

**5.6 Application for Shares**

Where the Company receives an application for shares signed by or on behalf of the applicant and the Company allots shares to the applicant as a consequence, the application is to be treated as:

- (a) an agreement by the applicant to accept those shares;
- (b) a request by the applicant for the Company to place the applicant's name in the Register in respect of those shares; and
- (c) an agreement by the applicant that the applicant is bound by this Constitution.

**6. ELIGIBLE PERSON**

**6.1 Definition**

In this Constitution, the expression “Eligible Person” means a person who:

- (a) is a customer of the Company, pursuant to a Water Delivery Contract with the Company;
- (b) is not in breach of or default under such Water Delivery Contract;
- (c) is not in breach of or default under any other agreement between that person and the Company, and
- (d) has paid all amounts payable by that person to the Company on or before the due date for payment,

provided that the Board may in its absolute discretion determine that a person is to be deemed to be an Eligible Person for the purposes of this Constitution where the Board is satisfied that the person will, within such period not greater than 7 days as the Board may determine, enter into a Water Delivery Contract with the Company.

**6.2 Evidence**

The Board may require such evidence as it may from time to time direct to determine whether or not a person is an Eligible Person for the purpose of an issue or transfer of Ordinary Shares to that person or the application of Clause 8 to that person.

**6.3 Board’s Determination is Final**

A determination by the Board on the matter of:

- (a) whether a person qualifies as or has ceased to be an Eligible Person under Clause 6.1; or
- (b) the date on which a person became or ceased to be a Eligible Person,

shall be final and binding, and no person shall have any claim of any nature whatsoever against the Company or any member of the Board in relation to, arising out of or otherwise in connection with any such determination by the Board.

**Constitution**

**7. COMPANY'S OPERATIONS AFTER 30 JUNE 2019 AND AFTER 30 JUNE 2029**

- (a) Prior to 30 June 2018 the Board will advise the shareholders of its intentions in respect of the operations of the Company after 30 June 2019.
- (b) If the Board determines that the operations of the Company will continue for a period of 10 years from 1 July 2019 then, prior to 30 June 2028, the Board will advise the shareholders of its intentions in respect of the operations of the Company after 30 June 2029.
- (c) Clause 8.3 (and therefore Clauses 8.4 and 8.5) will only apply if at the time at which the Ordinary Shareholder referred to in Clause 8.3(a) ceases to be an Eligible Person, there are other Ordinary Shareholders who continue thereafter to be Eligible Persons.

**8. ELIGIBILITY – ORDINARY SHAREHOLDER**

**8.1 Sale Price**

In this Clause 8, the expression **Sale Price** means, in respect of an Ordinary Share, the sum of \$0.01.

**8.2 Must be an Eligible Person**

- (a) Only an Eligible Person may hold Ordinary Shares.
- (b) Subject to this Constitution, if a person ceases to be an Eligible Person that person's eligibility to hold Ordinary Shares will thereupon terminate.
- (c) Clause 8.3 (and therefore Clauses 8.4 and 8.5) will only apply if at the time at which the Ordinary Shareholder referred to in Clause 8.3(a) ceased to be an Eligible Person, there are other Ordinary Shareholders who continue thereafter to be Eligible Persons.

**8.3 Disposal of Ordinary Shares**

- (a) If an Ordinary Shareholder ceases to be an Eligible Person, the Ordinary Shareholder must dispose of all of the Ordinary Shares held by that Ordinary Shareholder within 90 days from the date on which that Ordinary Shareholder ceased to be an Eligible Person.
- (b) If the Ordinary Shareholder fails to do so within such 90 day period, within the next 14 days, the Company may give written notice (**Intent Notice**) to the Ordinary Shareholder in which the Company advises the Ordinary Shareholder that the Company:
  - (i) wishes to sell all the Ordinary Shares which are held by the Ordinary Shareholder within 60 days from the date of the Company's Intent Notice, or
  - (ii) wishes to buy-back all those Ordinary Shares.



## 8.4 Sale

- (a) If the Company gives an Intent Notice referred to in Clause 8.3(b)(i), the Company may within 60 days from the date of the Intent Notice sell all of the relevant Ordinary Shares for the Sale Price and otherwise in such manner and on such terms as the Board in its absolute discretion determines, and a transfer of any such Ordinary Shares signed by a Director for the purpose of giving effect to the sale shall be as valid and effectual as if signed by the Ordinary Shareholder in respect of those Ordinary Shares.
- (b) The Company may receive and give a good discharge for the proceeds of a sale under Clause 8.4(a), may pay or recoup out of those proceeds all costs and expenses of and incidental to the sale and all amounts due to the Company by the former Ordinary Shareholder under any agreement or contract between the Company and the former Ordinary Shareholder and, subject to Clause 8.4(f), shall pay the net proceeds of sale to the former Ordinary Shareholder.
- (c) The Company shall not be bound to see to the application of the net proceeds of sale paid to the former Ordinary Shareholder under Clause 8.4(b) and that amount may be paid by cheque posted to the former Ordinary Shareholder at his address appearing in the Register.
- (d) The Company in any such sale shall be acting on behalf of the Ordinary Shareholder whose Shares are being sold and such Ordinary Shareholder shall indemnify and save harmless the Company in respect of all liability in respect of such sale except in the case of fraud.
- (e) In the event of the Board exercising its rights and powers pursuant to Clause 8.4(a) the Ordinary Shareholder concerned shall:
- (i) deliver to the Company at the Office the share certificates in respect of the relevant Ordinary Shares; and
  - (ii) make no claim or demand or commence any suit or action against the Directors or any other officer, employee or agent of the Company in respect of the exercise or purported exercise by the Board of its rights under Clause 8.4(a).
- (f) Failing delivery of the share certificates referred to in Clause 8.4(e)(i) the Company may proceed against such Ordinary Shareholder for recovery of such certificates and the Ordinary Shareholder shall not in any action deny or dispute the Company's right to possession of any such certificates or to cancel any such certificates. The Company shall after recovery of such certificates account to the former Ordinary Shareholder for the net proceeds of sale referred to in Clause 8.4(b) (which shall not carry any interest).
- (g) No transferee or subsequent holder of any Ordinary Shares pursuant to the exercise or purported exercise of the power of sale and transfer conferred by this Clause 8.4 shall be bound to enquire as to whether the requirements of this Clause have been complied with and after the name of any transferee has been entered in the Register in purported exercise of the aforesaid power of sale and transfer conferred by this Clause the validity of those proceedings and actions of the Board

in respect of such sale and transfer shall not thereafter be questioned by any Shareholder, former Ordinary Shareholder or Director.

- (h) If the Company is not able to sell all of the relevant Ordinary Shares within 60 days from the date of the Intent Notice referred to in Clause 8.3(b)(i) then, within 14 days from the expiry of such 60 day period, the Company may give written notice to the Ordinary Shareholder that the Company wishes to buy-back all of the Ordinary Shares and such notice shall be taken to be an Intent Notice for the purposes of Clause 8.5.
- (i) Notwithstanding any other provision of this Constitution the voting rights attaching to Ordinary Shares in respect of which an Intent Notice is given to an Ordinary Shareholder in terms of Clause 8.3(b)(i) shall be and remain suspended from the date on which the Intent Notice was given to the Ordinary Shareholder until:
  - (i) if the Company sells all of the relevant Ordinary Shares within the said 60 day period – registration of the transfer thereof to the transferee,
  - (ii) (subject to clause 8.4(i)(iii)) if the Company does not sell all of the relevant Ordinary Shares within the said 60 day period – the expiry of the 14 day period referred to in clause 8.4(h), and
  - (iii) if pursuant to Clause 8.4(h), the Company is taken to give an Intent Notice for the purpose of Clause 8.5 – the first to occur of:
    - (A) the day referred to in Clause 8.5(d)(iii),
    - (B) the day referred to in Clause 8.5(d)(iv), and
    - (C) the day on which the buy-back agreement is deemed to have been entered into pursuant to Clause 8.5(b) (following which section 257H(1) of the Act will apply).

#### 8.5 Buy-Back

- (a) If the Company gives an Intent Notice referred to in Clause 8.3(b)(ii) (**Buy-Back Notice**), the Company will use all reasonable endeavours to comply with Division 2 of Part 2J.1 of the Act. The Company shall be at liberty to delay voting on the relevant resolution referred to in Section 257D(1) of the Act until the next annual general meeting of the Company.
- (b) Upon the requirements of Division 2 of Part 2J.1 of the Act being complied with, the Company and the relevant Ordinary Shareholder (**Proposing Transferor**) shall thereupon be deemed to have entered into a buy-back agreement in respect of the relevant Ordinary Shares (**Buy-Back Shares**) on the following terms and conditions:
  - (i) the Company will buy-back from the Proposing Transferor who will transfer to the Company the Buy-back Shares for the Sale Price;
  - (ii) the Company will pay the Sale Price (less all amounts due to the Company by the Proposing Transferor under any agreement or contract

between the Company and the Proposing Transferor) to the Proposing Transferor at completion;

- (iii) at completion the Proposing Transferor will deliver up to the Company a transfer of the Buy-Back Shares in properly registrable form (save for the due stamping thereof and for the due acceptance thereof by the Company) together with the certificate for such shares;
  - (iv) completion will take place at the Company's registered office (or such other place as the Company and the Proposing Transferor may agree) within fourteen (14) days after the date on which the relevant resolution referred to in section 257D(1) of the Act is passed;
  - (v) the Proposing Transferor warrants to the Company that at completion and the time of registration of the transfer of the Buy-Back Shares to the Company, the Company will obtain absolute ownership of such shares free from all mortgages, charges, liens and other encumbrances (whether legal or equitable);
  - (vi) the Company will pay any stamp duty on the transfer to it of the Buy-Back Shares; and
  - (vii) the deemed buy-back agreement and completion thereof is conditional upon the Board being satisfied that the Company had duly complied with the procedures laid down in Division 2 of Part 2J.1 of the Act in respect thereof and that the buy-back of the Buy-Back Shares will not materially prejudice the Company's ability to pay its creditors.
- (c) The Proposing Transferor:
- (i) irrevocably appoints the Company and each Director of the Company from time to time severally as its attorney to complete and execute (under hand or under seal) such documents for and on its behalf as the attorney thinks necessary or desirable to give effect to Clause 8.5(b);
  - (ii) agrees to ratify and confirm whatever the attorney lawfully does, or causes to be done, under the appointment; and
  - (iii) agrees to indemnify the attorney against all claims, demands, costs, charges, expenses, outgoings, losses and liabilities arising in any way in connection with the lawful exercise of all or any of the attorney's powers and authorities under that appointment.
- (d) If the Company gives the Buy-Back Notice but:
- (i) the relevant resolution referred to in Section 257D(1) of the Act is not passed; or
  - (ii) the Company does not effect completion of the deemed buy-back agreement by reason of Clause 8.5(b)(vii),

then, within 14 days from whichever first occurs of:

- (iii) the day on which the relevant resolution referred to in section 257D(1) was considered but not passed, and
- (iv) the day immediately following the last day for completion referred to in clause 8.5(b)(iv) (which completion was not effected),

the Company may give written notice to the Proposing Transferor that the Company will endeavour to sell all the Ordinary Shares and such notice shall be taken to be an Intent Notice for the purpose of Clause 8.4.

- (e) Notwithstanding any other provision of this Constitution the voting rights attaching to Ordinary Shares in respect of which an Intent Notice is given to an Ordinary Shareholder in terms of Clause 8.3(b)(ii) shall be and remain suspended from the date on which the Intent Notice was given to the Ordinary Shareholder until:
  - (i) (subject to Clause 8.5(e)(ii)) the first to occur of:
    - (A) the day referred to in Clause 8.5(d)(iii),
    - (B) the day referred to in Clause 8.5(d)(iv), and
    - (C) the day on which the buy-back agreement is deemed to have been entered into pursuant to Clause 8.5(b) (following which section 257H(1) of the Act will apply), or
  - (ii) if pursuant to Clause 8.5(d), the Company is taken to give an Intent Notice for the purpose of Clause 8.4:
    - (A) if the Company sells all of the relevant Ordinary Shares within the 60 day period referred to in Clause 8.4(a) – registration of the transfer thereof to the transferee, or
    - (B) if the Company does not sell all of the relevant Ordinary Shares within the said 60 day period – the expiry of that 60 day period.

## 8A. REDUCTION OF PEAK DELIVERY ENTITLEMENT

### 8A.1 Reduction

If an Eligible Person agrees with the Company that the Eligible Person’s ‘Peak Delivery Entitlement’ pursuant to that Eligible Person’s Water Delivery Contract is to be reduced (the date on which such reduction takes effect being hereafter referred to as the **Trigger Date**), then this clause will apply to that portion of the Eligible Person’s Ordinary Shares (**Relevant Shares**) which is calculated as follows:

$$\text{Relevant Shares} = A \times B$$

where:

‘A’ = the total number of megalitres of water by which such ‘Peak Delivery Entitlement’ is reduced, and

'B' = 1,000

#### 8A.2 Sale Price

In this clause 8A, the expression **Sale Price** means, in respect of a Relevant Share, the sum of \$0.01.

#### 8A.3 Disposal of Relevant Shares

- (a) The Eligible Person must dispose of all of the Relevant Shares within 90 days from the Trigger Date.
- (b) If the Eligible Person fails to do so within such 90 day period, within the next 14 days the Company must give written notice (**Intent Notice**) to the Eligible Person in which the Company advises the Eligible Person that the Company:
  - (i) wishes to sell all of the Relevant Shares within 60 days from the date of the Company's Intent Notice; or
  - (ii) wishes to buy-back all of the Relevant Shares.

#### 8A.4 Sale

If the Company gives an Intent Notice referred to in clause 8A.3(b)(i), the provisions of clause 8.4 will apply in respect of the Relevant Shares as if:

- (a) each reference therein to 'an Intent Notice referred to in clause 8.3(b)(i)' or similar, was a reference to the Intent Notice referred to in clause 8A.3(b)(i);
- (b) each reference therein to 'Ordinary Shares' or similar, was a reference to the Relevant Shares;
- (c) each reference therein to 'relevant Ordinary Shareholder' or 'former Ordinary Shareholder' or similar, was a reference to the Eligible Person;
- (d) each reference therein to 'Sale Price' was a reference to the Sale Price referred to in clause 8A.2,

and with such other modifications as may reasonably be required in the circumstances.

#### 8A.5 Buy-Back

If the Company gives an Intent Notice referred to in clause 8A.3(b)(ii), the provisions of clause 8.5 will apply in respect of the Relevant Shares as if:

- (a) each reference therein to 'an Intent Notice referred to in clause 8.3(b)(ii)' or similar, was a reference to the Intent Notice referred to in clause 8A.3(b)(ii);

- (b) each reference therein to ‘Ordinary Shares’ or similar, was a reference to the Relevant Shares;
- (c) each reference therein to ‘relevant Ordinary Shareholder’ or similar, was a reference to the Eligible Person;
- (d) each reference therein to ‘Sale Price’ was a reference to the Sale Price referred to in clause 8A.2,

and with such other modifications as may reasonably be required in the circumstances.

## 9. CERTIFICATES

### 9.1 Certificates

Subject always to Clause 10.1(a), a Member is entitled without payment to receive a certificate in respect of the shares registered in the Member's name but, in respect of a share or shares held jointly by several persons, the Company is not bound to issue more than one certificate. Likewise, the Company shall issue certificates to the holders of options where the Company is so required by the Act.

### 9.2 Joint Holders

Subject always to Clause 10.1(a), where several persons are jointly entitled to any share, in the absence of any express direction from them to the contrary, the Company shall enter their names as members in the Register in the order in which their names appear on the application for shares or the instrument or other evidence of transfer or the notice of death or bankruptcy given to the Company to establish their entitlement to the share provided that nothing in this Clause 4.2 shall prevent the Company from differentiating between the joint holders of any share in any respect as provided for in this Constitution.

### 9.3 Delivery

Delivery of a certificate for a share shall be effected by delivering it personally to the holder or by posting it in a prepaid envelope addressed to the holder at the holder's registered address or by delivering or posting the certificate in accordance with the written instruction of the holder. Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all of them.

### 9.4 Number of Shares

The Directors may determine the number of shares to be issued in any one certificate.

### 9.5 Corporations Act

Every certificate for shares shall be issued in accordance with the Act.

### 9.6 Replace Certificates

Where the Company is required by the Act to do so:

- (a) in the event that a certificate is stolen, lost or destroyed, upon application to the Company by the holder thereof in accordance with the Act and payment of such fee as the Directors require, the Directors shall, subject to that Section, issue a replacement certificate; and
- (b) in the event that a certificate for shares previously issued has been worn out or defaced and has been surrendered to the Company for cancellation, and such fee as the Directors require has been paid, the Company shall cancel the certificate and issue a replacement certificate.

## 10. REGISTERS

### 10.1 Joint Holders

- (a) Notwithstanding anything to the contrary in this Constitution contained, if more than three persons are registered as the holders of securities of the Company on the Register or any other register of the Company (or a request is made to register more than three persons as holders of securities of the Company) then only the first three names will be regarded as holders of securities of the Company, and all other names will be disregarded by the Company for all purposes.
- (b) Subject always to Clause 10.1(a), if two or more persons are the holders of a share, that one of those persons whose name first appears in the Register in respect of that share is to be treated as the sole owner of the share in relation to all matters concerning the Company (including the giving of notice) but not as concerns the transfer of the share, right to vote, receipt of Dividends, delivery of certificates and the liability for instalments or calls.

### 10.2 Trusts

- (a) Except as required by law or otherwise required by this Constitution, the Company must treat the person whose name is entered in the Register in respect of a share as the absolute owner of that share and is not bound to recognise (whether or not it has notice):
  - (i) that a person holds any share on trust; or
  - (ii) any equitable, contingent, future or partial interest in, or unit of any share.
- (b) Shares held by a trustee, may, with the consent of the Directors, be marked in the Register in such a way as to identify them as being held subject to the relevant trust, but nothing in this Clause 10.2(b) limits the operation of Clause 10.2(a).

### 10.3 Register Closure

Subject to the Act, the Register and the transfer books may be closed at any time and for any period the Board determines.

**11. CALLS ON SHARES**

**11.1 Calls**

The Board may make calls on a Member in respect of any or all money unpaid on the share held by him unless and to the extent that the terms of issue of the share make that money payable at fixed times.

**11.2 Variations**

The Board may do either or both of the following:

- (a) make a call payable by instalments; and
- (b) revoke or postpone any call.

**11.3 Time of Call**

Each call is treated as having been made at the time the Board resolves to make the call.

**11.4 Payment**

A Member subject to a call must pay the amount in respect of the call at the time and place specified in a notice given by the Company to the Member which was given not less than 10 Business Days before the time specified in it for payment of the call.

**11.5 Suspension of Rights**

In addition to all other remedies of the Company, for as long as in relation to a share the amount in respect of a call is due and payable and not paid, the Member, in respect of that share held by the Member, is not entitled to receive any Dividend, or be present at, be counted among the quorum for, or vote, whether in person or by proxy, attorney or representative, at a general meeting of the Company.

**11.6 Joint Holders**

The joint holders of a share are jointly and severally liable to pay any calls made in respect of the share.

**11.7 Different Call Obligations**

The Board may make arrangements on the issue of shares for a difference between the holders of those shares in the amount of and times for payment of calls in respect of those shares.

**11.8 Payment at Fixed Times**

If the terms of issue of a share provide for any amount to be payable at a fixed time:

- (a) that amount is payable at that time as if a call had been duly made in respect of it under Clauses 11.1 to 11.4 specifying that time as the time for payment of a call for that amount; and



- (b) all the other provisions of this Constitution in respect of calls apply mutatis mutandis on that basis and "call" in this Constitution is to be interpreted accordingly.

**11.9 Interest and Costs**

If an amount payable in respect of a call is not paid on or before the day specified for its payment, the person from whom that amount is due must pay the Money Due in respect of that call.

**11.10 Waiver**

The Board may waive the payment of all or any part of the Money Due in respect of a call which relates to interest costs and expenses.

**11.11 Proof of Debt**

If on the trial or hearing of an action for the recovery of the Money Due for a call it is proved that:

- (a) the resolution of the Board making the call is duly recorded in the books of the Company;
- (b) the Member sued is entered in the Register as a holder of the share in respect of which the call was made; and
- (c) notice of the call was given to that Member in accordance with this Constitution,

proof of those matters is sufficient and conclusive proof of the debt without it being necessary to prove any other matter (including, without limitation, the appointment of the Directors).

**11.12 Payment in Advance of Call**

The Board may:

- (a) accept from a Member a sum representing all or a part of any amount unpaid in respect of a share although no part of that amount is then the subject of a call;
- (b) authorise the payment by the Company of interest on any sum so accepted, until that sum becomes payable at any rate not exceeding the Prescribed Rate agreed between the Board and the Member; and
- (c) except where otherwise agreed between the Member and the Company, repay the sum or any part of it,

but that sum does not by its being paid and accepted confer any right to participate in profits and must not be considered in ascertaining the amounts of Dividend or surplus in winding up or distribution attributable to that share.

**12. FORFEITURE OF SHARES****12.1 Notice Requirement**

If an amount payable in respect of a call is not paid on or before the day specified for its payment, the Board may at any time until the amount (including interest and costs and expenses incurred by the Company by reason of the non-payment) is paid, give the relevant Member a notice which:

- (a) requires the Member to pay the Money Due;
- (b) specifies a date (which is at least 10 Business Days after the date of the notice) by which and a place at which payment of the Money Due must be made; and
- (c) states that if payment is not made on or before the date and at the place specified, the share to which the call relates is liable to be forfeited.

**12.2 Board Resolution to Forfeit**

If the requirements of a notice given under Clause 12.1 are not satisfied, the share in respect of which the notice was given may, at any time before the payment required by the notice has been made, be forfeited by the Board by a resolution to that effect.

**12.3 Dividends**

Forfeiture of a share under Clause 12.2 includes all Dividends declared in respect of the forfeited share but not actually paid before forfeiture.

**12.4 Notice of Forfeiture**

Where a share is forfeited under Clause 12.2, the Company must promptly give notice of the forfeiture to the Member holding the share immediately before the resolution of the Board for its forfeiture was passed, and the forfeiture (together with its date) must be promptly entered in the Register.

**12.5 Forfeited Shares**

A share forfeited under Clause 12.2 immediately becomes the property of the Company and the Board may sell, re-allot or otherwise dispose of the share in such manner as the Board thinks fit, and in the case of re-allotment, with or without any amount paid up on the share by any former holder being credited as paid up.

**12.6 Cancellation of Forfeiture**

The forfeiture of a share under Clause 12.2 may be cancelled by the Board on any terms and conditions it determines at any time before the share is disposed of under Clause 12.5.

**12.7 Surrender of Shares**

Where the Board is entitled to forfeit a share under Clause 12.2, it may accept the surrender of that share on any terms and conditions it determines and a share so surrendered may be disposed of in the same way as a share forfeited under Clause 12.2.

**12.8 Cease to be Member**

A person who held a share which has been forfeited under Clause 12.2 ceases to be a Member in respect of the forfeited share, but remains liable to pay to the Company the Money Due and this liability only ceases when the Company receives payment of all the Money Due.

**12.9 Not Enforce Payment**

The Board may elect not to enforce payment, in whole or in part, of amounts owing to the Company under Clause 12.8.

**12.10 Evidence of Forfeiture**

A written statement declaring that the person making the statement is a Director or Secretary and that a share was forfeited on a date specified in the statement in accordance with this Constitution is sufficient evidence of the facts set out in the statement as against all persons claiming to be entitled to the share and of the title of the Company to dispose of the share.

**12.11 Transfer of Forfeited Shares**

The Company may effect a transfer in respect of a share forfeited under Clause 12.2 in favour of a person to whom it is sold, re-allotted or disposed of and receive the consideration furnished for that share and register the transferee as the holder of the share.

**12.12 Proceeds of Sale**

The net proceeds of any sale, re-allotment or disposal of a share under Clause 12.5 or Clause 12.7 (after payment of all costs and expenses incurred) must be applied in or towards payment or satisfaction of the Money Due and any residue must be paid to the person liable referred to in Clause 12.8 or as that person directs.

**12.13 Title of Transferee**

Once a transfer under Clause 12.11 has been effected, the title of the transferee is not affected by any irregularity or invalidity relating to the forfeiture or the sale, re-allotment or disposal of the share and the remedy of any person is solely in damages and only against the Company.

**13. LIEN****13.1 Money Due on Shares**

The Company has a first and paramount lien on each share for all money (whether presently payable or not) called or payable at a fixed time in respect of that share.

**13.2 Money Owed to Company**

The Company has, in addition to the lien described in Clause 13.1, a first and paramount lien on each share registered in a Member's name in respect of all money owed to the Company by the Member (including money payable by reason of Clause 13.3).

**13.3 Liability Incurred by Company**

Where at any time the law of any jurisdiction imposes or purports to impose any immediate, future or possible liability on the Company, or empowers or purports to empower any person to require the Company to make any payment, on account of a Member or referable to a share held by that Member (whether alone or jointly) or a Dividend declared in respect of a share held by that Member, the Company:

- (a) is fully indemnified by that Member from that liability;
- (b) may recover as a debt due from the Member the amount of that liability together with interest at the Prescribed Rate from the date of payment by the Company (if the payment is made) to the date of repayment by the Member; and
- (c) may refuse to register a transfer of any share by that Member until the amount of the Member's Liability has been paid to the Company,

and nothing in this Clause in any way prejudices or affects any right or remedy which the Company may otherwise have (including, without limitation, any right of set off).

**13.4 Dividends**

The liens described in Clauses 13.1 and 13.2 extend to all Dividends (if any) payable in respect of the share and to the proceeds of sale of the share.

**13.5 Grant of Exemption**

The Board may, at any time, exempt a share from the provisions of Clauses 13.1 and 13.2 to the extent and on any terms and conditions that it determines.

**13.6 Sale of Shares by Company**

Where:

- (a) the Company has a lien on a share;
- (b) the sum in respect of which the lien exists is presently payable;
- (c) the Company has given notice to the Member registered in the respect of the share requiring payment of the amount which is presently payable in respect of which the lien exists, and specifying a date (which is at least 10 Business Days after the date of the notice) by which and a place at which payment of the amount must be made; and
- (d) the requirements of the notice given under Clause 13.6(c) are not fulfilled,

the Company may sell the share as if it had been forfeited under Clause 12.2 and the provisions of Clauses 12.5 to 12.13 inclusive apply as if the Member's Liability were the Money Due.

**14. SHARE CAPITAL AND VARIATION OF RIGHTS****14.1 Alteration of Capital**

The Company may from time to time by ordinary resolution in general meeting do any or all of the following:

- (a) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares; and
- (b) sub-divide all or any of its shares into shares of a smaller amount than its existing shares but so that, in the sub-division, the proportion between the amount paid and the amount (if any) unpaid on each share of a smaller amount is the same as was the case of the share from which the share of a smaller amount is derived.

**14.2 Reduction of Capital**

Subject to the Act, the Company may reduce its share capital in any way.

**14.3 Buy-back authorisation**

Subject to the Act and to Clause 8, the Company may buy shares and other securities in itself on such terms and at such times as determined by the Directors.

**14.4 Variation of Rights**

If at any time the issued shares are divided into different classes, the rights attached to any class of shares (unless the terms of issue of that class otherwise provide) may, whether or not the Company is being wound up, be varied with either the consent in writing of the holders of 75% of the issued shares of that class, or the sanction of a special resolution passed at a separate meeting of the holders of shares of that class, and, for the purposes of this Clause, the following provisions apply:

- (a) in relation to any separate meeting of the holders of shares in a class, the provisions of this Constitution which relate to general meetings apply as far as they are capable of application and changed as necessary except that any holder of shares of that class present in person or by proxy, attorney or representative may demand a poll; and
- (b) the rights conferred upon the holders of the shares of any class shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed not to be varied by the creation or issue of further shares ranking equally with the first-mentioned shares.

**15. TRANSFER OF SHARES**

**15.1 Ordinary Shares**

- (a) If there is any inconsistency between any of the provisions of this clause 15.1 and the remaining provisions of this clause 15, the provisions of this clause 15.1 will prevail to the extent of the inconsistency.
- (b) An Ordinary Shareholder may transfer Ordinary Shares held by that Shareholder:
  - (i) to another Ordinary Shareholder; or
  - (ii) to an Eligible Person.

- (c) Ordinary Shares may only be transferred in multiples of 1,000, being the number of Ordinary Shares to which attaches a customer's "Peak Delivery Entitlement" of 1 megalitre of water pursuant to a Water Delivery Contract between the Company and that customer.
- (d) A transfer of Ordinary Shares may only take place in conjunction with:
  - (i) if the transfer comprises all of the Ordinary Shares held by the transferor – an assignment by the transferor to the transferee of the whole of the transferor's right, title and interest in the associated Water Delivery Contract; or
  - (ii) if the transfer comprises portion of the Ordinary Shares held by the transferor – a partial assignment by the transferor to the transferee of the transferor's right, title and interest in the associated Water Delivery Contract, which partial assignment must effectively assign the right to receive 1 megalitre of water of the customer's "Peak Delivery Entitlement" for every 1,000 Ordinary Shares transferred or multiples thereof provided that following the transfer each of the transferor and the transferee must be the holder of not less than 5,000 Shares.
- (e) The Board may require such evidence as it may from time to time direct to determine whether a transferor of Ordinary Shares has validly assigned to the transferee thereof, all or the relevant part (as the case may be) of the transferor's right, title and interest in the relevant Water Delivery Contract.

#### 15.2 Instrument of Transfer

Subject to this Constitution, a Member may transfer all or any of his shares by instrument in writing in registrable form or, subject to the Act, by any other means that the Directors approve.

#### 15.3 Proper Instrument

A transfer may only be registered by the Company where an instrument satisfying Clause 15.2 is delivered to the Company and the instrument:

- (a) is duly stamped, if necessary;
- (b) is executed by the transferor and (unless the Board otherwise determines in a particular case relating only to fully paid shares) the transferee, except where execution by either transferor or transferee is not required by law or is deemed by law to be present;
- (c) except where otherwise permitted by law, is accompanied by the certificate for the shares the subject of the transfer together with such other evidence as the Board may require to prove the title of the transferor or his right to transfer the shares; and
- (d) relates only to shares of one class.

#### 15.4 Restrictions on Registration

- (a) The Board may decline to register any transfer of shares;

- (i) where registration of the transfer would result in or perpetuate a contravention of or failure to observe a provision of:
    - (A) this Constitution, or
    - (B) a law of the Commonwealth of Australia or a State or Territory of Australia;
  - (ii) where the Company has a lien on the shares the subject of the transfer;
  - (iii) where the transfer is in respect of a partly paid share in respect of which a call has been made or an instalment is due and such a call or instalment is unpaid; or
  - (iv) to more than three persons as joint holders, except in the case of executors or trustees of a deceased Member.
- (b) If in the exercise of its rights under Clause 15.4(a), the Board refuses to register a transfer of any shares it shall give written notice of the refusal to the transferee.

**15.5 Transferor remains Member**

The transferor of a share remains the holder of that share until the transfer is registered and the name of the transferee is entered in the Register in respect of that share.

**15.6 Retention of Instruments**

On an instrument of transfer or a purported instrument of transfer being delivered to the Company, property to and title in that instrument (but not the shares the subject of it) pass to the Company which is entitled as against all persons to the possession of the instrument.

**15.7 Powers of Attorney**

Where a power of attorney granted by a Member is lodged with, or produced or exhibited to, the Company and that power of attorney confers power on the attorney to transfer any or all of the Member's shares, the Company is entitled to assume, as against the Member, that the power remains in full force and effect and may be relied on by the Company until the Company receives express notice in writing at its registered office of either:

- (a) the revocation of the power of attorney; or
- (b) the death of the Member.

**16. TRANSMISSION OF SHARES**

**16.1 Death of a Member**

- (a) In the case of the death of a Member, the only persons the Company will recognise as having any title to the Member's shares are:-
  - (i) the personal representative of the deceased Member where the deceased was a sole holder; and
  - (ii) the survivor or survivors where the deceased was a joint holder.

- (b) Nothing contained in Clause 16.1(a) releases the estate of a deceased Member from any liability in respect of a share, whether that share was held by the deceased solely or jointly with other persons.

**16.2 Registration on Transmission**

- (a) A person who becomes entitled to a share as a consequence of the occurrence of a Transmission Event may, upon producing the certificate for the share and such other evidence as the Directors may require to prove that person's entitlement, elect:-
  - (i) to be registered as the holder of the share by signing and serving on the Company a notice in writing stating that election; or
  - (ii) to have some other person nominated by that person registered as the transferee of the share by executing a transfer of the share to that other person.
- (b) An election under clause 16.2(a) is subject to the same limitations, restrictions and provisions of this Constitution as would apply if the election were a transfer or the transfer were made by the Member or deceased Member itself.
- (c) Where two or more persons are jointly entitled to any share in consequence of a Transmission Event, they will, upon being registered as the holder of the share, be taken to be joint holders of the share.
- (d) The Board must not register the transmission of any Ordinary Shares if it forms the opinion that any such transfer would result in a person breaching Clauses 8.2 or 15.1. The Board is not required to give any reasons for any such opinion.

**17. GENERAL MEETINGS**

**17.1 General Meetings**

- (a) The Company must hold an Annual General Meeting within 18 months after its registration, and subject thereto the Company must hold an Annual General Meeting at least once in each calendar year and within 5 months after the end of its financial year. An Annual General Meeting is to be held in addition to any other general meetings held by the Company in the year. The Board may whenever it deems fit convene a general meeting at such time and place as the Board determines. A general meeting other than an Annual General Meeting is to be called an "Extraordinary General Meeting".
- (b) A general meeting may be held at 2 or more places using any technology that enables each Member to hear the entire meeting and otherwise gives the Members as a whole a reasonable opportunity to participate.

**17.2 Convene**

Any director may whenever he thinks fit convene a general meeting of the Company and general meetings shall be convened on such requisition or in default may be convened by such requisitionists as provided by the Act.



**17.3 Notice of Meeting**

Subject to the provisions of the Act as to agreements to short notice of meetings, at least 21 days' notice of a general meeting must be given to the persons entitled to receive that notice.

**17.4 Contents of Notice**

A notice of a general meeting must specify (in addition to such matters as may be required by the Act):

- (a) the place, day and time of the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) the general nature of the business to be transacted at the meeting;
- (c) if a special resolution is to be proposed, the terms of the resolution; and
- (d) if a member is entitled to appoint a proxy, contain a statement setting out information regarding the right to appoint a proxy, including that a member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

**17.5 Notice not Received**

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

**17.6 Adjourn Meeting**

Except as otherwise provided by this Constitution, the chairman of a general meeting at which a quorum is present:

- (a) may with the consent of the meeting by ordinary resolution; and
- (b) must, if so directed by the meeting by ordinary resolution, adjourn the meeting from time to time and from place to place.

**17.7 Business at Adjourned Meeting**

The only business which may be transacted at an adjourned general meeting is business which was left unfinished from the general meeting which was adjourned.

**17.8 Notice of Adjourned Meeting**

No notice need be given of an adjourned general meeting or of the business to be transacted at it except if a general meeting is adjourned for one month or more, in which case, notice of the adjourned meeting must be given as if it were notice of the original meeting.

**18. PROCEEDINGS AT GENERAL MEETINGS****18.1 Representation of Members**

A Member may attend a general meeting at which he is entitled to be present, in any of the following ways (if applicable to the Member):

- (a) in person;
- (b) by proxy;
- (c) by attorney; or
- (d) by a representative appointed in respect of the general meeting under Section 250D of the Act;

provided that the Chairman of a general meeting or his nominee may refuse to admit to the meeting or may eject from the meeting any person:

- (i) who is in possession (without the Chairman's express permission) of any recording or photographic device; or
- (ii) who behaves or threatens to behave in a disorderly manner or to disrupt the meeting, as determined in the Chairman's discretion.

**18.2 Quorum**

- (a) No business may be transacted at a general meeting unless a quorum is present at all times during the meeting.
- (b) If the Company has two or more Voting Members, a quorum is present for a general meeting where ten natural persons, each of whom is or represents under Clause 18.1(b), (c) or (d) a different Voting Member, are present.

**18.3 Failure of Quorum**

If a quorum is not present within 15 minutes of the time notified for a general meeting:

- (a) where the meeting was convened by reason of a requisition of Members - the meeting is dissolved; and
- (b) in any other case:
  - (i) the meeting stands adjourned to the day, time and place that the Board may determine and notify to the Members or, if no determination is made, the same day in the next week at the same time and place; and
  - (ii) at the adjourned meeting, if a quorum is not present within 15 minutes of the time notified for the meeting, the meeting is dissolved.

**18.4 Chairman**

While a person holds office as Chairman of Directors, that person shall preside as chairman at general meetings. During any absence or vacancy in that office, the person (if

any) who holds office as Deputy Chairman of Directors shall preside as chairman at general meetings.

**18.5 Chairman Absent**

Where a general meeting is held and either no person specified in Clause 18.4 is present within 15 minutes of the time notified for the meeting or that person is present but is unwilling or unable to be the chairman of the general meeting:

- (a) the Directors present may elect one of their number to be the chairman of the general meeting; and
- (b) if there is no Director present or those present at the meeting are unable or unwilling to chair the general meeting, the Voting Members present must elect one of their number to be the chairman of the general meeting.

**18.6 Responsibilities of Chairman**

- (a) The chairman of a general meeting is responsible for the general conduct of the meeting and for this purpose may, without limitation:
  - (i) make rulings;
  - (ii) in addition to other powers to adjourn, adjourn the meeting without the concurrence of the meeting if he determines it is desirable for the orderly conduct of the meeting; and
  - (iii) determine conclusively any dispute concerning the admission, validity or rejection of a vote.
- (b) The chairman of an Annual General Meeting:
  - (i) must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Company; and
  - (ii) if the Auditor or its representative is at the meeting – must allow a reasonable opportunity for the Members as a whole at the meeting to ask the Auditor or its representative questions relevant to the conduct of the audit and the preparation and content of the auditor’s report.

**18.7 Method of Voting**

- (a) Every resolution put to a vote at a general meeting must be determined by a show of hands unless a poll is properly demanded before the vote is taken, or before or on the declaration of the result of the vote on a show of hands.
- (b) Before a vote is taken the chairman must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.

**18.8 Demand for Poll**

In addition to the provisions in this regard contained in the Act, a demand for a poll may be made by:

- (a) the chairman of the general meeting; or
- (b) at least five natural persons present each of whom is, or represents under Clauses 18.1(b), (c) or (d), a different Voting Member; or
- (c) any one or more natural persons present each of whom is, or represents under Clauses 18.1(b), (c) or (d), a different Voting Member who are together entitled to at least 5% of the total voting rights of all the Members having the right to vote at the meeting.

#### 18.9 Effect of Demand for Poll

The demand for a poll does not prevent the continuance of a general meeting for the transaction of any business except in respect of the resolution for which the poll is demanded.

#### 18.10 Votes on Show of Hands

Where a resolution is determined by show of hands:

- (a) a declaration by the chairman of the general meeting that the resolution has been carried, carried unanimously, carried without dissent, carried by a particular majority or lost is conclusive evidence of the fact so declared without proof of the number or proportion of votes cast for or against that resolution; and
- (b) an entry in the book containing the minutes of that general meeting recording that declaration is conclusive evidence of the fact that the declaration was made as so recorded.

#### 18.11 Conduct of Poll

If a poll is properly demanded for a resolution:

- (a) if the resolution is for the adjournment of the general meeting or for the election of the chairman of the meeting, the poll must be taken immediately;
- (b) in all other cases, the poll must be taken at the time and place and in the manner that the chairman of the general meeting determines and declares to the meeting;
- (c) the result of the poll, as disclosed by the chairman of the general meeting at which the result is declared, is a resolution of the general meeting at which the poll is demanded; and
- (d) an entry in the book containing the minutes of the general meeting at which the result is declared recording that declaration is conclusive evidence of the fact that the declaration was made as so recorded.

#### 18.12 Resolutions Determined by Majority

Both on a show of hands and on a poll, an ordinary resolution is passed if the proportion that the number of votes cast in favour of that resolution bears to the total number of votes cast on the resolution is greater than one half.

**18.13 No Casting Vote of Chairman**

If there is an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting will not have a second or casting vote, and the proposed resolution is to be taken as having been lost.

**19. ENTITLEMENT TO ATTEND AND VOTE****19.1 Entitlement to Notice and to Attend**

Subject to this Constitution and any terms of issue of any share, each Member, Director and the Auditor is entitled to be present and to speak at a general meeting.

**19.2 Entitlement to Vote**

Subject to this Constitution and any terms of issue of any share:

- (a) on a show of hands, each natural person present at a general meeting who is a Voting Member or a proxy (other than a person who is present only as one of two proxies appointed by the same Member), representative or attorney appointed by a Voting Member has one vote; and
- (b) on a poll, each natural person present at a general meeting has a number of votes calculated as the aggregate of the following:
  - (i) the number of fully paid shares held by the person;
  - (ii) the number of fully paid shares in respect of which Voting Members holding those shares have appointed the person as proxy, representative or attorney;
  - (iii) the aggregate (or if that is not a whole number, the next highest whole number) of the amounts calculated in respect of each partly paid share held by the person as the fraction of the total of the issue price of that share that is actually paid; and
  - (iv) the aggregate (or if that it not a whole number, the next highest whole number) of the amounts calculated on the same basis as paragraph (iii) above in respect of each partly paid share in respect of which the Voting Member holding that share has appointed the person as proxy, representative or attorney.

**19.3 Voting Limit**

- (a) For the purpose of this Clause 19.3:
  - (i) **associate** has the meaning given by Section 11 and (subject to Section 16(1)) Section 12(2) of the Corporations Act.
  - (ii) **relevant interest** has the meaning given by Sections 608 and 609 of the Corporations Act; and
  - (iii) **voting power** in the Company has the meaning given by Section 610 of the Corporations Act;

- (b) If the voting power in the Company of a Voting Member exceeds 10%, the Company shall disregard (in such manner as the Board determines in its absolute discretion) the exercise by:
- (i) such Voting Member; and
  - (ii) any Voting Member who is an associate of such Voting Member,
- in the same way (i.e. for, against or abstain) of such voting power in excess of 10% on a resolution.
- (c) However, the Company will not disregard a vote if:
- (i) it is cast by a person as proxy for a Voting Member who is entitled to vote, in accordance with the directions on the proxy form; or
  - (ii) it is cast by the person chairing the meeting as proxy for a Voting Member who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.
- (d) No resolution shall be invalid by reason only that after it has been passed, it is discovered that certain votes were not disregarded as provided in Clause 19.3(b).
- (e) If the Company by written notice (**Request Notice**) to a Voting Member requests the Voting Member to advise the Company of:
- (i) the full name of each associate of the Voting Member and the reason why such person is an associate of the Voting Member; and
  - (ii) the nature of each relevant interest which the Voting Member has in Voting Shares,
- the Voting Member must provide that information to the Company by written notice within 14 days of the date of the Request Notice provided that if the Company so requires, such written notice from the Voting Member must be in the form of a statutory declaration sworn by the Voting Member or, if the Voting Member is a body corporate, by a director, secretary or other officer of the body corporate.
- (f) If a Voting Member fails to comply with a request made by the Company pursuant to Clause 19.3(e) then, for so long as such failure continues, all rights attaching to the Voting Shares held by that Voting Member shall be suspended.

#### 19.4 **Vote of Transmitttee**

A person entitled to transmission of a share under Clause 16 who, at least 48 hours before the time notified for a general meeting (or an adjourned meeting), satisfies the Board of his right to that share, may vote at that general meeting in respect of that share as if the person were the registered holder of the share.

#### 19.5 **Joint Holders' Votes**

Where a share is held by more than one person (including, for the purposes of this Clause, the several legal personal representatives of a deceased Member):

- (a) each of those persons may tender a vote in respect of the share either in person or by proxy, representative or attorney, as if the person were the sole holder of the share; but
- (b) if two or more of those persons tender a vote on any resolution, the only vote which is to be counted in respect of that share is the vote tendered by the most senior of those persons (seniority being conclusively ascertained by the order of names in respect of that share in the Register).

**19.6 Proxies, Attorneys and Representatives**

- (a)
  - (i) A proxy, attorney or representative may be, but need not be, a Member of the Company.
  - (ii) A proxy may be an individual or a body corporate.
- (b) A proxy, attorney or representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.
- (c) An instrument appointing the proxy may be in any usual form or any other form that the Directors approve.
- (d) Unless otherwise provided by the Act or in the instrument, an instrument appointing a proxy, attorney or representative will be taken to confer authority:-
  - (i) to agree to a meeting being convened by shorter notice than is required by the Act or by this Constitution;
  - (ii) to agree to a resolution being proposed and passed as a resolution at a meeting of which less than twenty-one (21) days notice has been given;
  - (iii) even though the instrument may refer to specific resolutions and may direct the proxy how to vote on those resolutions:-
    - (A) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and
    - (B) to vote on any procedural motion, including any motion to elect the chairman, to vacate the chair or to adjourn the meeting;
  - (iv) to speak to any proposed resolution on which the proxy may vote; and
  - (v) to demand or join in demanding a poll on any resolution on which the proxy may vote.
- (e) If a Member appoints two proxies to vote in respect of the Member's shares at the same general meeting and the appointment does not specify the proportion or number of the Member's votes each proxy may exercise, each proxy may exercise half of the votes (disregarding any fractions of votes).
- (f) The instrument appointing a proxy must be in writing (which may be in electronic form) signed, or otherwise authenticated in a manner prescribed for that purpose

by the Act, by the appointor of the appointor's attorney duly authorised in writing or, if the appointor is a body corporate, by its duly authorised representative.

- (g) An instrument of proxy which is valid and effective except that no appointee is specified in respect of the shares of the relevant Member is to be treated as validly appointing the chairman of the general meeting to which it relates in respect of all of the shares of that Member.
- (h) Subject to the Act, where a Member in a valid instrument appointing a proxy directs the appointee to vote in a specified way or abstain from casting a vote in respect of a particular item of business at the relevant general meeting:
  - (i) the appointee must cast or abstain from casting (as the case may be) a vote on that item of business; and
  - (ii) the appointee must, on a poll, cast the votes as to which he has a direction by reason of the instrument of proxy in accordance with that direction,

but, if in respect of any vote in respect of that item of business, the Member does not in the instrument indicate how the appointee is to cast that vote, the appointee may cast, or abstain from casting, that vote as the appointee determines.
- (i) Any appointment of a proxy is effective, in respect of a particular general meeting if the instrument of proxy and, if it is signed or otherwise authenticated in a manner prescribed by the Act, by an attorney, the relevant power of attorney or certified copy of the power of attorney, are received by the Company at least 48 hours before the time notified for that meeting, and if a meeting of the Company's Members has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- (j) Where the Company has received an instrument of proxy in respect of a share from a Member the appointment made by that instrument is and remains valid and effective, except that where the Company subsequently receives:
  - (i) a power of attorney or office copy or notarially certified copy of a power of attorney entitling the attorney to attend and vote at the meeting, the appointment is revoked;
  - (ii) intimation in writing either of the revocation of the appointment under the instrument of proxy or of the death or mental incapacity of the Member, the appointment is revoked; and
  - (iii) another instrument of proxy from the Member in respect of that share, the instrument of proxy bearing the later date (or if the instruments bear the same date, the instrument later received by the Company) is an intimation in writing of the revocation of the appointment under the other instrument.
- (k) For the purposes of Clause 19.6(i) and (j), the Company receives the documents referred to in those provisions when:
  - (i) they are received at the Company's Office;



- (ii) they are received at a facsimile transmission number at the Company's Office;
  - (iii) they are received at a place, facsimile transmission number or electronic address specified for the purpose in the notice of meeting; or
  - (iv) in the notice of meeting specifies other electronic means by which a Member may deposit or produce the relevant document, when the document given by those means is received by the Company as prescribed for that purpose by the Act.
- (l) If a Member is present at a general meeting in either of the ways specified in Clauses 18.1(a) or 18.1(d), and a person appointed by that Member as proxy or attorney is also present at that meeting, that person is not entitled to exercise the rights conferred by the instrument of proxy or power of attorney while the Member is present.

**19.7 Ruling on Entitlements and Votes**

- (a) An objection may be raised with the chairman of a general meeting as to the qualification of a purported voter or the admission or rejection of a vote by any person present and entitled (or claiming to be entitled) to vote but that objection may be made only at the general meeting or adjourned meeting at which the purported voter wishes to vote or the vote objected to is given or tendered and, in relation to that objection:
  - (i) the decision of the chairman is final and conclusive; and
  - (ii) a vote not disallowed as a result is valid and effective for all purposes.
- (b) This Clause applies to any objection as to the use or legibility of a facsimile transmission or other electronic copy of any instrument referred to in Clause 19.6(i).
- (c) The Board or, if in the circumstances it is not possible or practical to contact or attempt to contact any member of the Board, the Chairman of the meeting, in its or his absolute discretion, may waive or reduce any period of time referred to in Clauses 19.3 and 19.6(i).

**20. DIRECTORS**

**20.1 Number of Directors**

The number of the Directors shall be not less than four (4) nor more than eight (8).

**20.2 Independent Director**

- (a) There must be at least one (1) Independent Director at all times, to the extent that such requirement can be reasonably satisfied.
- (b) An Independent Director:

- (i) must not have any material direct or indirect interest in any land in excess of one (1) hectare in area located within, or business activity conducted within, ten (10) kilometres from any part of the Company’s pipeline referred to in the definition of “Water Delivery Contract” in clause 1.1; and
- (ii) must be a person who, in the opinion of the Board, is able to benefit the growth, development and operation of the Company by the contribution of that person’s independent commercial, business and/or professional skill and expertise.

**20.3 Retirement by rotation**

At each Annual General Meeting, the following Directors automatically retire and are eligible for re-appointment (and if not re-appointed, subject to Clause 20.10, that retirement takes effect at the conclusion of that Annual General Meeting):

- (a) any Director appointed by the Board to fill a casual vacancy or as an addition to the Board since the previous Annual General Meeting and not re-appointed under Clause 20.6 by an Extraordinary General Meeting since the previous Annual General Meeting;
- (b) one third (or if that is not a whole number, the next lowest whole number) of the Directors selected in accordance with Clause 20.4, and who are not:
  - (i) to retire under Clause 20.3(a); or
  - (ii) the Managing Director;
- (c) any Director (excluding the Managing Director) who, if that Director did not retire at that Annual General Meeting, would at the next Annual General Meeting, have held that office for more than three years.

**20.4 Selection of Rotating Directors**

The Directors who are required to retire pursuant to Clause 20.3(b) are those of the Directors the subject of that Clause who have been in office the longest and, as between Directors who have been in office for an identical period, those to retire are (unless they otherwise agree among themselves) to be selected by lot.

**20.5 Qualification of Directors**

A Director need not be a Member.

**20.6 Casual Vacancy**

The Board may at any time (except the period from the opening to the closing of a general meeting) appoint any person as a Director to fill a casual vacancy or as an addition to the Board but so that the number of Directors does not any time exceed the maximum number set under Clause 20.1 and any Director so appointed automatically retires at the next general meeting of the Company and is eligible for re-appointment by that general meeting (and if not re-appointed that retirement takes effect at the conclusion of that general meeting).

**20.7 Vary Number of Directors**

The Company may from time to time by ordinary resolution reduce or increase the maximum number of Directors permitted under Clause 20.1 and if there is a reduction or increase, determine the rotation by which the reduced or increased number are to retire.

**20.8 Appointment at Annual General Meeting**

At any Annual General Meeting at which a Director retires under Clause 20.3, the Company may by ordinary resolution fill the office vacated by appointing a person as a Director.

**20.9 Notice of Nomination**

Except in the case of a Director retiring under Clause 20.3, a person who is not recommended for appointment by the Board is only eligible to be appointed as a Director by ordinary resolution where both:

- (a) a nomination of the person by at least 10 Ordinary Shareholders; and
- (b) a consent to nomination signed by the person,

are received at the registered office of the Company at least 30 days before the relevant general meeting.

**20.10 Deemed Re-appointment**

Where a Director retires by reason of Clause 20.3(b) and is willing to continue to act as a Director, that Director continues in office until the next Annual General Meeting and so on, unless either:

- (a) the number of Directors including the Director would be greater than the maximum number of the Directors permitted under this Constitution;
- (b) a resolution for the re-election of the Director has been put and not carried; or
- (c) a resolution for the re-election of the Director is not put because, prior to such resolution being put, all vacancies to be filled at the Annual General Meeting have been filled.

**20.11 Vacation of Office**

The office of a Director automatically becomes vacant if the Director:

- (a) becomes an insolvent under administration;
- (b) is not permitted by the Act (or an order made under the Act) to be a Director;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (d) is removed as a Director under the Act or this Constitution;

- (e) either by himself or by an Alternate Director appointed by him fails to attend three consecutive Board meetings without leave of absence from the Board; or
- (f) resigns either by reason of this Constitution or by notice in writing to the Company.

**20.12 Less than minimum number of Directors**

Where the office of a Director becomes vacant, the continuing Directors may continue to act except where the number of Directors falls below the minimum number set by Clause 20.1, in which case the continuing Directors may act only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a general meeting; or
- (c) in emergencies.

**21. DIRECTORS' REMUNERATION**

**21.1 Non-Executive Directors**

The non-Executive Directors shall be paid by way of fees for services such aggregate sum as may be determined from time to time by the Company by ordinary resolution, to be divided among them in such proportion and manner as the Directors agree and, in default of agreement, equally..

**21.2 Accrue Daily**

All Directors' fees shall be deemed to accrue from day to day.

**21.3 Special Remuneration**

Where a Director (other than the Managing Director or other Executive Director) is called upon to perform extra services or to make any special exertions in going or residing abroad or otherwise for any business or purposes of the Company, the Directors may arrange with that Director for a special remuneration by payment of a stated sum of money determined by the Directors and that remuneration may be either in addition to or in substitution for his or her share in the fees provided for in Clause 21.1.

**21.4 Allowances**

The Directors may also be paid an allowance for travelling and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Company or otherwise in connection with the exercise of their powers and the discharge of their duties or the business of the Company.

**22. DIRECTORS' INTERESTS****22.1 Disclosure of Interests**

To the extent required by the Act, a Director who has an interest in a matter that relates to the affairs of the Company must give the other Directors notice of the interest, and the following provisions of this Clause 22 are to be read and applied subject thereto.

**22.2 Voting by Interested Director**

A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter,

save as permitted by the Act.

**22.3 Directors may contract with Company**

Subject to Clauses 22.1 and 22.2, a Director is not disqualified by the office of Director from contracting or entering into any arrangement with the Company either as vendor, purchaser or otherwise, and no contract or arrangement entered into with the Company by a Director nor any contract or arrangement entered into by or on behalf of the Company in which a Director is in any way interested may be avoided for that reason, and a Director is not liable to account to the Company for any profit realised by any contract or arrangement by reason of holding the office of Director or of the fiduciary relationship established by the office.

**22.4 Director may hold other office**

Subject to Clauses 22.1 and 22.2:

- (a) a Director may hold any other office or position under the Company (except that of auditor) in conjunction with the office of Director, on terms and at a remuneration in addition to remuneration (if any) as a Director, as the Board approves;
- (b) a Director may be or become a director of or hold any other office or position under any corporation promoted by the Company, or in which it may be interested, whether as a vendor or shareholder or otherwise, and the Director is not accountable for any benefits received as a Director or shareholder of or holder of any other office or position under that corporation.

**22.5 Exercise of voting power in other corporations**

Subject to Clauses 22.1 and 22.2, the Board may exercise the voting power conferred by the shares in any corporation held or owned by the Company as the Board thinks fit (including the exercise of the voting power in favour of any resolution appointing the Directors or any of them directors of that corporation or voting or providing for the payment of remuneration to the directors of that corporation) and a Director of the Company may vote in favour of the exercise of those voting rights notwithstanding that

the Director is, or may be about to be appointed, a director of that other corporation and may be interested in the exercise of those voting rights.

**22.6 Execution of Instruments**

A Director may, notwithstanding anything to the contrary contained in Clauses 22.1 to 22.5 (inclusive), participate in the execution of any instrument by or on behalf of the Company and whether by signing or by affixing or witnessing the affixing of a seal (if any) or otherwise.

**23. ALTERNATE DIRECTORS**

23.1 Subject to this Constitution, each Director has power from time to time to appoint any person to act as an Alternate Director in the Director's place, whether for a stated period or periods or until the happening of a specified event or from time to time, whenever by absence or illness or otherwise the Director is unable to attend to duties as a Director. The appointment is to be in writing and signed by the Director and a copy of the appointment is to be given by the appointing Director to the Company by forwarding or delivering it to the Office. The appointment takes effect immediately upon receipt of the appointment at the Office. The following provisions apply to any Alternate Director:

- (a) the Alternate Director may be removed or suspended from office upon receipt at the Office of written notice, letter, telex, facsimile transmission or other form of visible communication from the Director by whom the Alternate Director was appointed to the Company;
- (b) the Alternate Director is entitled to receive notice of meetings of the Board and to attend and vote at the meetings if the Director by whom the Alternate Director was appointed is not present;
- (c) the Alternate Director is entitled to exercise all the powers (except the power to appoint an Alternate Director) and perform all the duties of a Director, insofar as the Director by whom the Alternate Director was appointed had not exercised or performed them;
- (d) without prejudice to the right to reimbursement for expenses pursuant to Clause 21, the Alternate Director is not, unless the Board otherwise determines, entitled to receive any remuneration as a Director from the Company;
- (e) the office of the Alternate Director is vacated upon the death of, or vacation of office by the Director by whom the Alternate Director was appointed;
- (f) the Alternate Director is not to be taken into account in determining either the number of Directors pursuant to Clause 20.1 or rotation of Directors; and
- (g) the Alternate Director is, while acting as a Director, responsible to the Company for the Alternate Director's own acts and defaults and is not to be deemed to be the agent of the Director by whom the Alternate Director was appointed; and
- (h) the Alternate Director of an Independent Director must satisfy the requirements of clause 20.2(b)(i).

**Constitution**

**24. MANAGING DIRECTOR AND EXECUTIVE DIRECTORS**

**24.1 Appointment**

The Directors may from time to time appoint one of their number to the office of Managing Director of the Company or to the office of Executive Director or Executive Directors either for a fixed term or at will, but not for life and, subject to the terms of any agreement entered into in a particular case, may revoke any such appointment. The appointment of a Managing Director or Executive Director so appointed automatically terminates if he ceases for any reason to be a Director.

**24.2 Remuneration**

A Managing Director or Executive Director shall, subject to the terms of any agreement entered into in a particular case, receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the Directors may determine.

**24.3 Powers**

The Directors may, upon such terms and conditions and with such restrictions as they think fit, confer upon a Managing Director or Executive Director any of the powers exercisable by them. Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Directors. The Director may at any time withdraw or vary any of the powers so conferred on a Managing Director or an Executive Director.

**24.4 Retirement**

A Managing Director shall not retire by rotation in accordance with Clause 20.3, but Executive Directors shall.

**25. POWERS OF THE BOARD**

**25.1 Management**

Except as otherwise required by the Act or any other applicable law or another provision of this Constitution:

- (a) the business of the Company is to be managed by the Board; and
- (b) the Board may exercise each and every right, power or capacity of the Company, to the exclusion of the Company in general meeting and the Members.

**25.2 Disposal of Main Undertaking**

Notwithstanding Clause 25.1, any sale or disposal of the Company's main undertaking must be conditional upon ratification by the Company by special resolution in general meeting.

**Constitution**

**25.3 Power of Attorney**

- (a) The Board by power of attorney may appoint any person to be an attorney of the Company for the purposes, with the powers (being powers of the Board), for the period and subject to the conditions determined by it.
- (b) Any such power of attorney may, without limitation, contain any provisions for the protection and convenience of persons dealing with the attorney as the Board determines, and authorise the attorney to delegate any or all of the powers vested in him by it.

**26. PROCEEDINGS OF THE BOARD**

**26.1 Mode of Meeting**

The Board may meet in person or by telephone or other instantaneous means of conferring for the dispatch of business (or by any combination of those means) and adjourn and otherwise regulate its meetings as it determines.

**26.2 Quorum**

- (a) The quorum of Directors required to be present at a meeting of the Board necessary for the transaction of business at the meeting shall be 3 Directors provided that if such quorum cannot be achieved by reason of the application of clause 22.2, the quorum shall be 2 Directors. A Director must not leave the meeting without having previously obtained the consent of the chairman of the meeting and will be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting unless that Director has previously obtained such consent.
- (b) For the purposes of this Clause and Clauses 26.4 and 26.10, a Director is treated as present at the meeting by telephone or other instantaneous means of conferring if the Director is able to hear the entire meeting and be heard by all others attending the meeting. A Director must not leave the meeting by deliberately disconnecting his telephone or other instantaneous means of conferring without having previously obtained the consent of the chairman of the meeting, and will be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting unless that Director has previously obtained such consent.

**26.3 Notice of Meeting**

Notice of each meeting of the Board, which must specify the time and the place of the meeting but need not state the nature of the business to be transacted:

- (a) must be given to each Director and his Alternate Director (if any); and
- (b) may be given by telephone or facsimile message,

but the non-receipt of any notice of a Board meeting by a Director or his Alternate Director does not affect the validity of the convening of the meeting.



**Constitution**

**26.4 Place of Meeting**

Where a meeting of the Board is held solely or partly by telephone or other instantaneous means of conferring, the meeting is to be treated as held at the place at which at least one of the Directors present at the meeting is physically located as is agreed by those Directors present at the meeting.

**26.5 Period of Notice**

The Board may determine the period of notice for each meeting of the Board which, until otherwise determined, is not less than 24 hours.

**26.6 Convening of Board Meeting**

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

**26.7 Appointment of Chairman**

The Board shall elect one of the Directors to be Chairman and may elect another to be Deputy Chairman and shall determine the period for which each of those Directors is to hold that office.

**26.8 Chairman of Board Meetings**

Where a meeting of the Board is held and:

- (a) a Chairman has not been appointed under Clause 26.7 or the Chairman is not present within 15 minutes of the time appointed for the holding of the meeting or is unwilling to act; and
- (b) a Deputy Chairman has not been appointed under Clause 26.7 or the Deputy Chairman is not present within 15 minutes of the time appointed for the holding of the meeting or is unwilling to act,

the Directors present at the meeting may choose one of their number to be chairman of that meeting.

**26.9 Majority Decisions**

Every question and resolution dealt with at a meeting of the Board is to be decided by a majority of votes of the Directors present and entitled to vote on the question or resolution.

**26.10 Votes of Directors**

Subject to this Constitution:

- (a) each Director present at a meeting of the Board has one vote on every question or resolution at that meeting;
- (b) if a Director is also an Alternate Director entitled to be present and to vote at the meeting, that Director has one further vote for each other Director in respect of whom that Director is present; and

- (c) if there is an equality of votes on any question or resolution, the chairman of the meeting may not exercise a casting vote in addition to any other vote he may have.

**26.11 Exercise of Powers by Board**

A power of the Board unless and while it has been delegated exclusively is exercisable only:

- (a) by resolution at a meeting of the Board at which a quorum is present: or
- (b) by a resolution of the Directors under Clause 26.14.

**26.12 Delegation to Committee**

The Board may delegate any of its powers to:

- (a) a committee consisting of not less than 2 Directors and which may also include any other persons determined by the Board;
- (b) a Director;
- (c) an employee of the Company; or
- (d) any other person,

and may terminate, withdraw or alter such delegation or withdraw or alter any powers conferred at any time.

**26.13 Committee Powers and Meetings**

Where a committee is created by the Board under Clause 26.12:

- (a) that committee must exercise the powers delegated to it under Clause 26.12 in accordance with any directions of the Board;
- (b) a power so delegated when exercised by the committee in accordance with Clause 26.13(a) is treated as exercised by the Board;
- (c) the members of the committee may elect a chairman from among the members;
- (d) where a meeting of a committee is held and:
  - (i) a chairman has not been elected in accordance with Clause 26.13(c); or
  - (ii) the chairman so elected is not present at the meeting within 15 minutes of the time appointed for the holding of the meeting or is unwilling to act,the members of the committee present at the meeting may choose one of their number to be chairman of the meeting;
- (e) the committee may meet in person or by telephone or other instantaneous means of conferring for the dispatch of business (or by any combination of those means) and adjourn and otherwise regulate its meetings as it may determine;

- (f) the presence of not less than half of the members of the committee, at least 2 of whom must be a Director, is necessary to constitute a quorum; no business may be transacted unless a quorum is present.
- (g) the committee meetings are otherwise governed to the greatest extent practicable by the provisions of this Constitution which regulate the meetings and procedures of the Board.

**26.14 Written Resolution of Directors**

- (a) If a majority of the Directors entitled to receive notice of a meeting of the Board and to vote on a resolution, sign a document to the effect that they are in favour of the resolution (the terms of which are set out in the document), a resolution in those terms is for all purposes treated as having been passed at a duly convened meeting of the Board held on the date and at the time when the last Director signed the Document.
- (b) For the purpose of Clause 26.14(a):
  - (i) two or more separate documents in identical terms each of which is signed by one or more Directors are treated as one document;
  - (ii) the signature by an Alternate Director of a document is not required if the Director who appointed that Alternate Director has signed the document;
  - (iii) the signature by the Director who appointed an Alternate Director of a document is not required if that Alternate Director has signed the document; and
  - (iv) a telex, facsimile transmission or other document produced by mechanical or electronic means under the name of a Director or Alternate Director (as the case may be) with the authority of the Director or Alternate Director (as the case may be) is deemed to be a document in writing signed by the Director or Alternate Director (as the case may be).

**26.15 Validity of Acts of Directors**

Each act, resolution or thing performed, passed or done by, or with the participation of, a person acting as a Director or member of a committee in respect of whom it is later discovered there was some defect in appointment to, or continuation in, office of that person or that the person was disqualified or not entitled to perform, vote on or do the act, resolution or thing, is as valid and effective as if that Director or member of committee had been validly appointed, had validly continued in office, had not been disqualified and was entitled so to perform, vote or do.

**27. ASSOCIATE DIRECTORS**

**27.1 Appointment**

The Board may:

- (a) appoint any person to be an Associate Director;

**Constitution**

- (b) determine the term of appointment, powers, duties and remuneration of that person as an Associate Director;
- (c) vary any determination so made; and
- (d) terminate or suspend any appointment of a person as an Associate Director.

**27.2 Restrictions**

No Associate Director, by virtue of appointment as such, is:

- (a) a Director;
- (b) entitled to attend Board meetings without invitation;
- (c) to be counted in determining if a quorum is present at a Board meeting; or
- (d) entitled to vote on any question at any Board meeting.

**28. SECRETARY**

28.1 The Board may:

- (a) appoint any person to be a Secretary of the Company;
- (b) determine the term of appointment, powers, duties and remuneration of that person as a Secretary;
- (c) vary any determination so made; and
- (d) terminate or suspend any appointment of a person as a Secretary.

**29. COMPANY ADMINISTRATION**

**29.1 Minutes to be made**

- (a) The Board must cause minutes to be made of:
  - (i) the names of the Directors present at each Board meeting;
  - (ii) the names of the committee members present at each meeting of a committee appointed under Clause 26.12;
  - (iii) the proceedings of each general meeting;
  - (iv) the proceedings of each Board meeting; and
  - (v) the proceedings of each meeting of a committee appointed under Clause 26.12.
- (b) The Board must cause all minutes made under Clause 29.1 to be entered in the relevant minute book of the Company.
- (c) The minutes of a meeting made under Clause 29.1, if appearing on their face to be signed by the chairman of the meeting or the chairman of the next succeeding

meeting of the relevant body, are sufficient but not conclusive evidence without proof of any further facts of the matters stated in them.

**30. ACCOUNTS, AUDIT AND RESERVES**

**30.1 Accounting Records**

The Board must cause:

- (a) the Company to keep the accounting records and to prepare the financial statements required by the Act; and
- (b) the accounts to be sent to Members and laid before general meetings of the Company as required by the Act.

**30.2 Audit**

The Board must cause the accounts of the Company to be audited by the Auditor as required by the Act.

**30.3 Accumulation of Reserves**

The Board may do any or all of the following with the profits of the Company before declaring any Dividend to the Members from them:

- (a) set aside any sum the Board determines as reserves to be applied, in the discretion of the Board, for any purpose it considers to be appropriate and use any sum so set aside in the business of the Company or invest any such sum in investments (which the Board may vary and deal with as it determines) which the Board determines; and
- (b) carry forward any amount from them which the Board considers ought not to be distributed as dividends without transferring those amounts to a reserve.

**31. DIVIDENDS AND OTHER DISTRIBUTIONS**

**31.1 Declaration of Dividends and Interim Dividends**

The Board may:

- (a) declare and authorise the distribution from the profits of the Company a dividend to be distributed to the Members according to their respective rights and interests, determine the property to constitute the dividend and fix the time for distribution; and
- (b) authorise the distribution to the Members of an interim dividend if and to the extent it appears justified by the position of the Company, determine the property to constitute the dividend and fix the time for distribution.

**31.2 No interest on Dividends**

No Dividend (whether in money or otherwise) bears interest as against the Company.

**Constitution**

**31.3 Obligation to Distribute**

Where the Board declares a Dividend under Clause 31.1 the obligation of the Company to make the distribution only arises where the Dividend is declared under Clause 31.1(a), the Board fixes the time for distribution and that time has arrived and, if the Dividend is a distribution of money, no debt arises in respect of the Dividend until that time.

**31.4 Payment of Dividend in Specie**

Without limitation to Clause 31.1, where the Board declares or authorises the distribution of a Dividend by a distribution of money it may also decide that all or any part of that Dividend be paid and satisfied by the distribution of specific assets (including, without limitation, paid up shares or other securities of the Company or of any other body corporate).

**31.5 Capitalisation of Profits or Reserves**

The Board may capitalise any amount available for distribution as a Dividend and, having applied the amount in either or both of the following manners, distribute that amount to the Members in the same proportions as the Members would have been entitled to if distributed as a Dividend:

- (a) in paying up any amounts unpaid on shares already issued; and
- (b) in paying up in full unissued shares.

**31.6 Dividend Reinvestment and Selection Plans**

The Directors may:-

- (a) implement a dividend reinvestment plan on such terms as they think fit under which the whole or any part of any Dividend due to Members who participate in the plan on their shares or any class of shares may be applied in subscribing for securities of the Company or of a related body corporate; and/or
- (b) implement a dividend selection plan on such terms as they think fit under which participants may elect to receive a Dividend from the Company paid wholly or partly out of any particular fund or reserve or out of profits derived from any particular source, or to forego a Dividend from the Company in place of some other form of distribution from the Company or another body corporate or a trust; and
- (c) amend, suspend or terminate any such dividend reinvestment plan or dividend selection plan which has been implemented by them.

**31.7 Calculation and Apportionment**

Subject to any rights or restrictions attached to any shares or class of shares, all Dividends must be paid equally on all shares, except that a partly paid share confers an entitlement only to the proportion of the Dividend which the amount paid (not credited) on the share is of the total amounts paid and payable (including amounts credited).

**Constitution**

**31.8 Amounts paid on shares**

For the purposes of Clause 31.7, amounts paid or credited as paid in advance of a call being made are not treated as having been paid up on the share.

**31.9 Deductions from Dividends**

The Board may deduct from any Dividend which is a distribution of money payable to a Member any money presently payable by the Member as such to the Company whether on account of a call or otherwise.

**31.10 Retention of Dividends**

The Board may retain any Dividend in respect of which the Company has a lien and:

- (a) if the Dividend is a distribution of property other than money, realise that property so that it is represented by money; and
- (b) apply the Dividend in or towards the satisfaction of the debts or liabilities in respect of which the lien exists.

**31.11 Declaration of Profits**

For the purpose of Clause 31.1, the declaration of the Board as to the amount of the profits of the Company and as to the amount of those profits available for distribution is conclusive.

**31.12 Settlement of Difficulties**

The Board may settle any difficulty that may arise in respect of any distribution under Clauses 31.1 to 31.10 (inclusive) as it considers desirable to adjust the rights of all parties and, in particular, may (without limitation):

- (a) round or disregard any fractional entitlement;
- (b) set the value of each asset to be distributed;
- (c) determine that money be paid to any Member instead of a particular distribution;
- (d) vest any property in trustees for any Member;
- (e) issue any fractional certificate required;
- (f) authorise a person to make on behalf of all Members entitled to a distribution of shares following a capitalisation under Clause 31.5 an agreement with the Company which will be effective against and bind all the Members concerned for the Company to issue to them, credited as fully paid, the shares the subject of the distribution or for the Company to apply the sum capitalised proportionately in paying up shares already issued to them; and
- (g) appoint a person to execute as agent or attorney on behalf of each Member entitled to a Dividend to be distributed otherwise than as money any instrument of transfer or other document necessary to vest in the Member full legal and equitable title to the property the subject of the Dividend.

**31.13 Entitlement to Dividend pending Registration**

The right to any Dividend declared on a share does not pass until the transfer of that share has been registered and the name of the transferee is entered in the Register.

**31.14 Retention of Transmitted Dividends**

The Board may retain any Dividend to be distributed in respect of a share which is subject to Clause 16.1 until the name of the person entitled to be registered under that Clause is entered in the Register as the holder of that share.

**31.15 Joint Holders' Entitlement to Dividend**

Where a share is held by more than one person, any one of those joint holders may give an effective receipt for any Dividend, in relation to that share.

**31.16 Dispatch and Payment of Dividends**

Any Dividend distributed as money may be paid by cheque and notification of any Dividend may be dispatched to the Member through the post directed:

- (a) to the address of the Member (or, in the case of a share held by more than one person, the address of the first-named of those joint holders) as shown in the Register; or
- (b) to any other address that the Member directs in writing.

**31.17 Unclaimed Dividend**

All Dividends declared but unclaimed may:

- (a) in the case of Dividends not to be distributed as money, be realised into money; and
- (b) in any case, be invested for the benefit of the Company until claimed or until required to be dealt with under any applicable law dealing with unclaimed money.

**32. NOTICES****32.1 Service of Notices by Company**

A notice required or permitted under this Constitution to be given by the Company to any Member or other person may be given either by serving it on the person personally or by sending it by prepaid post, telex or facsimile transmission or by other electronic means to the person at the address of the person:

- (a) if the person is a Member, subject to Clause 32.2, shown in the Register; and
- (b) if the person is not a Member, supplied by the person to the Company for the giving of notices.



**32.2 Overseas Member's Address**

A Member whose address as shown in the Register is not within Australia may give notice to the Company specifying an address within Australia which is to be treated for the purposes of Clause 32.1 as the address of that Member shown in the Register.

**32.3 Postal Notices to Overseas Members**

Where the Company proposes to send a notice to a Member by pre-paid post and the notice is to be sent outside Australia, the notice must be sent by airmail.

**32.4 Notices to Joint Holders**

Where a share is held by more than one person, a notice required to be given to those persons as joint holders of that share is effectively given when given to the one of those persons whose name first appears in the Register in respect of that share.

**32.5 Notices When Member Dies**

Any notice or document given in accordance with Clause 32.1 notwithstanding that the share in respect of which it is given is then subject to Clause 16.1, is to be treated as validly given to all persons entitled to be registered in respect of the share and all persons who claim through such person.

**32.6 Binding on Others**

Any person entitled to a share (whether by transfer, operation of law or otherwise) is to be treated as having duly received every notice in respect of that share which was duly given to the person from whom that person derives that entitlement before the person entitled is entered in the Register as the holder of the share.

**32.7 Signature of Notice**

The signature to any notice given by the Company may be written in any way.

**32.8 Service by Post**

Where a notice is given by post, that notice is treated as duly given where the notice is contained in a properly addressed envelope or wrapper in respect of which proper postage is paid and which is posted and is treated as given on the third day after it was posted.

**32.9 Service by Telex, Facsimile or Other Electronic Means**

Where a notice is given by telex, facsimile transmission or other electronic means, that notice is treated as duly given where the notice is addressed in accordance with Clause 32.1 and transmitted by telex, facsimile transmission or other electronic means to that address (whether it is in fact received or not) and is treated as duly given:

- (a) in the case of a telex, on the day after the sender receives the answer back of the addressee; and
- (b) in the case of a facsimile transmission or other electronic means, on the Business Day following transmission of the notice.

**Constitution**

**32.10 Counting of days**

Save where expressly stated to the contrary, where a specified period (including, without limitation, a particular number of days) is required to elapse or expire from or after the giving of a notice before an action may be taken neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

**32.11 Certificate of Director or Secretary**

If a Director or Secretary signs a certificate that a notice was given in the manner set out in the certificate, that certificate is conclusive evidence of the accuracy of the matters set out in it.

**33. INSPECTION AND SECRECY**

**33.1 No right to inspect**

No Member is entitled to require discovery of, inspection of, or any information concerning the affairs of the Company, except as provided by the Act or as permitted by the Board.

**33.2 Board may permit inspection**

Subject to the Act, the Board may determine whether any of the books, accounts and other information of the Company is to be available for inspection by Members and, if so, the extent, time, place and conditions of inspection so permitted.

**33.3 Obligation of Confidentiality**

Except in the proper course and performance of his duties, as required by law or as required by the Board, every officer of the Company must keep strictly confidential all transactions and affairs of, the accounts of and all information concerning the Company, and if so required by the Board, sign a declaration accepting the obligation of confidentiality and undertaking not to disclose any information within his knowledge the subject of that obligation to any person.

**34. WINDING UP**

**34.1 Power of Board**

The Board may authorise the presentation of a petition for the winding up of the Company by the Court.

**34.2 Distributing Surplus**

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

- (a) if the Company is wound up and the property of the Company available for distribution among the members is more than sufficient to pay:
  - (i) all the debts and liabilities of the Company; and

- (ii) the costs, charges and expenses of the winding up,  
  
the excess must be divided among the Members in proportion to the number of shares held by them irrespective of the amounts paid or credited as paid on the shares;
- (b) for the purpose of calculating the excess referred to in clause 34.2(a), any amount unpaid on a share is to be treated as property of the Company;
- (c) the amount of the excess that would otherwise be distributed to the holder of a partly paid share under clause 34.2(a) must be reduced by the amount unpaid on that share at the date of the distribution; and
- (d) if the effect of the reduction under clause 34.2(c) would be to reduce the distribution to the holder of a partly paid share to a negative amount, the holder must contribute that amount to the Company.

### 34.3 Dividing Property

- (a) If the Company is wound up, the liquidator may, with the sanction of a special resolution:
  - (i) divide amongst the Members the whole or any part of the Company's property; and
  - (ii) decide how the division is to be carried out as between the Members or different classes of Members.
- (b) A division under clause 34.3(a) need not accord with the legal rights of the Members and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part.
- (c) Where a division under clause 34.3(a) does not accord with the legal rights of the Members, a Member is entitled to dissent and to exercise the same rights as if the special resolution sanctioning that division were a special resolution passed under section 507 of the Act.
- (d) If any of the property to be divided under clause 34.3(a) includes securities with a liability to calls, any person entitled under the division to any of the securities may, within 10 days after the passing of the special resolution referred to in clause 34.3(a), by written notice direct the liquidator to sell the person's proportion of the securities and account for the net proceeds. The liquidator must, if practicable, act accordingly.
- (e) Nothing in this clause 34.3 takes away from or affects any right to exercise any statutory or other power which would have existed if this clause were omitted.

### 34.4 Remuneration of Liquidator

The Company in general meeting must not fix the remuneration to be paid to a liquidator pursuant to the Act unless at least 14 days' notice of the meeting has been given to the members and the notice has specified the amount of the proposed remuneration of the liquidator.

**Constitution**

**35. INDEMNITY AND INSURANCE OF DIRECTORS AND OTHERS**

35.1 To the extent permitted by the Act, the Company:

- (a) must indemnify every person who is or has been a Director of the Company;
- (b) may indemnify every other person who is or has been an officer of the Company; and
- (c) where the Board considers it appropriate to do so, may indemnify any person who is or has been an officer of a related body corporate of the Company,

against any liability incurred by that person in his or her capacity as a Director or officer of the Company or of the related body corporate (as the case may be).

35.2 In accordance with section 199A of the Act, the Company must not indemnify a person against:

- (a) any of the following liabilities incurred as an officer of the Company:
  - (i) a liability owed to the Company or a related body corporate;
  - (ii) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
  - (iii) a liability that is owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith; or
- (b) legal costs incurred in defending an action for a liability incurred as an officer of the Company if the costs are incurred:
  - (i) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under clause 35.2(a);
  - (ii) in defending or resisting criminal proceedings in which the person is found guilty;
  - (iii) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the Court to have been established; and
  - (iv) in connection with proceedings for relief to the person under the Act, in which the Court denies the relief Act.

Clause 35.2(b)(ii) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investment Commission or a liquidator as part of an investigation before commencing proceedings for the court order.

(c) For the purposes of clause 35.2(b) the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

**Constitution**

- 35.3 The Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company or a related body corporate of the Company against any liability incurred by the person as an officer of the Company or a related body corporate except a liability (other than one for legal costs) arising out of:
- (a) conduct involving a wilful breach of duty in relation to the Company; or
  - (b) a contravention of section 182 or 183 of the Act.
- 35.4 Despite anything in this Constitution, a Director is not precluded from voting in respect of any contract or proposed contract of indemnity or insurance, merely because the contract indemnifies or insures or would indemnify or insure the Director against a liability incurred by the Director as an officer of the Company or of a related body corporate.
- 35.5 No officer of the Company is liable for the act, neglect or default of any other officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of his or her office unless it arises through his or her own negligence, default, breach of duty or breach of trust.
- 35.6 For the purposes of this clause, “officer” means a Director, secretary or senior manager.

**36. DIRECTOR’S ACCESS TO RECORDS**

**36.1 Interpretation**

In this Clause 36:

- (a) **Access Period** means the period commencing on the date on which the relevant Director becomes a director of the Company and expiring seven (7) years from the date on which the relevant Director ceases to be a director of the Company.
- (b) **Board** includes any committee of the Board.
- (c) **Board Papers** means all documents circulated by the Company to the relevant Director in his capacity as a director of the Company that relate to any meeting or decision of the Board and all other documents in the possession of the Company referred to in any of the said documents circulated to the relevant Director.
- (d) **Company Records** means all records (other than Board Papers) in the possession of or belonging to the Company and which were created during the Period in Office, other than records which are the subject of legal privilege.
- (e) **Original Board Papers** means the originals of any Board Papers which, having been circulated to the relevant Director, are thereafter returned by the relevant Director to the Company for safe-keeping.
- (f) **Period in Office** means the period the relevant Director is a director of the Company.

### 36.2 Company to Maintain Papers

With respect to the Period in Office of a Director, the Company must maintain a complete set of all Board Papers in chronological order which, together with Original Board Papers, are to be kept in a suitably secure place and be available for access by the Director in accordance with Clause 36.3.

### 36.3 Access Rights

- (a) Subject always to clause 36.3(c) during the Access Period the Company must grant to the Director reasonable access to all Board Papers and the Original Board Papers and provide the Director, within 7 days of receipt of a written request in that behalf, with the Original Board Papers and with copies of any Board Papers at no charge to the Director. The access must be provided during the Company's usual business hours on normal business days.
- (b) If, during the Access Period, a claim or allegation is made against the Director in his capacity as a director or former director of the Company or the Director has reasonable grounds to believe that such a claim or allegation may be made against him, then the Company must with all due expedition give the Director access to copies of such of the Company Records which may be relevant to that claim or allegation as requested by the Director at no charge to the Director. The access must be provided during the Company's usual business hours on normal business days.
- (c) If the Company determines in good faith that:
  - (i) the Company may be entitled to claim legal privilege in respect of Board Papers or any part thereof; and
  - (ii) the loss of the right to claim such privilege could result in material damage to the Company,then the Company may impose such conditions on the Director's access to the relevant Board Papers as the Company determines in good faith are reasonably required to ensure that the right to claim privilege is not jeopardised by such access and the Company may refuse to grant the Director access to the relevant Board Papers until the Director has agreed in writing to comply with such conditions.
- (d) The Director shall not have access to Board Papers which comprise or include legal and any associated professional advice which relates to an actual or potential claim by or on behalf of the Company or a related body corporate of the Company against the Director for any reason whatsoever and the circumstances giving rise to such claim occurred prior to the giving of such legal and associated professional advice.
- (e) The Director must keep all information contained in the Board Papers and Company Records confidential except:
  - (i) where disclosure is required by law;

- (ii) for the purpose of obtaining professional advice;
- (iii) for the purpose of defending a claim by or on behalf of the Company or a related body corporate of the Company against the Director in his capacity as a director or former director thereof; or
- (iv) after receiving authorisation in writing from the Company.

**36.4 Deed of Access**

The Company and the Director must at the request of either of them, enter into a covenant under seal with each other which incorporates the provisions of this Clause 36.

**37. SUBMISSION TO JURISDICTION**

Each Member and each present and past Director and Secretary submits to the non-exclusive jurisdiction of the Supreme Court of the State of South Australia, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

**38. PROHIBITION AND ENFORCEABILITY**

- 38.1 Any provision of, or the application of any provision of, this Constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- 38.2 Any provision of, or the application of any provision of, this Constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

**39. INTERPRETATION OF CONSTITUTION**

Where any matter arises in the conduct of the affairs of the Company which is not provided for in this Constitution or where any difficulty arises in respect to the interpretation or application of any Clause the Directors shall determine the course to be adopted.

**40. GENERAL AUTHORISATION**

Where the Act authorises or permits a company to do any thing if so authorised by its Constitution, the Company is authorised by this Clause to do that thing.

**41. TRANSITIONAL PROVISIONS**

- 41.1 This Constitution shall be read and construed in such manner that:
  - (a) every Director, Managing Director, Alternate Director and Secretary in office as such immediately before the adoption of this Constitution shall continue in office subject to this Constitution; any register maintained by the Company immediately before the adoption of this Constitution shall be deemed to be a register maintained pursuant to this Constitution.
  - (b) any seal adopted by the Company before the adoption of this Constitution as a share seal or an official seal shall be deemed to be a seal which the Company has under a relevant authority conferred by this Constitution; and

**Constitution**

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- (c) unless a contrary intention appears in this Constitution all persons, things and circumstances appointed or created by or under the constitution of the Company in force before the adoption of this Constitution shall continue to have the same status, operation and effect after the adoption of this Constitution.