

K&L GATES

# Constitution

Tasplan Ltd  
ACN 009 563 062

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# Constitution of Tasplan Ltd ACN 009 563 062

## A company limited by shares

### 1. Preliminary

#### 1.1 Definitions

In this Constitution, unless the context requires otherwise:

**Act** means the *Corporations Act 2001 (Cth)* as amended, supplemented or replaced from time to time;

**Board** means the board of Directors of the Company from time to time;

**Company** means Tasplan Ltd ACN 009 563 062 or as that name is changed from time to time;

**Constitution** means this constitution of the Company as amended, supplemented or replaced from time to time;

**Director** means a person appointed or elected to the office of director of the Company;

**Government Agency** means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute;

**Initial Directors** means the Directors listed in the Schedule;

**Law** means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency; and
- (c) requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency that have the force of law;

**Member** means a registered holder of any share of the Company or any person deemed by this Constitution to be such a person;

**Nominations Committee** means a committee established by the Company under clause 15.8 to review the nomination of all Directors;

**Office** means the registered office for the time being of the Company;

**Officer** of the Company is an officer within the meaning of section 9 of the Act;

**Present** means, in connection with a meeting, a Member or Director being present in person or by proxy and includes Members and Directors who although not physically present at the meeting, are able to personally and contemporaneously participate in the deliberations by means of conference telephone, video conferencing, internet or similar communications equipment or any other technology accepted by the Members or Board,

whereby all persons participating in the meeting can hear, understand and communicate with others;

**Register** means the register of Members of the Company as required to be kept under section 168 of the Act;

**Seal** means the common seal of the Company (if any) and includes any additional seal of the Company referred to in clause 17.3;

**Secretary** means any person appointed to perform the duties of a secretary of the Company;

**Sponsor** means Unions Tasmania, Tasmanian Chamber of Commerce and Industry Limited, Local Government Association of Tasmania as these bodies are constituted from time to time;

**Special Resolution** has the same meaning as in section 9 of the Act;

**SIS** means the *Superannuation Industry (Supervision) Act 1993 (Cth)* as amended, supplemented or replaced from time to time; and

**Transition Period** means the period commencing on the date this Constitution takes effect and ending at the fourth annual general meeting following this date.

## 1.2 Interpretation

In this Constitution, unless the contrary intention appears:

- (a) a reference to:
  - (i) any statute, rule, regulation, ordinance or other Law includes regulations and other statutory instruments under any of them and consolidations, amendments, re-enactments or a replacement of any of them by any Government Agency;
  - (ii) a Chapter, Part, Division or section is a reference to a Chapter, Part, Division or section of the Act;
  - (iii) any officer of the Company includes any person acting for the time being as such an officer;
  - (iv) writing includes any mode of representing or reproducing words in a tangible or visible form, and includes facsimile transmission;
- (b) words importing:
  - (i) the singular include the plural and vice versa;
  - (ii) a gender includes the other genders;
  - (iii) natural persons include partnerships, associations and corporations;
- (c) headings are used for convenience only and do not affect the interpretation of this Constitution;

- (d) other grammatical forms of defined words or expressions have corresponding meanings
- (e) references to notices in this Constitution include not only formal notices of meetings but also all documents and other communications from the Company to its Members but do not include cheques; and
- (f) unless the contrary intention appears, an expression used in this Constitution that is given a special meaning in the Act has the same meaning in this Constitution where it relates to the same matter as the matter for which it was defined in the Act.

### **1.3 Replaceable rules**

The replaceable rules contained in the Act are displaced under section 135(2) and do not apply to the Company except to the extent that they are repeated in this Constitution.

## **2. Proprietary company**

The Company is a proprietary company and:

- (a) the liability of Members is limited by shares;
- (b) the number of Members is limited to 20;
- (c) it must not engage in any activity that would require disclosure to investors under Chapter 6D, except in the circumstances permitted by section 113(3).

## **3. Share capital**

### **3.1 Directors may issue shares**

Subject to the Act and this Constitution the Directors:

- (a) will issue 1 ordinary share to each Director (including the Initial Directors but excluding any Director nominated in accordance with clause 13.1(a)(iv));
- (b) may issue or dispose of shares on such terms and with such rights and restrictions as they think fit;
- (c) may issue shares with such preferred, deferred or other special rights or restrictions whether with regard to dividend, voting, return of capital or otherwise; and
- (d) may issue any preference shares on terms that they are, or at the option of the Company are liable, to be redeemed.

### **3.2 Rights attaching to ordinary shares**

The ordinary shares confer on their holders:

- (a) the right to receive notice of and attend any general meeting of the Company;
- (b) the right to cast one vote on a show of hands at a general meeting of the Company and to cast one vote for each ordinary share held on a poll.

### **3.3 Exercise of vote and rights**

Subject to this Constitution, no person is entitled to vote or to exercise any right or privilege as a Member until the person is registered in the Register.

## **4. Redemption of shares**

### **4.1 Ceasing to act as Director**

If a person ceases to act as a Director, including as a result of the death or mental incapacity of the person:

- (a) that person's shares in the Company will be redeemed and then cancelled by the Company; and
- (b) that person will be removed from the Register with effect from the date they cease to be a Director of the Company.

### **4.2 Authority of Secretary**

The Directors irrevocably appoint the Secretary as the Director's attorney to do all things necessary, including the execution of any documents, to give effect to any redemption as described in clause 4.1.

## **5. Shares held on trust or jointly**

### **5.1 No recognition of trusts or other interests**

Except as required by the Act or by this Constitution, the Company will not:

- (a) be required to recognise any person as holding a share on trust; or
- (b) be bound by or compelled in any way to recognise (whether or not the Company has been given notice) any equitable, contingent, future or partial claim, right or interest or any other right in any share except an absolute right of ownership in the holder listed in the Register.

## **6. Certificates**

### **6.1 Entitlement to certificates**

A person whose name is entered as a Member in the Register is entitled without payment to receive a certificate in respect of the share, signed in any way authorised by clause 18, in accordance with the Act. In respect of a share or shares held jointly by several persons, the Company is not bound to issue more than one certificate.

### **6.2 Delivery to joint holders**

Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.



## **7. Alteration of capital**

### **7.1 Power to consolidate, divide and cancel**

Subject to the Act, the Company may by resolution:

- (a) consolidate and divide all or any of its share capital into shares of larger value than its existing shares;
- (b) subdivide all or any of its shares into shares of smaller value, provided that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each such reduced share is the same as it was in the case of the share from which the reduced share is derived; and
- (c) cancel shares that, at the date of the resolution have not been taken or agreed to be taken by any person or have been forfeited and reduce its share capital by the amount of the shares so cancelled.

### **7.2 Reduction of capital**

Subject to the Act, the Company may, by resolution, reduce its share capital.

## **8. General meetings**

### **8.1 Annual general meeting**

The Company must hold an annual general meeting in November 2017 and in November in each following year.

### **8.2 Power to convene general meeting**

Any Director may, whenever the Director thinks fit, convene a general meeting of the Company's Members.

### **8.3 Notice period**

- (a) Subject to the Act and clause 8.3(b), the Company must give 21 days' notice of general meetings (including annual general meetings).
- (b) The Company may call, on shorter notice than that specified in clause 8.3(a):
  - (i) an annual general meeting, if all the Members entitled to attend and vote at the annual general meeting agree prior to the annual general meeting; and
  - (ii) any other general meeting, if Members holding at least 95% of the votes that may be cast at the general meeting agree prior to the general meeting.

### **8.4 Notice of general meetings**

- (a) Written notice of a general meeting must be given as provided in this Constitution to:
  - (i) every Member;
  - (ii) every Director; and

- (iii) the auditor (if any).
- (b) Notice to joint Members may be given by sending it to the joint Member named first in the Register.

## **8.5 Content of notice of general meetings**

A notice of a general meeting must:

- (a) specify the place, date and time for the meeting;
- (b) except as provided by clause 8.6, state the general nature of the business to be transacted at the meeting;
- (c) if a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and state the resolution;
- (d) contain a statement of:
  - (i) each Member's right to appoint a proxy; and
  - (ii) the fact that a proxy need not be a Member of the Company; and
- (e) contain a statement that, if the Member appoints more than one proxy, each proxy may be appointed to represent a specified proportion of the Member's votes.

## **8.6 Content of notice of annual general meeting**

It is not necessary for the notice of an annual general meeting to state that the business to be transacted at the meeting includes:

- (a) the consideration of the financial statements and the reports of the Directors and auditor (if any);
- (b) the election of Directors and other officers in place of those retiring;
- (c) the declaration of dividends;
- (d) the appointment and fixing of the remuneration of the auditors; and
- (e) any other business which, under this Constitution or the Act, is required to be transacted at an annual general meeting.

## **8.7 Nature of business**

All business will be special that is transacted at a general meeting, with the exception of:

- (a) declaring a dividend;
- (b) the consideration of the accounts, balance sheets, and the reports of the Directors and auditors; and
- (c) the election of the Directors or auditors (if any) or both.

## **8.8 Notice of adjourned meeting**

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 30 days or more.

## **8.9 Failure to give notice**

Any resolution passed at a meeting is not invalidated by:

- (a) the accidental omission to give notice of a meeting to any Member or non-receipt of that notice by a Member; or
- (b) the accidental omission to send out the instrument of proxy to a person entitled to receive notice or non-receipt of that instrument.

# **9. Proceedings at general meetings**

## **9.1 Circular resolutions**

- (a) A resolution may be passed without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. A body corporate's representative may sign such a circular resolution. Each member of a joint membership must sign a circular resolution.
- (b) Identical copies of the document may be distributed for signing by different Members and taken together will constitute one and the same document.
- (c) The resolution is passed when the last Member signs the document, and satisfies any requirement in this Constitution or the Act that the resolution be passed at a general meeting.

## **9.2 Use of technology**

The Company may hold a meeting at 2 or more venues using any technology that gives Members a reasonable opportunity to participate.

## **9.3 Quorum**

- (a) Except as otherwise provided in this Constitution, the quorum for a general meeting of the Company is 6 Members Present including, for each Sponsor, at least 1 Member who is a Director nominated by that Sponsor and the quorum must be Present at all times during the meeting.
- (b) No business will be transacted at any general meeting unless a quorum of Members is Present at the time when the meeting proceeds to business.
- (c) For the purpose of determining whether a quorum is Present:
  - (i) each person attending as a proxy of a Member is deemed to be a Member; and
  - (ii) if an individual person is attending both as a Member and as a proxy, they may be counted only once.

## **9.4 Effect of no quorum**

If a quorum of the Company's Members is not Present within 15 minutes after the time appointed for the meeting in the notice:

- (a) if the meeting was convened on the requisition of Members, the meeting must be dissolved; or
- (b) in any other case:
  - (i) the meeting will be adjourned to the date, time and place that the Directors specify (or if the Directors do not specify such details, the meeting is adjourned to the same day in the next week at the same time and place) except that if the meeting is adjourned for 30 days or more, notice of the resumed meeting must be given; and
  - (ii) if at a meeting resumed under clause 9.4(b)(i) a quorum is not Present within 15 minutes after the time appointed for the meeting, the meeting must be dissolved.

## **9.5 Chairperson of general meeting**

The chairperson of the Board under clause 12.3 shall chair general meetings of the Company.

## **9.6 Vacancy in chair**

Where a general meeting is held and the chairperson declines to act or is not Present within 15 minutes after the time appointed for the holding of the meeting, the Members Present must elect one of their number to be chairperson of the meeting or part of the meeting (as the case may be).

## **9.7 Adjournment**

The chairperson must adjourn a general meeting if the Members Present with a majority of votes at the general meeting agree or direct that the chairperson must do so.

## **9.8 Adjourned meetings**

- (a) Only unfinished business is to be transacted at a meeting resumed after an adjournment.
- (b) When a meeting of Members is adjourned for 10 days or more, notice of the adjourned meeting of Members shall be given as in the case of an original meeting.
- (c) A resolution passed at a meeting resumed after an adjournment is passed on the day it was in fact passed.

# **10. Voting at general meetings**

## **10.1 Voting**

- (a) A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded.

- (b) Before a vote is taken, the chairperson must inform the general meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (c) On a show of hands, a declaration by the chairperson is conclusive evidence of the result provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against the resolution.

## **10.2 Voting rights**

Subject to any rights or restrictions attached to any class of shares, each Member, entitled to vote may vote in person or by proxy authorised under the Act, at a meeting of the Members of the Company, and each Member has:

- (a) on a show of hands, one vote; and
- (b) on a poll, one vote for each share they hold.

## **10.3 Voting by joint holders**

If a share is held jointly and more than one Member votes in respect of that share, only the vote of the Member whose name appears first in the Register is counted.

## **10.4 Voting by poll**

- (a) A poll may be demanded by:
  - (i) the chairperson; or
  - (ii) any Members Present in person or by proxy entitled to vote on the resolution.
- (b) A poll may be demanded:
  - (i) before a vote is taken; or
  - (ii) before or immediately after the voting results on a show of hands are declared.
- (c) The percentage of votes that each Member holds is to be determined as at the close of business on the day before the poll is demanded.
- (d) The demand for a poll may be withdrawn.
- (e) If a poll is duly demanded, it must be taken in such manner and, subject to clause 10.4(f), either immediately or after an interval or adjournment or otherwise as the chairperson directs. The result of the poll is the resolution of the meeting at which the poll was demanded.
- (f) A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.
- (g) The demand for a poll does not prevent a meeting continuing for the transaction of any business other than the question on which a poll has been demanded.

## **10.5 No casting vote of chairperson**

In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded does not have a casting vote (in addition to any vote that the chairperson may have had as a Member).

## **10.6 Objection to qualification of a voter**

- (a) An objection to a person's right to vote at a general meeting:
  - (i) may only be raised at a general meeting or adjourned meeting at which the vote objected to is given or tendered; and
  - (ii) must be determined by the chairperson of the meeting, whose decision is final.
- (b) A vote not disallowed under an objection referred to in clause 10.6(a) is valid for all purposes.

## **10.7 Votes counted in error**

If any vote is counted which ought not to have been counted or might have been rejected, the error will not invalidate the resolution unless the error is:

- (a) detected at the same meeting; and
- (b) of sufficient magnitude, in the opinion of the chairperson, as to invalidate the resolution.

# **11. Proxies**

## **11.1 Who can appoint a proxy**

A Member who is entitled to attend and vote at a general meeting may appoint a person as that Member's proxy to attend and vote for that Member at a meeting of the Company. A proxy need not be a Member of the Company.

## **11.2 Execution and form of proxies**

An instrument appointing a proxy:

- (a) may be contained in a facsimile or email;
- (b) must be in writing under the hand of the appointer;
- (c) may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument;
- (d) is deemed to confer authority to demand or join in demanding a poll;
- (e) is not revoked by the principal attending and taking part in the meeting unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used; and

- (f) must, as nearly as the circumstances permit, be in the following form or in such other form as the Directors prescribe:

**Proxy form**  
**Tasplan ACN 009 563 062**  
**General meeting**  
**[date]**

I,

of

being a member of the Company appoint:

**[insert name and position of proxy]**

of

or if no person is named, the Chairperson of the general meeting as my proxy to vote and act for me and on my behalf at the general meeting of members of the Company to be held on **[date]** and any other day to which that general meeting is adjourned or postponed.

My proxy is authorised to exercise all of my voting rights.

I direct my proxy to vote:

☐ in any manner he/she sees fit (including abstaining from voting); or

☐ in the following manner:

No	Resolution <i>[list in sequence of ordinary and special business]</i>	For	Against	Abstain
1.				
2.				
3.				
4.				

If you have appointed the Chairperson as your proxy and you do not wish to direct the Chairperson how to vote, please place a mark in the box (below).

☐ By marking this box, you acknowledge that the Chairperson may exercise your proxy even if they have an interest in the outcome of the resolution and votes cast by the Chairperson other than as proxy holder will be disregarded because of that interest.

The Chairperson intends to vote in favour of/against the resolutions **[insert details]**.

**Dated**

**Signed**

Signature of member/s (note if the member is a company, the proxy form should be signed in accordance with the member company's constitution and with the *Corporations Act 2001 (Cth)*).

### **11.3 Life of proxy**

An instrument appointing a proxy will not be valid after 12 months from the date of its execution, unless it is expressly stated to be a standing appointment or to extend for a longer period.

### **11.4 Lodgement of proxies**

- (a) If a Member appoints a proxy, the proxy's appointment must be given to the Company at the Office or at the place specified for the purpose in the notice calling the general meeting.
- (b) The appointment of a proxy is valid for a meeting if the appointment and any authority are given to the Company at least 1 hour before the general meeting at which the proxy is to be used.

### **11.5 Validity of proxy vote**

A vote cast in accordance with the terms of an instrument of proxy is valid if no notice in writing of:

- (a) the previous death of the appointing Member;
- (b) the mental incapacity of the appointing Member;
- (c) the revocation of the proxy's appointment;
- (d) the revocation of the authority under which the proxy was appointed; or
- (e) the transfer of the share in respect of which the proxy was given,

has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the proxy is used or exercised.

## **12. Transition Period**

### **12.1 Rotation of Directors of the Company**

- (a) On and from the commencement of the Transition Period, the Board will be comprised of the Initial Directors who shall be taken to be nominated by the Sponsor (if any) outlined in the Schedule.
- (b) At the second annual general meeting which follows the commencement of the Transition Period:



- (i) Brian Scullin, Paul Griffin and Allan Garcia will cease to hold office;
  - (ii) Paul Griffin's and Allan Garcia's positions will be filled by a person nominated by their Sponsor, as set out in the Schedule, and appointed by the Board;
  - (iii) by virtue of section 13.6, Paul Griffin and Allan Garcia will not be eligible for re-election; and
  - (iv) Brian Scullin's position as Director will not be replaced.
- (c) At the third annual general meeting which follows the commencement of the Transition Period:
- (i) Naomi Edwards, Neroli Ellis, Stephen Walsh, Frank Barta and Paul Arnold will cease to hold office;
  - (ii) Stephen Walsh's and Paul Arnold's positions will be filled by a person nominated by their Sponsor, as set out in the Schedule, and appointed by the Board;
  - (iii) Naomi Edwards' position will be filled by a person appointed by the Board;
  - (iv) Neroli Ellis's position will be filled by a person nominated by Unions Tasmania and appointed by the Board;
  - (v) by virtue of clause 13.6, Neroli Ellis will not be eligible for re-election; and
  - (vi) Frank Barta's position as Director will not be replaced.
- (d) At the fourth annual general meeting which follows the commencement of the Transition Period:
- (i) John Mazengarb, Roslyn Madsen, Michael Tidey, Rebekah Burton and Susan Parr will cease to hold office;
  - (ii) Roslyn Madsen's, Michael Tidey's and Susan Parr's positions will be filled by a person nominated by their Sponsor, as set out in the Schedule, and appointed by the Board;
  - (iii) Rebekah Burton's position will be filled by a person nominated by Tasmanian Chamber of Commerce and Industry Limited and appointed by the Board; and
  - (iv) John Mazengarb's position will be filled by a person nominated by Unions Tasmania and appointed by the Board.
- (e) For the avoidance of doubt, at the end of the Transition Period, the number of Directors will be 11.

## **12.2 Casual vacancies during and after the Transition Period**

Casual vacancies will be filled as follows:

- (a) where the vacating Director was appointed pursuant to a nomination by a Sponsor, the casual vacancy will be filled by a person nominated by the Sponsor and appointed by the Board;
- (b) where the vacating Director was not appointed pursuant to a nomination by a Sponsor, the casual vacancy will be filled by a person appointed by the Board.

### **12.3 Chairperson during and after the Transition Period**

- (a) During her term as Director, Naomi Edwards will be the chairperson of the Board.
- (b) At the end of Naomi Edwards' term as Director, the person appointed to replace her under clause 12.2 will become the chairperson of the Board and shall remain the chairperson until they cease to be a Director in accordance with this Constitution.
- (c) From the end of the term of the Director who replaces Naomi Edwards' in accordance with clause 12.2 and 12.3(b), the person appointed to the Board under clause 13.1(a)(iv) will be the chairperson of the Board.

### **12.4 Amendment of the Constitution**

- (a) The Constitution cannot be amended during the period commencing at the start of the Transition Period and ending at the completion of the second anniversary following this date, except by a unanimous resolution of Members.
- (b) After the period specified in clause 12.4(a) and for the remainder of the Transition Period, a Special Resolution of Members is required in order to amend the Constitution, except for an amendment which would remove the right of any of the Sponsors to appoint a Director pursuant to clause 13.1, which can only be made by a unanimous vote of the Members.
- (c) For the avoidance of doubt, following the end of the Transition Period, any clause of the Constitution can be amended by Special Resolution of Members.

## **13. Appointment and removal of Directors after the Transition Period**

### **13.1 Number and composition of the Board**

- (a) After the Transition Period, the number of Directors will be 11 unless otherwise determined by the Board and must comprise of:
  - (i) 5 Directors nominated by Unions Tasmania and appointed by the Board pursuant to clause 13.2;
  - (ii) 3 Directors nominated by Tasmanian Chamber of Commerce and Industry Limited and appointed by the Board pursuant to clause 13.2;
  - (iii) 2 Directors nominated by the Local Government Association of Tasmania and appointed by the Members pursuant to clause 13.2; and
  - (iv) 1 Director appointed by the Board pursuant to clause 13.3.

- (b) For the avoidance of doubt, a nominating Sponsor of a Director remains the Sponsor for that position until it is otherwise determined by the Board in accordance with this Constitution.

### **13.2 Appointment by the Board on nomination from a Sponsor**

Where, in accordance with this Constitution, the position of a Director is to be filled by nomination of a Sponsor and appointment by the Board, the Board may at any time appoint any person to fill that position, provided that:

- (a) a nomination has been received from the relevant Sponsor in the approved form;
- (b) the person meets the eligibility requirements in clause 13.4; and
- (c) upon appointment to the Board, the total number of Directors does not exceed the maximum number of Directors permitted under clause 13.1.

### **13.3 Appointment by the Board**

Where, in accordance with this Constitution, the position of a Director is to be filled by appointment of the Board, the Board may at any time appoint any person to fill that position, provided that:

- (a) the person meets the eligibility requirements in clause 13.4; and
- (b) upon appointment to the Board, the total number of Directors does not exceed the maximum number of Directors permitted under clause 13.1.

### **13.4 Eligibility Requirements**

To be eligible to act as a Director of the Company, a person must:

- (a) be at least 18 years of age;
- (b) after the Transition Period and other than in respect of the Director appointed under clause 13.1(a)(iv), be a Member of the Company;
- (c) be approved by the Nominations Committee in accordance with any rules, policies or procedures imposed by the Company in relation to the eligibility of a person to be appointed as a Director;
- (d) if required, be nominated by the relevant Sponsor in accordance with clause 13.1;
- (e) satisfy:
  - (i) the relevant requirements under the Act and SIS to hold office as a Director of a company which acts as a trustee of a regulated superannuation fund;
  - (ii) the relevant requirements of any Company policy made by the Company from time to time; and
  - (iii) any other requirements as determined by the Board from time to time.

### **13.5 Term of office**

- (a) The term of a Director expires at the third annual general meeting following the commencement of their current term as Director at which time, if eligible, they can submit themselves for re-appointment.
- (b) Subject to this Constitution, a retiring Director is eligible for re-appointment without needing to give any prior notice of an intention to submit for re-appointment and holds office as a Director until the end of the meeting at which the Director retires.

### **13.6 Maximum term of office**

A person may only be appointed as a Director if that person, at the date of their appointment, has not previously served as a Director of the Company, a director of Quadrant Superannuation Pty Ltd or as a board member of the Retirement Benefits Fund Board for a total period of 12 years or more, unless there has been a period of at least 3 years since they last held office as a Director of the Company, a director of Quadrant Superannuation Pty Ltd or as a board member of the Retirement Benefits Fund Board, in which case the 12 year period recommences.

### **13.7 Vacation of office**

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act, the office of a Director becomes vacant if the Director:

- (a) ceases to be a Director by virtue of this Constitution;
- (b) becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- (c) is prohibited from being a Director by reason of any order made under the Act;
- (d) becomes physically or mentally incapable of performing the Director's duties;
- (e) resigns by written notice to the Company;
- (f) is absent from 3 consecutive Directors' meetings without the consent of the other Directors;
- (g) without the prior or subsequent consent of the other Directors, is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the Director's interest as required by the Act; or
- (h) fails, or ceases, to meet the eligibility requirements of a Director under clause 13.4.

### **13.8 Remuneration of Directors**

- (a) The Directors are to be paid such Directors' fees as the Company determines by ordinary resolution.
- (b) The Company may also pay the Directors travelling and other expenses that they properly incur:

- (i) in attending meetings of the Directors or any committee of the Directors;
- (ii) in attending any general meetings of the Company; or
- (iii) in connection with the business of the Company.

## **14. Powers and duties of Directors**

### **14.1 General management power**

Subject to the Act, this Constitution and any resolution of the Company, the Directors:

- (a) will manage the business of the Company;
- (b) may exercise all such powers of the Company that are not, by the Act or this Constitution, required to be exercised by the Company in general meeting, provided that:
  - (i) no resolution of the Company in general meeting will invalidate any prior act of the Directors which would have been valid if such a resolution had not been made; and
  - (ii) any sale or disposal by the Directors of the Company's main undertaking or a substantial proportion of its assets will be subject to ratification by the Company in general meeting; and
- (c) may pay all expenses incurred in promoting and forming the Company.

### **14.2 Power to borrow and give security**

- (a) Subject to the SIS or any other relevant Law and without limiting the generality of clause 14.1, the Directors may for the purposes of the Company:
  - (i) borrow money, with or without giving security for it; and
  - (ii) guarantee the performance of any obligation of the Company or of any other person.
- (b) The Directors may borrow or provide security as they think fit and in particular by the issue of bonds, debentures or debenture stock or any mortgage, charge or other security on the undertaking of the whole or part of the property of the Company (both present and future) including its uncalled capital.
- (c) Debentures, debenture stock, bonds or other securities may be:
  - (i) made assignable free from any equities between the Company and the person to whom the same has been issued; or
  - (ii) issued at a discount, premium or otherwise and with any special privileges as to redemption, surrender, drawings, allotment of shares, attending and voting at general meetings of the Company, appointment of Directors and otherwise, and any debentures may be re-issued notwithstanding that they may have been made paid off or satisfied.

### **14.3 Register of mortgages and charges**

The Directors must:

- (a) cause a proper register to be kept in accordance with the Act of all mortgages and charges affecting the property of the Company; and
- (b) comply with the Act in regard to the registration of mortgages and charges.

### **14.4 Indemnity**

Subject to clause 23 and to the extent permitted by SIS, the Act, if any of the Directors or any other person becomes personally liable for the payment of any sum primarily due from the Company, the Directors may execute a mortgage, charge or security over the whole or any part of the assets of the Company by way of indemnity to secure the Directors or persons so becoming liable from any loss in respect of the liability.

### **14.5 Director may act in professional capacity**

- (a) Subject to the Act and clause 14.5(b), any Director (or the Director's firm) may act in a professional capacity for the Company and the Director (or the Director's firm) is entitled to remuneration for professional services as if the Director were not a Director.
- (b) A Director (or the Director's firm) must not act as the Company's auditor.

## **15. Proceedings of Directors**

### **15.1 Calling and holding Directors' meetings**

A Director may call a Directors' meeting by giving reasonable notice to each Director.

### **15.2 Circulating resolutions**

- (a) The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Identical copies of the document may be distributed for signing by different Directors and taken together will constitute one and the same document.
- (c) The resolution is passed when the last Director signs the document.

### **15.3 Telephone and other meetings**

Without limiting the power of the Directors to regulate their meetings as they think fit, a meeting of Directors or committee of Directors may be held where one or more of the Directors is not physically present at the meeting, provided that:

- (a) all Directors consent to the calling and the holding of the meeting by means of telephone or other form of communication;
- (b) all Directors participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously by means of the agreed form of communication;

- (c) notice of the meeting is given to all the Directors entitled to notice in accordance with the usual procedures agreed on or laid down from time to time by the Directors and such notice does not specify that Directors are required to be present in person;
- (d) in the event that a failure in communications prevents clause 15.3(b) from being satisfied by that number of Directors which constitutes a quorum, then the meeting will be suspended until clause 15.3(b) is satisfied again. If clause 15.3(b) is not satisfied within 15 minutes from the time the meeting was interrupted, the meeting will be deemed to have terminated; and
- (e) any meeting held where one or more of the Directors is not physically present will be deemed to be held at the location specified in the notice of meeting provided a Director is present at that location. If no Director is present at the location specified, the meeting will be deemed to be held at the location where the chairperson of the meeting is located.

#### **15.4 Directors' resolutions**

- (a) Subject to this Constitution, a resolution of the Directors must be passed by a majority of the votes of Directors present and entitled to vote on the resolution.
- (b) In case of an equality of votes, the chairperson of the meeting does not have a casting vote.

#### **15.5 Minutes**

- (a) The Directors must cause minutes to be made of:
  - (i) all appointments of Directors and officers;
  - (ii) the names of the Directors present at each meeting of the Directors;
  - (iii) all orders made by the Directors;
  - (iv) all declarations made or notices given by any Director (either generally or specifically) of his or her interest in any contract or proposed contract or of his or her holding of any office or property whereby any conflict of duty or interest may arise; and
  - (v) all resolutions and proceedings of meetings of Members and classes of Members and of the Directors,

and retain the minutes in a minute book for a period of at least 10 years or such other period as may be required under the Act.

- (b) The minutes of a meeting must be signed by the chairperson of the meeting or the chairperson of the next meeting.
- (c) In the absence of evidence to the contrary, contents of the minute book that is recorded and signed in accordance with this clause 15.5 is evidence of the matters shown in the minute.

## 15.6 Director's personal interests

If a Director has a material personal interest in a matter that relates to the affairs of the Company other than an interest that does not have to be disclosed under section 191(2) of the Act and the Director discloses the nature and extent of the interest and its relation to the affairs of the Company to the other Directors, in accordance with section 191 of the Act, then:

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

## 15.7 Quorum

- (a) At a meeting of Directors properly convened, the number of Directors who must be Present to constitute a quorum is such number as is determined by the Directors and, unless so determined, is 6 including a Director nominated by each Sponsor.
- (b) If the office of a Director becomes vacant, the remaining Directors may act but, if the total number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, the Directors may act only for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum or for the purpose of convening a general meeting of the Company.

## 15.8 Delegation to Committees

- (a) The Directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.
- (b) A committee must exercise the powers delegated to it in accordance with any directions of the Directors. The effect of the committee exercising a power in this way is the same as if it had been exercised by the Directors.
- (c) The members of a committee may elect one of their number as chairperson of their meetings.
- (d) Where a meeting of a committee is held and:
  - (i) a chairperson has not already been elected to chair that meeting under clause 15.8(c); or
  - (ii) the previously elected chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act,

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



- (e) A committee may meet and adjourn as it thinks fit unless otherwise directed by the Directors.
- (f) Questions arising at a meeting of a committee must be determined by a majority of votes of the members present and voting.
- (g) In the case of an equality of votes, the chairperson does not have a casting vote in addition to any vote the chairperson has in the chairperson's capacity as a member of the committee (if any).

## **15.9 Acts of Directors valid despite defective appointment**

Any act done at any meeting of the Directors or of a committee of Directors by any person acting as a Director is, although it is later discovered that there was some defect in the appointment of any such Director or that the Director was disqualified, is valid as if the Director had been duly appointed and was qualified to be a Director or to be a member of the committee.

## **16. Secretary**

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

## **17. Seal**

### **17.1 Safe custody**

Where the Company has a Seal, the Directors must provide for its safe custody.

### **17.2 Authority to use**

Where the Company has a Seal, the Seal must only be used by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the Seal.

### **17.3 Additional Seal**

Where the Company has a Seal, the Company may have for use outside the state or territory in which the Office is located, one or more Seals each of which must only be used in accordance with the provisions of this clause 17.

## **18. Execution of documents**

### **18.1 Use of Seal optional**

Except where required by the Act, the Company need not have or use the Seal to execute documents or deeds. The Directors may resolve whether or not the Company is to have or use a Seal.

### **18.2 Execution without the Seal**

The Company may validly execute a document (including a deed) without using the Seal if the document is signed if the Company has more than one Director, by a Director and countersigned by another Director, Secretary or another person appointed by the

Directors to countersign that document or a class of documents in which that document is included.

### **18.3 Execution using the Seal**

The Company may validly execute a document (including a deed) by fixing the Seal to the document and the fixing being witnessed by a Director and countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

### **18.4 Execution by authorised persons**

Clauses 18.2 and 18.3 do not limit the ability of the Directors to authorise a person who is not an officer of the Company to execute a document for and on behalf of the Company.

### **18.5 Seal register**

- (a) The Secretary must record details of every document to which the Seal, if any, is fixed in a Seal register.
- (b) Where the Company has a Seal, the Seal register must be produced at each Directors' meeting for the purpose of the Directors approving the fixing of the Seal to each document recorded in the Seal register since the last Directors' meeting.

## **19. Reserves**

- (a) The Directors may set aside out of the Company's profits such sums as they think proper as reserves, to be applied, at their discretion, for any purpose for which the Company's profits may be properly applied.
- (b) Pending any such application, the reserves may, at the discretion of the Directors, be used in the business of the Company or be invested in such investments as the Directors think fit.
- (c) The Directors may carry forward profits of the Company without transferring those profits to a reserve.

## **20. Capitalisation of profits**

### **20.1 Authority to capitalise**

The Company may, by ordinary resolution in general meeting and on the recommendation of the Directors, resolve that it is desirable to capitalise any sum, being the whole or part of the amount for the time being standing to the credit of any reserve account or profit and loss account.

## **21. Notices**

### **21.1 Notices in writing**

Any notice given by the Company to any Member must be:

- (a) in writing, legible and in English; and

- (b) signed by an officer of the Company or in any way authorised by clause 18.

## **21.2 Service**

The Company must give a notice to any Member by:

- (a) serving it on the Member personally;
- (b) sending it by post to the Member's address as shown in the Register or an alternative address (if any) supplied by the Member to the Company for the purpose of giving notices; or
- (c) sending it by facsimile to the facsimile number (if any) nominated by the Member.

## **21.3 Deemed receipt**

A notice is deemed to be duly given or made in the case of:

- (a) delivery in person, when delivered;
- (b) delivery by post:
  - (i) in Australia to an Australian address, on the third day after posting; or
  - (ii) in any other case, on the tenth day after posting; or
- (c) delivery by facsimile, on a transmission report being printed by the Company's facsimile machine stating that the document has been sent to the Member's facsimile number,

but if delivery is not made before 4.00 pm on a day it will be deemed to be received at 9.00 am on the next day.

## **21.4 Notice to joint holders**

A notice may be given by the Company to joint Members by sending the notice to the joint Member first named in the Register or to an alternative address (if any) nominated by that Member.

## **22. Winding up**

If upon the winding up or dissolution of the Company, there remains after satisfaction of all the debts and liabilities any property whatsoever, the same shall not be paid to or distributed amongst the Members of the Company, but shall be given or transferred to such one or more institutions having objects similar to those of the Company and which prohibit the distribution of their income and property among their members to an extent not less than imposed on the Company, such institutions to be determined by the Members at or before the time of dissolution and in default thereof by such judge of the Supreme Court of Tasmania as may have or acquire jurisdiction in the matter, and if effect cannot be given to this provision, then to some charitable object.

## 23. Indemnity

### 23.1 Interpretation

In this clause 23:

- (a) **proceedings** means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act in their capacity as an officer of the Company (including proceedings alleging that they were guilty of negligence, default, breach of trust or breach of duty in relation to the Company); and
- (b) **officer** has the meaning given to that term in section 9 of the Act.

### 23.2 Scope of indemnity

In addition to any other indemnity provided to an officer of the Company in accordance with the Act, and to the extent permitted by SIS, the Act and any applicable Law:

- (a) every officer of the Company will be indemnified out of the assets of the Company against any liability incurred by them in relation to the execution of their office;
- (b) no officer of the Company is liable for any loss or damage incurred by the Company in relation to the execution of his or her office;
- (c) every officer of the Company will be indemnified out of the assets of the Company against any liability which he or she incurs:
  - (i) in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the officer or in which the officer is acquitted;
  - (ii) in connection with any application, in relation to any such proceedings, in which relief is granted under the Act to the officer by the Court; and
- (d) every officer of the Company will be indemnified out of the assets of the Company against any liability to another person (other than the Company or a related body corporate of the Company) where the liability is incurred by the officer in their capacity as an officer of the Company, provided that this indemnity will not apply where the liability arises out of conduct involving a lack of good faith.

### 23.3 Insurance

In addition to the payment of any other insurance premium by the Company in accordance with the Act, and to the extent permitted by SIS, the Act and any applicable Law, the Company may pay the premium in respect of a contract insuring an officer of the Company against a liability:

- (a) incurred by the officer of the Company in his or her capacity as officer, provided that the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of sections 182 or 183 of the Act; or
- (b) for costs and expenses incurred by that officer of the Company in defending proceedings, whatever their outcome.