



Constitution of Grain Trade Australia Limited

ACN 097 228 656

Amended October 2008

Amended October 2010

Amended October 2011

Amended October 2014

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CONSTITUTION OF GRAIN TRADE AUSTRALIA LIMITED
ACN 097 228 656

1. **PRELIMINARY**

1.1 **Company limited by guarantee**

The Company is limited by guarantee and the liability of members is limited as provided in this document.

1.2 **Objects of the Company**

The Company is formed with the object of:

- (a) promoting the interests of those involved in the Grain Industry on a national basis;
- (b) promoting harmony and good relations in the Grain Industry and safeguarding the interests of persons and firms engaged in the Grain Industry;
- (c) guarding and maintaining a high reputation for the Grain Industry in commercial life and to promote the ethical and financial accountability of the membership of the Company;
- (d) co-operating with persons in promoting matters beneficial to the Grain Industry and its participants;
- (e) assisting Government at all levels to formulate policy to permit the more efficient operation of the Grain Industry;
- (f) providing an apolitical and unbiased forum for discussion and debate of issues relevant to the Grain Industry;
- (g) encouraging marketing between recognised and reputable organisations;
- (h) providing all participants in the Grain Industry with the most efficient trading tools and dispute resolution mechanisms.

1.3 **Application of income and property**

Subject to rules 1.4 and 10.2, the Company must apply its income solely towards promoting the objects of the Company as stated in rule 1.2. No part of the Company's income may be paid or transferred directly or indirectly by way of dividend bonus or otherwise to members.

1.4 **Certain payments allowed**

Rule 1.3 does not prevent the payment of reasonable remuneration to any officer, employee, or consultant of the Company or to any member of the Company or other person in return for service rendered to the Company. In addition rule 1.3 does not prevent the Company paying to any officer, employee, consultant or member of the Company:

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- (a) interest on money lent by the member to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
 - (b) reasonable remuneration for goods supplied by the member to the Company in the ordinary course of business; and
 - (c) reasonable rent for premises let by the member to the Company.

1.5 Replaceable rules

The replaceable rules referred to in section 141 of the Act do not apply to the Company and are replaced by the rules set out in this document.

1.6 Definitions

The following definitions apply in this document.

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

"**Alternate**" means an alternate Director appointed under rule 4.1.

"**Appointor**" in relation to an Alternate, means the Director who appoints that Alternate.

"**Board**" means the Directors acting collectively under this document.

"**Company**" means the company named at the beginning of this document whatever its name is for the time being.

"**Controller**" has the meaning set out in the Act.

"**Corporate Member**" means a member which is an entity not routinely a direct party to a contract for the purchase or sale of grain, and that is admitted and classified as a Corporate Member by the Board.

"**Director**" means a person who is, for the time being, a director of the Company including, where appropriate, an Alternate.

"**Chief Executive Officer**" means the Chief Executive Officer appointed under rule 7.1.

"**Grain Industry**" means parties and infrastructure that participate in the grain value chain.

"**Industry Association Member**" means a member which is an incorporated or unincorporated association of corporates and/or others and is admitted and classified as an Industry Association Member by the Board.

"**Insolvent under Administration**" has the meaning set out in the Act.

"**Level A Ordinary Member**" means members who trade and/or store and/or handle more than 1,500,000 tonnes of grain per year.

"**Level B Ordinary Member**" means the following:

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- (a) Level B1 ordinary members who trade and/or store and/or handle between 1,000,000 and 1,500,000 tonnes of grain per year; and
 - (b) Level B2 ordinary members who trade and/or store and/or handle between 500,000 and 1,000,000 tonnes of grain per year; and
 - (c) Level B3 ordinary members who trade and/or store and/or handle between 250,000 and 500,000 tonnes of grain per year; and

"**Level C Ordinary Member**" means members who trade and/or store and/or handle less than 250,000 tonnes of grain per year.

"**Life Member**" means a member who is appointed and classified as a life member by the Board and who the Board determines has provided outstanding service to the Company.

"**member**" means a person whose name is entered in the Register as a member of the Company.

"**Merchant Association Member**" means Grain NSW, Grain Industry Association of Victoria, Queensland Agricultural Merchants' Association Inc, Grain Industry Association of SA Incorporated, and other merchant associations as determined by the Board from time to time, and is admitted and classified as a Merchant Association Member by the Board.

"**Officer**" has the meaning set out in the Act.

"**Ordinary Member**" means an entity or individual which is routinely a direct party to a contract for the purchase or sale of grain and which is admitted and classified as a Level A Ordinary Member, a Level B Ordinary Members or a Level C Ordinary Member by the Board.

"**ordinary resolution**" means a resolution of members other than a special resolution.

"**Register**" means the register of members kept as required by sections 168 and 169 of the Act.

"**Secretary**" means, during the term of that appointment, a person appointed as secretary of the Company in accordance with this document.

"**Special Qualification Director**" means a Director who in the opinion of the Board has special qualifications relevant to the business and objects of the Company and who is nominated and appointed by the Board in accordance with rule 3.6(b).

"**special resolution**" has the meaning given by section 9 of the Act.

1.7 Interpretation of this document

Headings and marginal notes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:

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- (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
 - (c) A word which suggests 1 gender includes the other genders.
 - (d) If a word is defined, another part of speech has a corresponding meaning.
 - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (f) The word "**agreement**" includes an undertaking or other binding arrangement or understanding, whether or not in writing.
 - (g) A power to do something includes a power, exercisable in the like circumstances to revoke or undo it.
 - (h) A reference to a power is also a reference to authority or discretion.
 - (i) A reference to something being "**written**" or "**in writing**" includes that thing being represented or reproduced in any mode in a visible form.
 - (j) Words (other than those defined in rule 1.6) which are defined by the Act have the same meaning in this document.
 - (k) A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.

2. MEMBERSHIP

2.1 **Classes of Membership**

Subject to rules 2.6 and 2.7, the members of the Company are:

- (a) the Ordinary Members;
- (b) the Merchant Association Members;
- (c) the Industry Association Members;

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- (d) the Corporate Members;
 - (e) the Life Members; and
 - (f) such other classes of member as the Board may create from time to time.

2.2 Admission of Members

The Board shall have absolute discretion as to whether to admit a person as a member, the number of votes (if any) and the classes of membership to which that member is admitted.

2.3 Levels of Members

The Board shall have absolute discretion as to the creation of levels of members within classes of members and the scale of annual subscription appropriate to such levels.

2.4 Levels of Ordinary Membership

- (a) Each year the Board may determine the levels within the class of Ordinary membership to which each Ordinary Member belongs, and notify the Ordinary Member as to which level within the class of Ordinary membership the Ordinary Member belongs.
- (b) In determining the level into which each Ordinary Member belongs, the Board shall have absolute discretion to determine the methods used to calculate the level of trade, storage or handling of grain.
- (c) For the avoidance of doubt, where an Ordinary Member's level within the class of Ordinary membership changes from time to time this will not be taken to be a variation of class rights of that Ordinary Member.

2.5 Limited liability of members

If the Company is wound up each member of the Company undertakes to contribute to the assets of the Company up to an amount not exceeding \$100.00 for payment of the debts and liabilities of the Company including the costs of the winding up. This undertaking continues for 1 year after a member ceases to be a member of the Company.

2.6 Resigning as a member

A member may resign from the Company by giving written notice to the Board.

2.7 Expelling a member

- (a) The Board may, by resolution, expel from the Company any member:
 - (i) who does not comply with this document or any by-laws, rules or regulations of the Company; or
 - (ii) whose conduct in the opinion of the Board is prejudicial to the interests of the Company or

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- (iii) in the event that any one or more of the following events occurs in relation to the member:
- (i) an order being made, or the member passing a resolution, for its winding up;
 - (ii) an application being made to a court for an order for its winding up unless the application is withdrawn or dismissed within 5 days;
 - (iii) an administrator being appointed to the member;
 - (iv) one of the following:
 - a. the member resolving to appoint a Controller or analogous member to the member or any of the member's property;
 - b. an application being made to a court for an order to appoint a Controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous member to the member or any of the member's property unless the application is withdrawn or dismissed within 5 days; or
 - c. an appointment of the kind referred to in subparagraph (b) being made (whether or not following a resolution or application);
 - (v) the holder of a security interest taking possession of any of the member's property;
 - (vi) the member being taken under section 459F(1) of the Act to have failed to comply with a statutory demand;
 - (vii) the member:
 - a. suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - b. being taken by applicable law to be (or if a court would be entitled or required to presume that the member is) unable to pay its debts or otherwise insolvent;
 - (viii) the process of any court or authority being invoked against the member or any of its property to enforce any judgment or order for the payment of money or the recovery of any property, unless the member is able, within 5 days, to satisfy the other party that there is no substantial basis for the judgment or order in respect of which the process was invoked;
 - (ix) the member dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason;

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- (x) the member taking any step that could result in the member becoming an Insolvent Under Administration;
 - (xi) the member taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
 - (xii) who fails to adhere to the requirements of the Australian Grain Industry Code of Practice; or
 - (xiii) any analogous event,
- unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the company.
- (b) At least 21 days before the Board holds a meeting to expel a member the Board must send a notice to the member which states:
 - (i) the allegations against the member;
 - (ii) the proposed resolution for the member's expulsion;
 - (iii) that the member has an opportunity at the meeting to address the allegations either orally or in writing; and
 - (iv) that if the member notifies the Secretary in writing at least 48 hours before the meeting at which the resolution is to be considered by the Board, the member may elect to have the question of that member's expulsion dealt with by the Company in general meeting.
 - (c) The Company must expel a member and remove the member's name from the Register where:
 - (i) a general meeting is held to expel a member; and
 - (ii) a resolution is passed at the meeting by a majority of two-thirds of those present and voting for the member to be expelled. The vote must be taken by ballot.
 - (d) A member expelled from the Company does not have any claim on the Company, its funds or property.

2.8 Membership Subscription

- (a) All members, with the exception of Life Members shall pay to the Company an annual subscription fee. The amount of such annual subscription fee shall be determined by the Board each year and will vary according to each level and class of membership.
- (b) All subscriptions shall be due and payable on the date determined by the Board.

3. **DIRECTORS**

3.1 **Number of Directors**

The Company must have at least 6 Directors and, until otherwise decided by ordinary resolution, not more than 16 Directors.

3.2 **No Membership qualification**

A Director need not be a member of the Company. Neither the auditor of the Company nor any partner or employee of the auditor is eligible to act as a Director.

3.3 **Composition of the Board**

(a) Subject to rule 3.3(c), the Board shall consist of:

- (i) up to a maximum of 5 Directors who are nominated to be Directors by the Ordinary Members (if any) of which:
 - (A) up to 2 Directors may be nominated by Level A Ordinary Members (if any); and
 - (B) up to 2 Directors may be nominated by Level B Ordinary Members (if any); and
 - (C) 1 Director may be nominated by Level C Ordinary Members (if any), and
- (ii) up to a maximum of 3 Directors who are nominated to be Directors by the Merchant Association Members (if any); and
- (iii) up to a maximum of 8 other Directors which shall include
 - (A) Special Qualification Directors (if any); and
 - (B) if any other class of members is permitted to nominate Directors pursuant to rule 3.3(c), then persons who have been nominated to be Directors by that class of members.

(b) At any one time no two or more directors shall have the same employer (which shall include related companies and companies in associated ownership), or represent the same association, organization or entity.

(c) The number of Directors to be nominated by each level and/or class of members shall be determined from time to time by ordinary resolution of the Board.

3.4 **Nominations of Directors**

The persons nominated by Ordinary Members, Merchant Association Members and any other classes of members to act as Directors in accordance with rule 3.3 cannot be appointed as Directors unless at least 30 - 40 days (the number of days to be determined by the Board on an annual basis) before the meeting at which the resolution for the appointment of those persons as Directors will be considered, the Company receives both:

- (a) a nomination of the person signed by at least one member who is of the relevant class of members (other than the person being nominated for election); and
- (b) a consent to act as a Director signed by the person who has been nominated for election as a Director.

3.5 **Appointment of Directors by the Board**

Persons appointed as Special Qualification Directors by resolution of the Board in accordance with rule 3.6(b) must be appointed subject to receipt by the Company of a consent to act as a Director signed by the person who has been nominated by the Board. A Special Qualification Director will be appointed with effect from receipt by the Company of a written consent from that person consenting to act as a Director of the Company.

3.6 **Election by general meeting and Appointment by the Board**

Subject to this document, section 201E of the Act, and to the number of Directors for the time being fixed under rule 3.1 not being exceeded:

- (a) at each annual general meeting, the Company may elect the Directors (excluding the Special Qualification Directors) so nominated by the members (if any) in accordance with rules 3.3 and 3.4, for a three year term by ordinary resolution; and
- (b) following each annual general meeting, the Board may by resolution appoint the Special Qualification Directors (if any) so nominated by the Board in accordance with rules 3.3 and 3.5 for a one year term.

3.7 **Election by Ballot**

In the event of persons being nominated in excess of vacancies, or otherwise than in accordance with rule 3.3 and/or 3.4, a ballot of members shall be conducted according to procedures specified by the Board from time to time.

3.8 **Election of Chairman and Deputy Chairmen**

At the first Board meeting following each Annual General Meeting, the Board will elect:

- (a) a Director to act as the chairman of the Board; and
- (b) two Directors to act as deputy chairmen of the Board.

3.9 Rotation of Directors

- (a) Subject to rule 3.9(f), at the annual general meeting held following the financial year ended 30 June 2011, and every third annual general meeting thereafter, the following Directors must retire from office:
 - (i) one Director who has been nominated by Level A Ordinary Members (if any);
 - (ii) one Director who has been nominated by Level B Ordinary Members (if any); and
 - (iii) one Director who has been nominated by Merchant Association Members (if any).

- (b) Subject to rule 3.9(f), at the annual general meeting held following the financial year ended 30 June 2012 and every third annual general meeting thereafter, the following Directors must retire from office:
 - (i) one Director who has been nominated by Level A Ordinary Members (if any);
 - (ii) one Director who has been nominated by Level C Ordinary Members (if any); and
 - (iii) one Director who has been nominated by Merchant Association Members (if any).

- (c) Subject to rule 3.9(f), at the annual general meeting held following the financial year ended 30 June 2013 and every third annual general meeting thereafter, the following Directors must retire from office:
 - (i) one Director who has been nominated by Level B Ordinary Members (if any); and
 - (iii) one Director who has been nominated by Merchant Association Members (if any).

- (d) Subject to rule 3.9(f), when determining which Directors (excluding the Special Qualification Directors) who should retire in accordance with rules 3.9(a), (b) or (c):
 - (i) it shall be those Directors who have been in office as a Director for the longest period of time; and
 - (ii) in respect to those Directors who have held office for the same period of time:
 - (A) it shall be the Director determined by agreement between the Directors who have held office for the same period of time; or

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- (B) in the event an agreement between the Directors cannot be reached in accordance with rule 3.9(d)(ii)(A), then it shall be the Director determined by lot.
 - (e) No Director shall hold office as a Director for more than a three year term, unless they are re-elected as a Director in accordance with the rules of this Constitution.
 - (f) Where the number of Directors is less than the maximum number of Directors (determined in accordance with the requirements set out in rule 3.3(a)), then the rotation provisions set out in rule 3.9(a) – 3.9(d) will only apply in the particular year in respect to a particular Director, if the retiring Director will have served as a Director for three years since being elected.

3.10 **Time of retirement**

- (a) A Director's retirement under rule 3.9 takes effect at the end of the relevant annual general meeting unless the Director is re-elected at that meeting.
- (b) A Special Qualification Director's retirement shall take effect at the end of each Board resolution (which is to follow each annual general meeting in accordance with rule 3.6(b)), unless the Special Qualification Director is re-appointed by the Board following the annual general meeting.

3.11 **Cessation of Director's appointment**

The office of a Director automatically becomes vacant if the person who holds the office:

- (a) become insolvent;
- (b) is not permitted by the Act (or an order made under the Act) to be a director or vacates office by force of section 203B of the Act;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend Board meetings (either personally or by an Alternate) for a continuous period of 3 months without leave of absence from the Board;
- (e) resigns by notice in writing to the Company;
- (f) is removed from office under rule 3.12.

3.12 **Removal from office**

Whether or not a Director's appointment was expressed to be for a specified period, subject to section 203D of the Act the Company by ordinary resolution may remove a Director from office.

3.13 Filling of casual vacancies in Board

Subject to rule 3.1, the Directors shall have power to appoint any person as a Director either to fill a casual vacancy or as an addition to their number. A person appointed as a Director pursuant to this rule 3.13:

- (a) must provide the Company with a consent to act as a Director signed by the person who is to be appointed; and
- (b) if the Director is appointed to fill a casual vacancy, the Director once appointed will hold office for the duration of the term for which the Director they have replaced would have held office; or
- (c) if the Director is appointed as an additional Director, the Director shall hold office until the end of the Board meeting which follows the annual general meeting held in accordance with rule 3.6(b).

3.14 Too few Directors

If the number of Directors is reduced below the minimum required by rule 3.1, the continuing Directors may act as the Board only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a meeting of members; and
- (c) in emergencies.

4. ALTERNATE DIRECTORS

4.1 Appointment of Alternates

Subject to rule 3.2, a Director (other than an Alternate) may appoint a person who is approved by the Board (without the vote of the Appointor) to act as Alternate for a specified period or each time the Appointor is unable to attend a Board meeting or act as a Director.

4.2 Notice of Board meetings

If the Appointor requests the Company to give the Alternate notice of Board meetings, the Company must do so. Unless the Appointor has requested it, the Company need not give notice of Board meetings to an Alternate.

4.3 Obligations and entitlements of Alternates

An Alternate:

- (a) may attend and vote in place of the Appointor at a Board meeting at which the Appointor is not present;
- (b) if also a Director, has a separate right to vote as Alternate;

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- (c) if Alternate for more than 1 Appointor, has a separate right to vote in place of each Appointor;
 - (d) when acting as Alternate, is an officer of the Company and subject to all the duties, and entitled to exercise all the powers and rights, of the Appointor as a Director; and
 - (e) may not be remunerated except to the extent that the Appointer would be entitled to remuneration. In respect of that remuneration the Alternate Director's only rights (if any) are against the Appointer and not the Company.

4.4 **Termination of appointment**

The Appointor may revoke the appointment of a person as Alternate whether or not that appointment is for a specified period. If the Appointor ceases to be a Director, any appointment of an Alternate made by the Appointor immediately ceases.

4.5 **Appointments and revocations in writing**

The Appointor must appoint, and revoke the appointment of, any Alternate in writing. The appointment or revocation is not effective until a copy is provided to the Company.

5. **POWERS OF THE BOARD**

5.1 **Powers generally**

Except as otherwise required by the Act, any other applicable law or this document, the Board:

- (a) has power to manage the business of the Company;
- (b) may approve the Company's involvement in any ventures that in the Board's opinion, is for the benefit of the Company and the Grain Industry; and
- (c) may exercise every right, power or capacity of the Company to the exclusion of the Company in general meeting and the members.

5.2 **Exercise of powers**

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 12; or
- (b) in accordance with a delegation of the power under rule 7 or 8.

6. **EXECUTING NEGOTIABLE INSTRUMENTS AND ELECTRONIC BANKING**

6.1 **Negotiable Instruments and Electronic Banking**

The Board must decide:

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- (a) the manner (including the use of facsimile signatures if thought appropriate) in which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company; and
 - (b) the manner in which electronic and on-line banking for the Company can be conducted and approved for and on behalf of the Company.

6.2 Approval by the Board

The Company may:

- (a) execute, accept, or endorse negotiable instruments; and
 - (b) conduct and approve electronic and on-line banking,
- only in the manner decided by the Board.

7. CHIEF EXECUTIVE OFFICER

7.1 Appointment and power of Chief Executive Officer

The Board may appoint a Chief Executive Officer either for a specified term (but not for life) or without specifying a term. The Chief Executive Officer need not be a Director or member of the Company.

Notwithstanding rule 8.1, The Board may delegate any of the powers of the Board to the Chief Executive Officer:

- (a) on the terms and subject to any restrictions the Board decides; and
 - (b) so as to be concurrent with, or to the exclusion of, the powers of the Board,
- and may revoke the delegation at any time.

7.2 Termination of appointment of Chief Executive Officer

The appointment of an Chief Executive Officer terminates if the Board removes the Chief Executive Officer from the office of Chief Executive Officer (which, subject to any contract between the Company and the Chief Executive Officer, the Board has power to do), whether or not the appointment was expressed to be for a specified term.

8. DELEGATION OF BOARD POWERS

8.1 Delegation to committee or attorney

The Board may delegate any of its powers:

- (a) to a committee (which may include a Board committee, a technical committee or any other type of committee determined by the Board from time to time) consisting of at least 1 Director which may also include people who are not Directors; or
- (b) to an attorney;

and may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period. This rule is supplemental to section 126(1) of the Act.

8.2 **Terms of delegation**

A delegation of powers under rule 8.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

Power exercised in accordance with a delegation of the Board is treated as exercised by the Board.

8.3 **Powers of attorney**

A power of attorney under rule 8.1 may contain the provisions for the protection and convenience of those who deal with the attorney that the Board thinks appropriate.

8.4 **Proceedings of committees**

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this document which regulate the meetings and proceedings of the Board.

9. **DIRECTOR'S DUTIES AND INTERESTS**

9.1 **Compliance with Law**

Each Director must comply with sections 180-184 (inclusive), 191 and 195 of the Act.

9.2 **Scope of Directors' duties**

A Director is not disqualified by reason only of being a Director from:

- (a) holding any office or place of profit or employment other than that of the Company's auditor, or being a member or creditor, of any corporation (including the Company) or partnership other than the auditor; or
- (b) entering into any agreement with the Company.

9.3 **Declaration of interests**

A Director who:

- (a) is in any way, interested in a contract or proposed contract with the Company; or
- (b) holds any office or possesses any property as a result of which duties or interests might be created which are directly or indirectly in conflict with that Director's duties or interests as a Director,

must declare the fact and the nature of the interest, or nature, character and extent of the conflict at the first Board meeting held after the relevant facts come to the Director's knowledge or after appointment as a Director (whichever is later).

9.4 **Director interested in a matter**

Each Director must comply with section 195 of the Act in relation to being present, and voting, at a Board meeting that considers a matter in which the Director has a material personal interest. Subject to section 195 of the Act:

- (a) a Director may be counted in a quorum at a Board meeting that considers, and may vote on, whether the Company enters into an agreement or proposed agreement in which that Director has an interest;
- (b) the Company may enter into the agreement and the Director may participate in the execution of any relevant document by or on behalf of the Company;
- (c) the Director may be counted in a quorum at a Board meeting that considers, and may vote on, matters involving the agreement; and
- (d) if disclosure under rule 9.3 is made before the agreement is entered into:
 - (i) the Director may retain benefits under the agreement even though the Director has an interest in the agreement; and
 - (ii) the Company cannot avoid the agreement merely because of the existence of the interest.

9.5 **Agreements with third parties**

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure required by rule 9.3; or
- (b) is present at, or counted in the quorum for, a meeting that considers, votes on, or participates in the execution of, that agreement in breach of section 195 of the Act.

9.6 **Obligation of secrecy**

Every Director and Secretary must keep the transactions and affairs of the Company and the state of its accounts confidential unless required to disclose them:

- (a) in the course of duties as an officer of the Company;
- (b) by the Board or the Company in general meeting; or
- (c) by law.

The Company may require a Director, Secretary, auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Company.

10. DIRECTORS' REMUNERATION

10.1 **Restriction on payments to Directors**

Subject to rule 10.2 and rule 11 the Company must not pay fees or other remuneration to a Director.

10.2 **Payments to Directors with Board approval**

With the approval of the Board the Company may pay to a Director:

- (a) reasonable expenses (including travelling and accommodation) incurred in carrying out duties as a Director;
- (b) reasonable remuneration for any service rendered by the Director to the Company;
- (c) reasonable remuneration where the Director is an employee of the Company and the terms of employment have been approved by the Board;
- (d) interest on money lent by the Director to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
- (e) reasonable remuneration for goods supplied by the Director to the Company in the ordinary course of business; and
- (f) reasonable rent for premises lent by the Director to the Company.

11. OFFICERS' INDEMNITY AND INSURANCE

11.1 **Indemnity**

Subject to section 199A of the Act, the Company must, to the extent the person is not otherwise indemnified, indemnify every Officer of the Company and its wholly owned subsidiaries and may indemnify its auditor and other employees against a liability:

- (a) incurred as Officer, auditor or employee to a person other than the Company or a related body corporate (including a liability incurred as a result of appointment or nomination by the Company or subsidiary as a trustee or as an Officer of another corporation) unless the liability arises out of conduct involving a lack of good faith; and
- (b) for costs and expenses incurred in defending civil or criminal proceedings in which judgement is given in favour of that person or in which that person is acquitted, or in connection with an application in relation to those proceedings in which the court grants relief to that person under the Act.

11.2 **Insurance**

Subject to section 199B of the Act, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

11.3 **Former officers**

The indemnity in favour of officers under rule 11.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or a wholly owned subsidiary of the Company even though the person is not an officer at the time the claim is made.

12. **BOARD MEETINGS**

12.1 **Convening Board meetings**

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

12.2 **Notice of Board meeting**

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to:
 - (i) each Director who is in Australia; and
 - (ii) each Alternate in respect of whom the Appointor has given notice under rule 4.2 requiring notice of Board meetings to be given to that Alternate or whose Appointor is not given notice due to being outside Australia; and
- (b) may give that notice orally (including by telephone) or in writing,

but failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

12.3 **Use of technology**

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D of the Act. A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of 2 or more places, at the place where the chairman of the meeting is located.

12.4 **Chairing Board meetings**

The Board may elect a Director to chair its meetings and decide the period for which that Director holds that office. If there is no chairman of Directors or the chairman is not present within 15 minutes after the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

12.5 **Quorum**

Unless the Board decides otherwise, the quorum for a Board meeting is 6 Directors and a quorum must be present for the whole meeting. An Alternate who is also a Director or a

person who is an Alternate for more than 1 Appointor may only be counted once toward a quorum. A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D of the Act, the Board must resolve the basis on which Directors are treated as present.

12.6 **Majority decisions**

A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. If an equal number of votes is cast for and against a resolution, the matter is decided in the negative.

12.7 **Procedural rules**

The Board may adjourn and, subject to this document, otherwise regulate its meetings as it decides.

12.8 **Written resolution**

If all the Directors entitled to receive notice of a Board meeting and 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 Board resolution in those terms is passed at the time when the last Director signs.

12.9 **Additional provisions concerning written resolutions**

For the purpose of rule 12.8:

- (a) 2 or more separate documents in identical terms, each of which is signed by 1 or more Directors, are treated as 1 document;
- (b) signature of a document by an Alternate is not required if the Appointor of that Alternate has signed the document;
- (c) signature of a document by the Appointor of an Alternate is not required if that Alternate has signed the document in that capacity; and
- (d) a telex, telegram, facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

12.10 **Valid proceedings**

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

13. MEETINGS OF MEMBERS

13.1 Annual general meeting

The Company must hold an annual general meeting at least once in each calendar year and within 5 months after the end of its financial year as required by section 250N of the Act.

13.2 Calling meetings of members

- (a) The Board or a Director may at any time; and
- (b) the Board must when requested by members under section 249D of the Act or when ordered by the Court under section 249G of the Act,

convene a meeting of members.

13.3 Notice of meeting

Subject to rule 13.4, at least 21 days' written notice of a meeting of members must be given individually to:

- (a) each member (whether or not the member is entitled to vote at the meeting);
- (b) each Director; and
- (c) to the auditor.

The notice of meeting must comply with section 249L of the Act and may be given in any manner permitted by section 249J(3) of the Act.

13.4 Short notice

Subject to sections 249H(3) and (4) of the Act:

- (a) if the Company has elected to convene a meeting of members as the annual general meeting, if all the members entitled to attend and vote agree; or
- (b) otherwise, if members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

13.5 Postponement or cancellation

Subject to sections 249D(5) and 250N of the Act, the Board may:

- (a) postpone a meeting of members;
- (b) cancel a meeting of members; or
- (c) change the place for a general meeting

by written notice given individually to each person entitled to be given notice of the meeting.

13.6 Fresh notice

If a meeting of members is postponed or adjourned for 1 month or more, the Company must give new notice of the resumed meeting.

13.7 Technology

The Company may hold a meeting of members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

13.8 Accidental omission

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of members.

14. PROCEEDINGS AT MEETINGS OF MEMBERS

14.1 Member present at meeting

If a member has appointed a proxy or attorney or (in the case of a member which is a body corporate) a representative to act at a meeting of members, that member is taken to be present at a meeting at which the proxy, attorney or representative is present.

14.2 Quorum

The quorum for a meeting of members is 6 members or fifty per cent (50%) of members, whichever is less. Each individual present may only be counted once toward a quorum.

14.3 Quorum not present

If a quorum is not present within 15 minutes after the time for which a meeting of members is called:

- (a) if called as a result of a request of members under section 249D of the Act, the meeting is dissolved; and
- (b) in any other case:
 - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
 - (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

14.4 Chairing meetings of members

If the Board has appointed a Director to chair Board meetings, that Director may also chair meetings of members. If:

- (a) there is no Director who the Board has appointed to chair Board meetings for the time being; or
- (b) the Director appointed to chair Board meetings is not present at the time for which a meeting of members is called or is not willing to chair the meeting,

the members present must elect a member or Director present to chair the meeting.

14.5 Attendance at general meetings

- (a) Every member has the right to attend all meetings of members.
- (b) Every Director has the right to attend and speak at all meetings of members of the Company.
- (c) The auditor has the right to attend any meeting of members of the Company and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

14.6 Adjournment

Subject to rule 13.6, the chairman of a meeting of members at which a quorum is present:

- (a) may; and
- (b) must, if directed by ordinary resolution of the meeting,

adjourn it to another time and place.

14.7 Business at adjourned meetings

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

15. PROXIES, ATTORNEYS AND REPRESENTATIVES

15.1 Appointment of proxies

A member may appoint a proxy to attend and act for the member at a meeting of members. An appointment of proxy must be made by written notice to the Company:

- (a) that complies with section 250A(1) of the Act; or
- (b) in any other form and mode that is, and is signed or acknowledged by the member in a manner, satisfactory to the Board.

15.2 **Member's attorney**

A member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of the Company. If the appointor is an individual, the power of attorney must be signed in the presence of at least 1 witness.

15.3 **Deposit of proxy forms and powers of attorney**

An appointment of a proxy or power of attorney is not effective for a particular meeting of members unless:

- (a) in the case of a proxy, the proxy form and, if it is executed by an attorney, the relevant power of attorney or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it,

is received by the Company at its registered office or a fax number at that office (or another address specified for the purpose in the relevant notice of meeting) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the meeting is resumed.

15.4 **Corporate representatives**

A member that is a body corporate may appoint an individual to act as its representative at meetings of members as permitted by section 250D of the Act.

15.5 **Standing appointments**

A member may appoint a proxy, attorney or representative to act at a particular meeting of members or make a standing appointment and may revoke any appointment. A proxy, attorney or representative may, but need not, be a member.

15.6 **Suspension of proxy or attorney's powers if member present**

A proxy or attorney has no power to act for a member at a meeting at which the member is present:

- (a) in the case of an individual, in person; or
- (b) in the case of a body corporate, by representative.

A proxy has no power to act for a member at a meeting at which the member is present by attorney.

15.7 **Priority of conflicting appointments of attorney or representative**

If more than 1 attorney or representative appointed by a member is present at a meeting of members and the Company has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and

-
- (b) subject to rule 15.7(a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

15.8 **More than 2 current proxy appointments**

An appointment of proxy by a member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that member which would result in there being more than 2 proxies of that member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

15.9 **Continuing authority**

An act done at a meeting of members by a proxy, attorney or representative is valid even if, before the act is done, the appointing member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an Insolvent Under Administration or is wound up; or
- (c) revokes the appointment or the authority under which the appointment was made by a third party,

unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

16. **ENTITLEMENT TO VOTE**

16.1 **Number of votes**

Each member has the number of votes as is determined by the Board annually in accordance with the member's membership class.

16.2 **Casting vote of chairman**

If an equal number of votes is cast for and against a resolution at a meeting of members, the chairman has a casting vote.

16.3 **Decision on right to vote**

A member or Director may challenge a person's right to vote at a meeting of members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the chairman, whose decision is final.

17. **HOW VOTING IS CARRIED OUT**

17.1 **Method of voting**

A resolution put to the vote at a meeting of members must be decided on a show of hands unless a poll is demanded under rule 17.2 either before or on declaration of the result of the vote on a show of hands. Unless a poll is demanded, the chairman's declaration of a decision on a show of hands is final.

17.2 Demands for a poll

A poll may be demanded on any resolution except a resolution concerning the election of the chairman of a meeting by:

- (a) at least 6 members entitled to vote on the resolution; or
- (b) the chairman.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

17.3 When and how polls must be taken

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to rule 17.3(c), in the manner that the chairman of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to rule 17.3(c), in the manner that the chairman of the meeting directs;
- (c) votes which section 250A(4) of the Act requires to be cast in a given way must be treated as cast in that way;
- (d) a person voting who has the right to cast 2 or more votes need not cast all those votes and may cast those votes in different ways; and
- (e) the result of the poll is the resolution of the meeting at which the poll was demanded.

18. SECRETARY

18.1 Appointment and removal of Secretary

The Board may appoint a Secretary of the Company either for a specified term or without specifying a term. The Chief Executive Officer may be the Secretary of the Company.

18.2 Terms and conditions of office

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

18.3 Removal from office

Subject to any contract between the Company and the Secretary, the Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

19. MINUTES

19.1 Minutes must be kept

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's members;
- (b) the name of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 8); and
- (d) resolutions passed by Directors without a meeting,

to be kept in accordance with section 251A of the Act.

19.2 Minutes as evidence

A minute recorded and signed in accordance with section 251A of the Act is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

19.3 Inspection of minute books

The Company must allow members to inspect, and provide copies of the minute books for the meetings of members in accordance with section 251B of the Act.

19.4 Policy book

The Company must record and maintain a record of all policies of the Company determined by the Board in a separate book. This record should also note the date of the determination of the policy and the history of the determination of the policy.

20. COMPANY SEALS

20.1 Common seal

The Board:

- (a) may decide whether or not the Company has a common seal; and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2) of the Act.

20.2 Use of seals

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with section 123 of the Act.

20.3 **Fixing seals to documents**

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) by 2 Directors;
- (b) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

21. **ACCOUNTS AND AUDIT**

21.1 **Company must keep accounts**

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited,

and must allow a Director and the auditor to inspect those records at all reasonable times.

21.2 **Signatories on bank accounts**

The Board shall appoint the signatories on the Company's bank accounts.

21.3 **Financial reporting**

The Board must cause the Company to prepare a financial report and a Directors' report that comply with Part 2M.3 and must report to members in accordance with section 314 of the Act no later than the deadline set by section 315 of the Act.

21.4 **Audit**

The Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor are regulated by sections 324 to 334 inclusive and 1278, 1280 and 1289 of the Act.

21.5 **Conclusive reports**

Audited financial reports laid before the Company in general meetings are conclusive except as regards errors notified to the Company within 3 months after the relevant general meeting. If the Company receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

21.6 **Inspection of financial records and books**

Subject to rule 19.3 and section 247A of the Act, a member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by ordinary resolution.

22. REGISTER OF MEMBERS

The Company must maintain a register of members.

In accordance with section 169 of the Act, the register must contain the following information:

- (a) the name and address of each member;
- (b) the date on which the entry of the member's name in the register is made;
- (c) the name and details of each person who stopped being a member of the Company within the last 7 years;
- (d) the date on which the person stopped being a member; and
- (e) an index of member's names where the Company has more than 50 members (and the register itself is not kept in a form that operates effectively as an index).

23. NOTICES

23.1 Notices by Company

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either
 - (i) delivered personally;
 - (ii) sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (iii) sent by fax to the fax number (if any) nominated by that person; or
 - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

23.2 Overseas members

A member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

23.3 When notice is given

A notice to a person by the Company is regarded as given and received:

- (a) if it is delivered personally or sent by fax or electronic message:
 - (i) by 5.00 pm (local time in the place of receipt) on a business day - on that day; or

-
- (ii) after 5.00 pm (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day; and
 - (b) if it is sent by mail:
 - (i) within Australia - 3 business days after posting; or
 - (ii) to a place outside Australia - 7 business days after posting.

A certificate in writing signed by a Director or Secretary of the Company stating that a notice was sent is conclusive evidence of service.

23.4 **Business days**

For the purposes of rule 23.3, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

23.5 **Counting days**

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

23.6 **Notices to "lost" members**

If:

- (a) on 2 or more consecutive occasions a notice served on a member in accordance with this rule is returned unclaimed or with an indication that the member is not known at the address to which it was sent; or
- (b) the Board believes on other reasonable grounds that a member is not at the address shown in the Register or notified to the Company under rule 23.2,

the Company may give effective notice to that member by exhibiting the notice at the Company's registered office for at least 48 hours.

This rule ceases to apply if the member gives the Company notice of a new address.

23.7 **Winding Up**

In the event of the dissolution or winding up of the Company, any remaining assets of the Company at the conclusion of the winding up will be donated and transferred absolutely to another organisation or company with similar objects to the Company and which is not carried on for the profit or gain of its individual members.