

Constitution  
of  
Team Super Pty Ltd  
ACN 003 566 989

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## 1 DEFINITIONS AND INTERPRETATION

### Definitions

- 1.1 The following words have these meanings in this Constitution unless the contrary intention appears.

**ARTIO** means the Australian Road Transport Industrial Organisation (National) ABN 63 734 697 902, or all or part of any organisation of which is a successor to or formed as a result of amalgamation or reconstruction of it.

**Auditor** means the auditor (if any) for the time being of the Company.

**Board of Directors** means the Directors collectively, acting as a Board.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in New South Wales.

**Chair** means the Chair of the Board of Directors.

**Co-Chair** means each of the Chairs if there is more than one.

**Cohort of Directors** means the group of Employer Directors or Member Directors, respectively, that are appointed by a Shareholder or, in the case of NSWMC and QRC, those Shareholders.

**Committee** means a committee established by the Board of Directors in accordance with clause 21.

**Company** means Team Super Pty Ltd ABN 70 003 566 989.

**Constitution** means this constitution as amended from time to time and a reference to a provision of this Constitution is a reference to that provision as amended from time to time.

**Corporations Act** means the Corporations Act 2001 (Cth) and the Corporations Regulations 2001 (Cth).

**Deputy Chair** means the Deputy Chair of the Board of Directors appointed in accordance with clause 19.3.

**Director** means a director of the Company, and includes an alternate director only when acting as an alternate to a Director of the Cohort of Directors for whom they were appointed.

**Disqualified Person** means a “disqualified person” under the Superannuation Industry (Supervision) Act 1993 (Cth), a “disqualified individual” under the Corporations Act, or a person who is subject to any disqualification under the Financial Accountability Regime Act 2023 (Cth).

**Employer** has the same meaning as in the Governing Rules.

**Employer Director** has the same meaning as in the Governing Rules.

**Fit and Proper** means the fitness and propriety requirements in the Company’s Fitness and Propriety Policy pursuant to *Superannuation Prudential Standard SPS 520 Fit and Proper*.

**Fund** means the Team Superannuation Fund ABN 16 457 520 308.

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

**Independent Director** has the same meaning as in the Governing Rules.

**MEU** means the Mining and Energy Union, or all or part of any organisation of employees which is a successor to or formed as a result of amalgamation or reconstruction of it.

**Member Director** has the same meaning as in the Governing Rules.

**NSWMC** means the New South Wales Minerals Council Limited ABN 42 002 500 316, or all or part of any organisation of which is a successor to or formed as a result of amalgamation or reconstruction of it.

**Participating Union** means MEU or TWU or all or part of any organisation or registered organisation which is a successor to or formed as a result of any amalgamation or reconstruction of either entity.

**QRC** means the Queensland Resources Council Ltd ABN 59 050 486 952, or all or part of any organisation of which is a successor to or formed as a result of amalgamation or reconstruction of it.

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

**Related Body Corporate** has the same meaning as in the Corporations Act.

**Relevant Law** means the standards, covenants or other requirements set out in:

- (a) the Superannuation Industry (Supervision) Act 1993 (Cth);

- (b) the Income Tax Assessment Act 1936 (Cth);
- (c) the Income Tax Assessment Act 1997 (Cth);
- (d) the Corporations Act 2001 (Cth);
- (e) the Superannuation Guarantee (Administration) Act 1992 (Cth);
- (f) the Coal and Oil Shale Mine Workers (Superannuation) Act 1941 (NSW);
- (g) the Coal and Oil Shale Mine Workers' Superannuation Act 1989 (Qld);
- (h) any regulations made under any of those Acts; and
- (i) any other law that the Board of Directors determines is a Relevant Law.

However, if such a standard, covenant or other requirement ceases to be in force or the Responsible Authority does not require it to be complied with either generally or in relation to the Fund, then that standard, covenant or requirement ceases to be a Relevant Law to that extent.

**Representative** means a person appointed by a Shareholder to act as its representative under section 250D of the Corporations Act.

**Responsible Authority** means the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission, the Australian Taxation Office or any other government authority responsible for administering the laws or any other rules governing corporations, superannuation funds or the availability of income tax concessions to superannuation funds.

**Secretary** means a person appointed as a secretary of the Company under clause 25, and where appropriate includes an acting secretary or a person appointed by the Board of Directors to perform all or any of the duties of a secretary of the Company.

**Share** means a share in the Company.

**Shareholder** means a person who for the time being is a member of the Company in accordance with the Corporations Act.

**TWU** means the Transport Workers Union of Australia, or all or part of any organisation of employees which is a successor to or formed as a result of amalgamation or reconstruction of it.

## **Interpretation**

1.2 In this Constitution unless the contrary intention appears:

- (a) the word “person” includes a firm, a body corporate, an unincorporated association or an authority;
- (b) the singular includes the plural and vice versa and words importing a gender include other genders;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) a reference to writing includes typewriting, printing, telegram, facsimile, electronic notification and other modes of representing or reproducing words in a visible form;
- (e) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (f) a word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution.

1.3 Headings are for ease of reference only and do not affect the interpretation of this Constitution.

## **Replaceable Rules**

- 1.4
- (a) The provisions of the Corporations Act that may generally apply as replaceable rules do not apply to the Company while it is the Trustee of the Fund.
  - (b) If the Company ceases to be the Trustee of the Fund, the replaceable rules contained in the Corporations Act shall apply where not displaced or modified by this Constitution.

## **Purpose**

1.5 The purpose of the Company is to act primarily as the trustee of one or more regulated superannuation funds within the meaning of section 19 of the Superannuation Industry (Supervision) Act 1993.

## **2 SHARES**

2.1 (a) The Shares of the Company shall be ordinary shares.

- (b) The issued share capital of the Company shall be divided into “A” and “B” Shares. “A” Shares shall only be issued to NSWMC, QRC and ARTIO. “B” Shares shall only be issued to MEU and TWU.
- (c) “A” Shares and “B” Shares shall be ordinary shares in the capital of the Company ranking equally in all respects.
- (d) The Shares of the Company shall be held in the following proportions:
  - (i) 12.5% by NSWMC;
  - (ii) 12.5% by QRC;
  - (iii) 25% by MEU;
  - (iv) 25% by TWU; and
  - (v) 25% by ARTIO.

2.2 Subject to the Corporations Act and this Constitution:

- (a) the Board of Directors may issue or dispose of Shares with such rights or subject to such restrictions, to such persons and on such terms as they consider appropriate;
- (b) the Board of Director’s power under clause 2.2(a) includes the power to issue Shares with any preferential, deferred or special rights, privileges or conditions or any restrictions in regard to voting, return of capital or otherwise;
- (c) no Share may be held jointly; and
- (d) if at any time the capital of the Company is divided into different classes of Shares, the rights and privileges attached to any class (unless otherwise provided by the terms of issue of the Shares of that class) may, whether or not the Company is being wound up, be varied with the sanction of a special resolution of the holders of all of the Shares of the Company.

2.3 The Company is not required to recognise:

- (a) a person as holding a Share on any trust, except if required by law; or
- (b) any equitable, contingent, future or partial interest in a Share, except an absolute right of ownership by the registered Shareholder.

### **3 RIGHT TO CERTIFICATE**

- 3.1 A person whose name is entered as a Shareholder in the Register is entitled without payment to receive a certificate in respect of the Share it holds in accordance with the Corporations Act.
- 3.2 The Company may issue a replacement certificate for Shares in accordance with the Corporations Act if:
- (b) satisfactory evidence has been received by the Company that the certificate for Shares previously issued has been stolen, lost or destroyed and has not been pledged, charged, sold or otherwise disposed of; and
  - (c) the Shareholder has undertaken in writing to the Company to return the certificate to the Company if it is found or received by the Shareholder.

### **4 TRANSFER OF SHARES**

#### **Instruments of transfer**

- 4.1 Subject to this Constitution and Relevant Law, a Shareholder may transfer its Shares by a written transfer instrument in any form approved by the Board of Directors.
- 4.2 The transfer instrument must be stamped (if necessary) and executed by or on behalf of the transferor and the transferee.

#### **Registration**

- 4.3 The Share transfer instrument must be left for registration at the registered office of the Company and accompanied by any other information that the Board of Directors requires to establish the right of the transferor to make the transfer. The Board of Directors may then approve the registration the transferee as Shareholder, following which the Secretary must record the transfer in the Register as required by Relevant Law.
- 4.4 A transferor of Shares remains the holder of the Shares transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Shares.

#### **Restrictions on transfer**

- 4.5 The Board of Directors may refuse to register any transfer of Shares without giving any reason. The Secretary must notify the proposed transferee of the refusal.
- 4.6 If a Shareholder wishes to sell or transfer their Share, that Shareholder (“outgoing Shareholder”) must transfer all the Shares in the Company that they hold to any person nominated by the Board of Directors in accordance with this Constitution



against payment to the outgoing Shareholder of the price at which the Shares were issued, and the outgoing Shareholder irrevocably appoints the Secretary as the outgoing Shareholder's attorney to do all things necessary, including the signing of a Share transfer instrument, to give effect to the transfer.

- 4.7 The Board of Directors must not approve, and the Secretary must not register joint holders of a Share.

## **5 CALLING GENERAL MEETINGS**

- 5.1 Any two Directors may, at any time, call a general meeting.

5.2 (a) A Shareholder may only request the Directors to call and arrange to hold a general meeting in accordance with section 249D of the Corporations Act.

(b) A Shareholder may not call or arrange to hold a general meeting except under section 249E or section 249F of the Corporations Act.

- 5.3 The Shareholders may participate in a general meeting by any technological means by which they are all able simultaneously to hear each other and to participate in discussion. The Shareholders need not all be physically present in the same venue for a general meeting to be held.

## **6 NOTICE OF GENERAL MEETING**

- 6.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days' written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which the notice is given) of any general meeting must be given to each Shareholder, each Director and the Auditor.

- 6.2 A notice calling a general meeting must:

(a) set out the place, date and time for 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) state the general nature of the meeting's business;

(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; and

(d) set out that a Shareholder has a right to appoint a proxy and that the proxy need not be a Shareholder.

- 6.3 The Board of Directors may postpone or cancel any general meeting, except one called by Shareholders or the Court. However, they must give written notice of, and

reasons for, the postponement or cancellation to everyone entitled to receive notices from the Company.

- 6.4 Subject to the Corporations Act, the failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to anyone referred to in clause 6.1 or the non-receipt of a notice (or form) by anyone referred to in clause 6.1 above does not invalidate the proceedings at or any resolution passed at the general meeting.

## **7 QUORUM OF SHAREHOLDERS**

- 7.1 No business may be transacted at a general meeting unless a quorum of Shareholders is present when the meeting proceeds to business.
- 7.2 A quorum of Shareholders occurs when the holders of at least 50 percent of the “A” Shares and at least 50 percent of the “B” Shares are present, whether in person or by proxy, attorney or Representative.
- 7.3 If a quorum of Shareholders is not present within 30 minutes after the time appointed for a general meeting:
- (a) if the general meeting was called on the requisition of Shareholders, it is automatically dissolved; or
  - (b) in any other case:
    - (i) it will stand adjourned to the same time and place seven days after the general meeting, or to another day, time and place determined by the Directors who called the general meeting; and
    - (ii) if at the adjourned general meeting a quorum of Shareholders is not present within 30 minutes after the time appointed for the general meeting, it is automatically dissolved.
- 7.4 All business arising at any general meeting shall be determined only by resolution put to the vote of the meeting.

## **8 CHAIR OF A GENERAL MEETING**

- 8.1 The Chair, and if there are Co-Chairs, the Co-Chair who chaired the most recent meeting of the Board of Directors chaired by a Co-Chair, is entitled to preside at a general meeting unless otherwise agreed by the Co-Chairs. If the Chair (or Co-Chair as applicable) is not present within 15 minutes after the time appointed for a meeting or is unable or unwilling to act, the following may preside (in order of entitlement):
- (a) the other Co-Chair;

- (aa) the Deputy Chair;
- (b) a Director chosen by a majority of the Directors present;
- (c) the only Director present; or
- (d) a Shareholder, proxy, attorney or Representative present chosen by the Shareholders, proxies, attorneys and Representatives present.

8.2 The chair of the meeting is not entitled to a casting vote.

## **9 ADJOURNMENT OF A GENERAL MEETING**

9.1 The chair of a general meeting at which a quorum of Shareholders is present may adjourn the meeting:

- (a) in their discretion with the meeting's consent; and
- (b) in accordance with any direction of the meeting as to time and place.

9.2 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.

9.3 If a general meeting has been adjourned for more than 30 days:

- (a) notice of the adjourned meeting shall be given as in the case of an original meeting; and
- (b) except as provided in paragraph (a) it shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted at an adjourned meeting.

## **10 VOTES OF SHAREHOLDERS**

10.1 Unless a resolution is required to have effect as a special resolution pursuant to the Corporations Act or this Constitution, a resolution is passed at a general meeting if it is passed by more than 50% of the votes cast by Shareholders entitled to vote on the resolution.

10.2 Subject to the provisions of the Corporations Act in relation to the right to demand a poll, every question put to a meeting is to be decided by a show of hands.

10.3 Subject to any rights or restrictions attached to or affecting any Shares, at any general meeting each Shareholder has one vote per share. A vote may be given by each Shareholder personally or by proxy, attorney or Representative.

- 10.4 In the case of an equality of votes, the chair of the meeting shall not be entitled to a casting vote.
- 10.5 No objection may be raised regarding the right of a person to attend or vote at a general meeting except at that meeting. Every vote not disallowed at the meeting is valid.
- 10.6 If there is a dispute as to the admission or rejection of a vote, the chair of the meeting must decide it. The chair's decision made in good faith is final and conclusive.
- 10.7 Unless a poll is demanded:
- (a) a declaration by the chair that a resolution has been passed, passed by a specified majority, or has not passed; and
  - (b) an entry to that effect in the minutes of the meeting, are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 10.8 The demand for a poll may be withdrawn.
- 10.9 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the meeting was not entitled to do so.

## **11 AUDITOR'S RIGHT TO ATTEND GENERAL MEETINGS**

If an Auditor has been appointed, the Auditor or any authorised agent of the Auditor is entitled to:

- (a) attend any general meeting;
- (b) receive all notices and other communications relating to any general meeting that a Shareholder is entitled to receive; and
- (c) be heard at any general meeting on any part of the business of the meeting which concerns the Auditor in that capacity (even if the Auditor retires at that meeting or a resolution to remove the Auditor from office is passed at that meeting).

## **12 DIRECTORS' RIGHT TO ATTEND GENERAL MEETINGS**

A Director is entitled to:

- (a) attend any general meeting;

- (b) receive all notices of and other communications relating to any general meeting that a Shareholder is entitled to receive; and
- (c) be heard at any general meeting on any part of the business of the meeting.

### **13 RIGHT TO APPOINT PROXY OR ATTORNEY**

- 13.1 A Shareholder entitled to attend a meeting of the Company is entitled to appoint any person (whether a Shareholder or not) as proxy or attorney to attend the meeting in the Shareholder's place. A proxy or attorney has the same right as the Shareholder at the meeting.
- 13.2 A proxy or attorney may vote or abstain as they choose except where the appointment of the proxy or attorney directs the way the proxy or attorney is to vote on a particular resolution. If an appointment directs the way the proxy or attorney is to vote on a particular resolution the proxy or attorney must vote that way.
- 13.3 An instrument appointing a proxy or attorney must be in writing in a form acceptable to the Board of Directors.
- 13.4 In the case of a proxy, the instrument is valid if it contains the information required by subsection 250A(1) of the Corporations Act. The Board of Directors may determine that an appointment of a proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 13.5 If the Board of Directors permit, the instrument of proxy or attorney may take effect for more than one meeting.
- 13.6 A vote cast in accordance with an instrument appointing a proxy or attorney is valid even if before the vote was cast the appointor:
  - (a) died;
  - (b) became of unsound mind;
  - (c) has entered external administration;
  - (d) revoked the proxy or power; or
  - (e) transferred the Shares in respect of which the vote was cast,unless any written notification of the death, unsoundness of mind, external administration, revocation or transfer was received by the Company before the relevant general meeting or adjourned general meeting.

- 13.7 A Shareholder may not appoint more than one person to attend a meeting in their place (whether that person is a proxy, attorney or Representative).

## **14 REPRESENTATIVES OF CORPORATIONS**

- 14.1 Any Shareholder that is a corporation may appoint an individual as its Representative as provided by the Corporations Act. If a Shareholder corporation does so:
- (a) its Representative may exercise at the relevant general meeting all the powers which the Shareholder corporation could exercise if it were a natural person; and
  - (b) when its Representative is present at a meeting, the Shareholder corporation will be considered to be personally present at the meeting.
- 14.2 The chair of a general meeting may permit a person claiming to be a Representative to exercise its powers even if the person has not produced a certificate evidencing their appointment as Representative, or may allow the Representative to vote on the condition that the person subsequently establishes to the satisfaction of the chair of the general meeting their status as a Representative within a period prescribed by the chair of the general meeting.
- 14.3 The appointment of a Representative may set out restrictions on the Representative's powers.

## **15 WRITTEN RESOLUTIONS**

- 15.1 Subject to the Corporations Act, the Company may pass a resolution without a general meeting being held if all Shareholders (personally or by proxy, attorney or Representative) 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. The resolution is passed when the last Shareholder or its proxy, attorney or Representative signs the document setting out the resolution.
- 15.2 For the purposes of clause 15.1, separate copies of a document may be used for signing by Shareholders if the wording is identical in each copy.
- 15.3 Any document referred to in this clause may be in the form of a facsimile transmission or electronic notification.

## **16 APPOINTMENT AND REMOVAL OF DIRECTORS**

- 16.1 There must be at least twelve (12) directors of whom:
- (a) One (1) must be appointed as an Employer Director by NSWMC, one (1) must be appointed as an Employer Director by QRC, and one (1) must be appointed

as an Employer Director as agreed by NSWMC and QRC, or if not agreed then on a rotating basis, each one in accordance with clause 16.2;

- (b) Three (3) must be appointed as Employer Directors by ARTIO in accordance with clause 16.2;
- (c) Three (3) must be appointed as Member Directors by MEU in accordance with clause 16.3; and
- (d) Three (3) must be appointed as Member Directors by TWU in accordance with clause 16.3.

16.2 The following provisions apply to the appointment and removal of Employer Directors:

- (a) Each Employer Director must be aged at least 18 years, eligible to be appointed under Relevant Law and, prior to appointment, have been determined by the Board of Directors to be Fit and Proper and have provided to the Company a statutory declaration that they are not a Disqualified Person.
- (b) The Employer Directors must be appointed and removed by notice in writing to the Company, in accordance with this clause 16.2 and Relevant Law.
- (c) If any appointing Shareholder develops additional rules for the appointment of an Employer Director, such rules must be consistent with Relevant Law.

16.3 The following provisions apply to the appointment and removal of Member Directors:

- (a) Each Member Director must be aged at least 18 years, eligible to be appointed under Relevant Law and, prior to appointment, have been determined by the Board of Directors to be Fit and Proper and have provided to the Company a statutory declaration that they are not a Disqualified Person.
- (b) Member Directors must be appointed and removed by notice in writing to the Company, in accordance with this clause 16.3 and Relevant Law.
- (c) If any appointing Shareholder develops additional rules for the appointment of a Member Director, such rules must be consistent with Relevant Law, and do not come into effect until (5) Business Days after they have been provided in writing to the Company.

16.4 A Director will hold office until the earliest of:

- (a) that Director's retirement from that office by notice in writing given to the Board of Directors;
- (b) the date on which that Director's term of office expires being:

- (i) a period of four (4) years from the date on which the Director was appointed to that office or such other period as may be determined by Shareholders pursuant to clause 16.4A; or
- (ii) subject to clause 16.4A, the date on which that Director's appointment to such office otherwise ceases in accordance with clause 16.2 or 16.3, whichever is relevant;
- (c) that Director's disqualification from that office by operation of law or that Director becoming a Disqualified Person;
- (d) that Director no longer meeting a condition of their appointment or no longer satisfying any eligibility criteria that had to be met for that Director to be appointed;
- (e) that Director, in the opinion of the Board of Directors, ceasing to be Fit and Proper;
- (f) that Director's death;
- (g) in the case of a Member Director appointed under clause 16.3(b), that Director's removal from office by the relevant Participating Union in accordance with that provision; and
- (h) in the case of an Employer Director, that Director's removal from office by the appointing Shareholder, as appropriate, in accordance with clause 16.2.

A Director who ceases to hold office pursuant to this clause 16.4 will, if otherwise eligible, be entitled to again be nominated or appointed as a Director.

16.4A Notwithstanding anything in clauses 16.2 and 16.3, for the purpose of clause 16.4(b)(i), the Shareholders may resolve in accordance with clause 10 that the term of office of a Director may be a period other than four (4) years and may also resolve to vary the term of office of a Director during that term of office, by way of extension or reduction, at any time, subject to Relevant Law.

16.5 In the event that a Director ceases to hold office otherwise than on the normal expiry of the Director's term of office:

- (a) in the case of a Member Director, a replacement Director will be appointed by the relevant Participating Union in accordance with clause 16.3; or
- (b) in the case of an Employer Director, a replacement Director will be appointed by the appointing Shareholder, as appropriate, in accordance with clause 16.2.

A person appointed to fill such a casual vacancy must hold office for the unexpired portion of the term of office and otherwise on the same conditions as the Director in



respect of whom the vacancy has occurred unless otherwise determined by the Board of Directors at the date of appointment.

- 16.6 (a) For each Cohort of Directors the appointing Shareholder or Shareholders, following prior consultation with the relevant Cohort of Directors, may appoint one alternate (Alternate Director) in respect of that Cohort of Directors to exercise some or all of the powers of a Director of the relevant Cohort of Directors.
- (b) The Board of Directors may determine rules and procedures which will apply to an Alternate Director when they are not acting as a Director, including their entitlement to receive Board of Directors papers and other confidential information in relation to the Company and the Fund, their use of that information and their attendance and conduct at meetings of the Board of Directors in the capacity as an observer.
- (c) An Alternate Director will be entitled to receive notices of meeting of the Board of Directors if the Board of Directors consider appropriate, after consulting with the relevant Cohort of Directors.
- (d) When the Alternate Director exercises the powers of the Director for which they are acting as Alternate Director, the exercise of the powers will be as effective as if the powers were exercised by the Director.
- (e) A Shareholder or Shareholders may terminate the appointment of an Alternate Director appointed by them at any time in writing, a copy of which must be given to the Company.
- (f) An Alternate Director appointment under Clause 16.6(a) does not take effect until the nominee has been determined by the Board of Directors to be Fit and Proper.
- (g) If an Alternate Director, in the opinion of the Board of Directors, ceases to be Fit and Proper, that person ceases to be an Alternate Director.
- 16.7 The Board of Directors may appoint and remove an Independent Director in accordance with the Governing Rules and Relevant Law, however notwithstanding clause 19.4, an Independent Director is not entitled to vote on any such resolution.

## **17 REMUNERATION OF DIRECTORS**

- 17.1 A Director or officer of the Company may be reimbursed for travel, accommodation and other expenses properly incurred when travelling to or from meetings of the Directors, a Committee or the Company or when otherwise engaged on the business of the Company.

17.2 The Directors may be paid such remuneration as may be determined by agreement between the Company and the Directors from time to time and in accordance with the Governing Rules.

## **18 POWERS OF DIRECTORS**

18.1 Subject to the provisions of the Corporations Act and of this Constitution, the management of the business of the Company is vested in the Board of Directors, and it may exercise all the Company's powers that are not required by the Corporations Act or this Constitution or other laws to be exercised or done by the Company in general meeting.

18.2 Without limiting the generality of clause 18.1, the Board of Directors may exercise all of the powers necessary to enable the Company to carry out its trusteeship of the Fund in accordance with the Governing Rules and Relevant Law.

18.3 Subject to Relevant Law, the Board of Directors may exercise all the Company's powers to borrow and raise money and secure any debts, liabilities, contracts or obligations incurred or undertaken by the Company in such manner and on such terms as it considers appropriate.

## **19 DIRECTORS' MEETINGS**

### **19.1 Quorum**

(a) A quorum of Directors will be:

- (i) two thirds of the Directors in office at the time of the meeting, which must include an equal number of Employer Directors and Member Directors; or
- (ii) such other number and/or combination of Directors as may be determined by resolution of the Board of Directors, in accordance with clause 19.1(a)(i) or by written resolution, from time to time being a number and combination which satisfies Relevant Law. For the avoidance of doubt, the Board of Directors may (by resolution) specify such number and/or combination for quorum of Directors by way of standing rules.

(b) The Directors in office at the relevant time may continue to act notwithstanding any vacancy in their numbers, if there is a quorum of Directors.

### **19.2 Meetings and Resolutions**

(a) The Directors may meet and adjourn and regulate their meetings as the Directors see fit and a meeting of the Directors at which a quorum is present

will be competent to exercise all or any of the powers exercisable by the Board of Directors.

- (b) All questions arising at a meeting of the Board of Directors must be determined by resolution and a resolution is effective if passed:
  - (i) by a majority of at least two thirds of Directors in office at the time of the meeting; or
  - (ii) where an alternative quorum of Directors is determined in accordance with clause 19.1(a)(ii) that is less than two thirds of Directors in office at the time of the meeting, and such determination is made in connection with the absence from the meeting of multiple Directors due to conflicts of interest or duty, by all Directors present at the meeting and entitled to vote on the resolution.
- (c) A written resolution signed by all Directors in office at the relevant time is as effective as a resolution passed at a meeting of the Board of Directors duly convened and held, on the day and at the time when the document was last signed by a Director. Two or more separate documents each containing the same resolution in identical terms will together be deemed to constitute one document signed on the respective days on which the Directors signed the separate documents.
- (d) A Director may indicate his or her approval of a written resolution by email sent to each other Director and the Secretary, which will be considered for the purpose of clause 19.2(c) to be a signed resolution. However the acceptance of that email as a written resolution, may be subject to such reasonable enquiries as to its authenticity as the Secretary determines or as required under procedures approved by the Board of Directors.
- (e) A Director may participate in a meeting of the Board of Directors by any technological means by which all persons participating in the meeting are able to simultaneously hear each other and to participate in the discussion. Participating in such a meeting in this manner will be deemed to constitute presence in person at such meeting.
- (f) A Director, or the Secretary with the approval of a Director, may at any time convene a meeting of the Board of Directors by giving not less than seven (7) days prior written notice to each of the Directors or other Directors, as the case may be. However, all of the Directors may determine that a meeting of the Board of Directors may be held at shorter notice or with no notice.

### 19.3 Chair or Co-Chair of Directors

- (a) The Board of Directors must elect one Director to the office of Chair, and may elect two Directors to the office of Co-Chair, for a period of two years, unless extended by the Board of Directors.
- (b) On the expiration of the term of office of a Director who has been elected Chair, the Board of Directors must elect a Director to be Chair, and may elect two Directors to be Co-Chair, on the basis that, unless the Board of Directors otherwise determines:
  - (i) if a retiring Chair was an Employer Director, the replacement of that Chair must be a Member Director or an Independent Director;
  - (ii) if the retiring Chair was a Member Director, the replacement Chair must be an Employer Director or an Independent Director; and
  - (iii) a retiring Co-Chair does not need to have a replacement appointed.
- (c) A Director appointed as Chair or Co-Chair in accordance with clause 19.3(a) will hold office as Chair or Co-Chair, as the case may be, until:
  - (i) that Director retires as Chair or Co-Chair by written notice given to the other Directors;
  - (ii) that Director ceases to be a Director;
  - (iii) that Director is removed as Chair or Co-Chair by a resolution of the Board of Directors; or
  - (iv) the term of office expires.
- (d) Any casual vacancy caused by the Chair ceasing to act during the period of their appointment must be filled at the next meeting of the Board of Directors by a replacement Chair on the basis that, unless the Board of Directors otherwise determines:
  - (i) if the retiring Chair was an Employer Director, the replacement must be an Employer Director; and
  - (ii) if the retiring Chair was a Member Director, the replacement must be a Member Director.

The replacement Chair will hold office until the end of the period of appointment of the Chair who has ceased to act.

- (e) Any casual vacancy caused by one Co-Chair ceasing to act during the period of that person's appointment is not required to be filled, however if the Board of Directors resolve to appoint a replacement Co-Chair it will be on the basis that:

- (i) if the continuing Co-Chair is an Employer Director, the replacement Co-Chair will be a Member Director or an Independent Director; and
- (ii) if the continuing Co-Chair is a Member Director, the replacement Co-Chair will be an Employer Director or an Independent Director.

The replacement Co-Chair will hold office until the end of the period of appointment of the Co-Chair who has ceased to act.

- (f) The Board of Directors may resolve to appoint a Deputy Chair. If the Board of Directors appoints a Deputy Chair the provisions of clauses 19.3(a) to (d) will apply to the appointment, term of office and filling of a casual vacancy in respect of the Deputy Chair as if references in those provisions to the Chair were references to the Deputy Chair, but subject to any modifications the Board of Directors may set by resolution.
- (g) The Chair will act as chair of each meeting of the Board of Directors attended by the Chair. If there are Co-Chairs and only one attends a meeting of the Board of Directors that Co-Chair will act as chair of the meeting. If both Co-Chairs are present, that Co-Chair who has never been chair of a meeting of the Board of Directors or was least recently chair of a meeting of the Board of Directors will act as chair of the meeting, unless otherwise agreed by the Co-Chairs. If no Chair or Co-Chair is present at a meeting of the Board of Directors:
  - (i) if one has been appointed and they are present at the meeting, the Deputy Chair will act as chair of the meeting;
  - (ii) if no Deputy Chair has been appointed or the Deputy Chair is not present at the meeting, a Director may be appointed by those present to act as chair of the meeting.

#### 19.4 Voting

Subject to this Constitution and Relevant Law, each Director present at a meeting of the Board of Directors will have one deliberative vote. No Director may have a second vote.

- 19.5 Subject to this Constitution and Relevant Law, if the Directors present at a meeting accept a person to chair the meeting other than in conformity with this clause 19, that will not invalidate the proceeding of, or any resolutions taken at, that meeting.

### 20 DIRECTORS' INTERESTS

- 20.1 Each Director must disclose to the Company their interests (whether direct or indirect) and duties in accordance with Relevant Law and the Secretary must record the declaration in the minutes of the relevant Board of Directors meeting.

20.2 Subject to complying with clause 20.1 and Relevant Law, a Director that has (directly or indirectly) a personal material interest may vote on matters that relate to the interest unless determined otherwise by the Chair or Co-Chair as applicable.

20.3 Subject to Relevant Law, a Director:

(a) is not disqualified from:

(i) that office because of membership of a superannuation fund of which the Company is the trustee;

(ii) contracting with the Company either as vendor or purchaser;

(iii) being employed by the Company; or

(iv) acting in any capacity (except that of Auditor) to or in respect of the Company;

(b) may enter into a contract with the Company and participate in any association, institution, fund, trust or scheme for the past or present employees or Directors of the Company, a Related Body Corporate of the Company or any of their respective predecessors in business or their dependants or persons connected with them; and

(c) may retain for the Director's own benefit any profit arising from any such office, place of profit or contract and any pension, allowance or other benefit received because of that participation.

20.4 A contract entered into by or on behalf of the Company is not void or voidable by reason only that a Director is in any way directly or indirectly interested in it.

## **21 COMMITTEES**

21.1 The Board of Directors may establish any Committee that it considers appropriate and appoint one or more Directors or other person to serve on that Committee.

21.2 The Board of Directors may delegate any of its powers to:

(a) a Committee;

(b) a Director;

(c) an employee of the Company; or

(d) any other person.

- 21.3 A Committee or person to which any powers have been delegated must exercise its powers in accordance with any directions of the Board of Directors and a power exercised in that way is taken to have been exercised by the Board of Directors.
- 21.4 A Committee or person to which any powers have been delegated may be authorised to sub-delegate all or any of the powers for the time being vested in it.
- 21.5 Meetings of any Committee will be governed by the provisions of this Constitution that deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Board of Directors.
- 21.6 The Board of Directors may dissolve a Committee and/or revoke a delegation at any time.

## **22 VALIDITY OF ACTS OF DIRECTORS**

All acts of the Board of Directors, a Committee or a person acting as a Director or a member of a Committee are valid even if:

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

## **23 MINUTES**

- 23.1 The Directors must cause records to be held in respect of the business of the Company, including:
- (aa) minute books kept in accordance with the requirements of the Corporations Act;
  - (a) all appointments of Directors and officers;
  - (b) the names of the Directors present at all Directors' meetings and meetings of Committees;
  - (c) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Committees;
  - (d) all resolutions passed by the Board of Directors;
  - (e) all orders made by the Board of Directors and Committees;
  - (f) all disclosures of interests made under clause 20; and

(g) any other records in relation to any other matters concerning its role as trustee of the Fund that are required by Relevant Law.

23.2 Minutes must be signed by the chair of the meeting or by the chair of the next meeting of the relevant body, and if so signed will as between the Directors be conclusive evidence of the matters stated in such minutes.

## **24 APPOINTMENT OF ATTORNEY**

24.1 The Board of Directors may from time to time, by resolution or by power of attorney executed in accordance with section 127 of the Corporations Act, appoint any person to be the agent or attorney of the Company:

(a) for the purposes;

(b) with the powers, authorities and discretions (not exceeding those exercisable by the Board of Directors under this Constitution);

(c) for the period; and

(d) subject to the conditions,

determined by the Board of Directors.

24.2 An appointment by the Board of Directors of an attorney or agent of the Company may be made in favour of any person whether nominated directly or indirectly by the Directors.

24.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Board of Directors think fit.

24.4 The Board of Directors may notify a relevant person of the appointment of an attorney or agent to act for and on behalf of the Company by facsimile transmission or electronic notification.

## **25 SECRETARY**

25.1 The Board of Directors may appoint at least one person as a Secretary on such terms and conditions and remuneration as it considers appropriate. No person may become a Secretary if they are disqualified from office by Relevant Law or any other law.

25.2 The Board of Directors may remove the Secretary.

25.3 The Secretary is entitled to attend all Directors' and general meetings.



## **26 COMMON SEAL**

- 26.1 The Company may, but need not, have a common seal. The Board of Directors must provide for the safe custody of the common seal (if any) in such manner as it considers appropriate.
- 26.2 The common seal may be affixed to a document only by the authority of the Board of Directors or a Committee authorised by the Board of Directors to do so.
- 26.3 Every document to which the common seal is affixed must be signed by a Director and countersigned by the Secretary or a second Director or some other person appointed generally or in a particular case by the Board of Directors for that purpose.
- 26.4 Promissory notes, cheques or other negotiable instruments must be signed or otherwise executed on behalf of the Company by two Directors or one Director and one Secretary unless the Board of Directors otherwise determine.

## **27 INSPECTION OF BOOKS**

The Directors and Shareholders may at any time inspect the books and documents of the Company or any of them. Subject to the Corporations Act, no other person may inspect such books and documents unless authorised to do so by the Board of Directors.

## **28 RESERVES**

- 28.1 The Board of Directors may set aside reserves out of profits of an amount it considers appropriate, to be applied for any purpose for which profits of the Company may be properly applied.
- 28.2 Pending any such application, the Board of Directors may invest or use the reserves in the business of the Company or in other investments or dispose of all or any part of the reserves as they think fit.

## **29 DIVIDENDS**

The Directors must not distribute any profits of the Company by way of dividend.

## **30 NOTICES**

- 30.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution by:
- (a) serving it personally on the person; or

- (b) sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.

30.2 A notice sent by post is taken to be served:

- (a) by properly addressing, prepaying and posting a letter containing the notice; and
- (b) five (5) Business Days after the day on which it was posted.

30.3 A notice sent by facsimile transmission or electronic notification is taken to be served:

- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
- (b) on the next Business Day after its despatch.

## **31 WINDING UP**

If the Company is to be wound up, the liquidator may, subject to approval by special resolution of the Shareholders, vest the whole or any part of the assets (after the satisfaction of all debts and liabilities) of the Company in trustees on such trusts as are consistent with a wind up of the Fund under the Governing Rules. No assets of the Company may be paid or distributed among the Shareholders (either on winding up or otherwise) except to the extent that a Shareholder is a beneficiary under such a trust.

## **32 INDEMNITY**

32.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been a Secretary, Director, Auditor, representative, agent or other officer of the Company or a subsidiary of the Company against any liability (other than a liability for legal costs) incurred by that person in their capacity as such an officer of the Company or its subsidiary.

32.2 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been a Secretary, Director, Auditor, representative, agent or other officer of the Company or a subsidiary of the Company against reasonable legal costs incurred in defending an action for a liability incurred by that person in their capacity as such an officer of the Company or its subsidiary.

**33     PARAMOUNT PROVISION**

The Company must comply with Relevant Law and Relevant Law prevails over any conflicting provisions in the Constitution.

**34     INSURANCE**

The Company may arrange insurance in respect of any Director, Secretary or officer in respect of any liability incurred while acting in their office to the extent permitted by the Corporations Act.