

Constitution for Togethr Trustees Pty Ltd

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EQUIPSUPER PTY LTD
ACN 006 964 049

Constitution for Togethr Trustees Pty Ltd

Contents

1	PRELIMINARY	3
1.1	Definitions	3
1.2	Interpretation	4
1.3	Application of Act	5
1.4	Exercise of powers	5
1.5	Replaceable rules not to apply	7
1.6	Single member company	7
2	SHARE CAPITAL	7
2.1	Shares	7
2.2	Variation of class rights	7
2.3	Alteration of share capital	8
2.4	Equitable and other claims	8
3	TRANSFER OF SHARES	8
3.1	Transfer of shares	8
3.2	Power to decline registration of transfers	9
3.3	Power to suspend registration of transfers	9
4	GENERAL MEETINGS	9
4.1	Calling general meetings	9
4.2	Notice of general meetings	10
4.3	Quorum at general meetings	10
4.4	Chairperson of general meetings	11
4.5	Conduct of general meetings	11
4.6	Decisions at general meetings	12
4.7	Voting rights	13
4.8	Decisions without general meetings	13
4.9	Resolution of single member	14
4.10	Representation at general meetings	14
5	Directors	16
5.1	The Board	16
5.2	[Not used].	16
5.3	[Not used].	16
5.4	[Not used].	16
5.5	[Not used].	16
5.6	[Not used].	17
5.7	[Not used].	17
5.8	[Not used].	17
5.9	[Not used].	17
5.10	Remuneration of directors	17
5.11	Share qualification	18
5.12	Interested directors	18
5.13	Powers and duties of directors	19
5.14	Proceedings of directors	19
5.15	Convening meetings of directors	20
5.16	Notice of meetings of directors	20
5.17	Quorum at meetings of directors	21
5.18	Chairperson of directors	21
5.19	Decisions of directors	22

5.20	Written resolutions of directors	22
5.21	Committees of directors and delegation to a director	23
5.22	Validity of acts	23
6	Officers	23
6.1	Secretary	23
6.2	Provisions applicable to all officers	23
7	Seals	24
7.1	Common seal	24
7.2	Use of seal	24
8	Dividends, Reserves and Profits	24
8.1	Dividends	24
8.2	Reserves	24
8.3	Carry forward of profits	25
9	Winding Up	25
10	Indemnity and Insurance	25
10.1	Persons to whom rules 10.2 and 10.4 apply	25
10.2	Indemnity	25
10.3	Extent of indemnity	25
10.4	Insurance	26
10.5	Savings	26
10.6	Deed	26
11	Access to Documents	26
12	Notices	26
12.1	Notices by the company to members	26
12.2	Notices by the company to directors	27
12.3	Notices by members or directors to the company	27
12.4	Time of service	27
12.5	Other communications and documents	28
12.6	Notices in writing	28
13	General	28
13.1	Submission to jurisdiction	28
13.2	Prohibition and enforceability	28
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Constitution for Togethr Trustees Pty Ltd

Constitution of TOGETHR TRUSTEES PTY LTD (ACN 006 964 049)

PRELIMINARY

- A The name of the company is Togethr Trustees Pty Ltd
- B The company is a proprietary company limited by shares.

1 PRELIMINARY

1.1 Definitions

The meanings of the terms used in this constitution are set out below.

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

APRA means the Australian Prudential Regulation Authority.

Board means the directors of the company for the time being, acting collectively as a body.

Employer means any employer which contributes to a Fund wholly or partly pursuant to an arrangement between that employer and the trustee for the time being of a Fund.

Employer Director means a person who is a director of the company by virtue of rule 5.1(a) and an 'Employer Director' of the Holding Company.

Equip Corporate Group means as the context requires, any or all of the company, Holding Company, each related body corporate of the company, the ES Fund, and each other trust or fund for which any related body corporate of the company acts as trustee.

ES Fund means the regulated superannuation fund of which the company is presently the trustee, now known as Equipsuper (ABN 33 813 823 017).

Fund means either one or all of, as the context requires:

- (a) the ES Fund; and
- (b) any other superannuation fund of which the company is trustee from time to time.

Holding Company means Togethr Holdings Pty Ltd ACN 604 515 791, by whatever name it is subsequently known from time to time;

Member Director means a person who is a director of the company by virtue of rule 5.1(a) and a 'Member Director' of the Holding Company.

registrable superannuation entity has the meaning given to that term in the SIS Act.

Representative in relation to a member which is a body corporate, means a person authorised by the body corporate under the Act or a corresponding previous law to act as its representative.

RSE licensee has the meaning given to that term in the SIS Act.

SIS Act means the Superannuation Industry (Supervision) Act 1993 (Cth).

Transmission Event means:

- (a) for a member who is an individual – the member's death, the member's bankruptcy or the member becoming of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; and
- (b) for a member who is a body corporate – the dissolution of the member or the succession by another body corporate to the assets and liabilities of the member or where a receiver, receiver and manager, administrator, liquidator or provisional liquidator is appointed to the body corporate or any of its assets.

1.2 Interpretation

- (a) A reference in this constitution to a partly paid share is a reference to a share on which there is an amount unpaid.
- (b) A reference in this constitution to a call or an amount called in respect of a share includes a reference to an amount that, by the terms of issue of a share, becomes payable on issue or at a fixed date.
- (c) A member is to be taken to be present at a general meeting if the member is present in person or by proxy, attorney or Representative.
- (d) A chairperson may be referred to as chairman or chairwoman, or as chair, as appropriate.

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- (e) A reference in this constitution in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
 - (f) In this constitution, unless the contrary intention appears:
 - (i) the singular includes the plural and the plural includes the singular;
 - (ii) words of any gender include all genders;
 - (iii) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual;
 - (iv) a reference to a person includes that person's successors and legal personal representatives;
 - (v) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them; and
 - (vi) 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.
 - (g) In this constitution, headings and bold type are for convenience only and do not affect its interpretation.
 - (h) A reference to an Employer Director will be interpreted by reference to an 'employer representative' and a reference to a Member Director will be interpreted by reference to a "member representative" "as used in the SIS Act and with regard to a Fund.

1.3 Application of Act

- (a) Unless the contrary intention appears, an expression in a rule that deals with a matter dealt with by a provision of the Act has the same meaning as in that provision of the Act.
- (b) Subject to rule 1.3(a), unless the contrary intention appears, an expression in a rule that is used in the Act has the same meaning in this constitution as in the Act.

1.4 Exercise of powers

- (a) The company may, in any way the Act permits:
 - (i) exercise any power;
 - (ii) take any action; or
 - (iii) engage in any conduct or procedure,

which, under the Act, a company limited by shares may exercise, take or engage in.

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- (b) Where this constitution provides that a person or body may do a particular act or thing, the act or thing may be done at the person's discretion.
- (c) Where this constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the same manner and subject to the same conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing.
- (d) Where this constitution confers a power to do a particular thing in respect of particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that thing in respect of some only of those matters or in respect of a particular class or particular classes of those matters and to make different provision in respect of different matters or different classes of matters.
- (e) Where this constitution confers a power to make appointments to any office or position, the power is, unless the contrary intention appears, to be taken to include a power:
- (i) to appoint a person to act in the office or position until a person is appointed to the office or position;
 - (ii) subject to any contract between the company and the relevant person, to remove or suspend any person appointed, with or without cause; and
 - (iii) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of the office or position.
- (f) Where this constitution confers a power or imposes a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.
- (g) Where this constitution confers a power or imposes a duty on the holder of an office as such then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office.
- (h) Where this constitution confers power on a person or body to delegate a function or power:
- (i) the delegation may be concurrent with, or (except in the case of a delegation by the board of directors) to the exclusion of, the performance or exercise of that function or power by the person or body;
 - (ii) the delegation may be either general or limited in any manner provided in the terms of delegation;
 - (iii) the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of a specified office or position;
 - (iv) the delegation may include the power to delegate;
 - (v) where the performance or exercise of that function or power is dependent on the opinion, belief or state of mind of that person or body in relation to a

matter, that function or power may be performed or exercised by the delegate on the opinion, belief or state of mind of the delegate in relation to that matter; and

- (vi) the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body.

1.5 Replaceable rules not to apply

Those provisions of the Act designated as replaceable rules do not apply to the company except so far as they are repeated in this constitution.

1.6 Single member company

If at any time the company has only one member then, unless the contrary intention appears:

- (a) a reference in a rule to 'the members' is a reference to that member; and
- (b) without limiting rule 1.6(a), a rule which confers a power or imposes an obligation on the members to do a particular thing confers that power or imposes that obligation on that member.

2 SHARE CAPITAL

2.1 Shares

Without prejudice to any special rights conferred on the holders of any shares or class of shares, and subject to the company remaining a proprietary company, the directors may:

- (a) issue, allot or grant options for, or otherwise dispose of, shares in the company; and
- (b) decide:
 - (i) the persons to whom shares are issued or options are granted;
 - (ii) the terms on which shares are issued or options are granted; and
 - (iii) the rights and restrictions attached to those shares and options.

2.2 Variation of class rights

Unless otherwise provided by the terms of issue of a class of shares:

- (a) all or any of the rights or privileges attached to the class may be varied, whether or not the company is being wound up, only with the consent in writing of the holders of three quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the issued shares of that class;
- (b) the provisions of these rules relating to general meetings apply, so far as they can

and with such changes as are necessary, to each separate meeting of the holders of the issued shares of that class; and

- (c) the rights conferred on the holders of the shares of that class are to be taken as not having been varied by the creation or issue of further shares ranking equally with them.

2.3 Alteration of share capital

- (a) The company may alter its share capital in any manner permitted by law.
- (b) Where fractions of shares are or would otherwise be created by an alteration of share capital under rule 2.3(a) the directors may:
 - (i) make cash payments;
 - (ii) decide that fractions of shares are to be disregarded or rounded down to the nearest whole share.

2.4 Equitable and other claims

- (a) Except where a law or this constitution requires otherwise or the company has agreed otherwise, the company is entitled to treat the registered holder of a share as the absolute owner of that share and need not:
 - (i) recognise a person as holding a share on any trust, even if the company has notice of that trust; or
 - (ii) recognise, or be bound by, any equitable, contingent, future or partial claim to or interest in a share by any other person except an absolute right of ownership in the registered holder, even if the company has notice of that claim or interest.
- (b) With the consent of the directors, shares held by a trustee may be marked in the register in such a way as to identify them as being held subject to the relevant trust.
- (c) Nothing in rule 2.4(b) limits the operation of rule 2.4(a).

3 TRANSFER OF SHARES

3.1 Transfer of shares

- (a) Subject to this constitution and to the rights or restrictions attached to any shares or class of shares, a member may transfer any of the member's shares by an instrument in writing in any usual form or in any other form approved by the directors.
- (b) An instrument of transfer referred to in rule 3.1(a) must:
 - (i) be signed by or on behalf of both the transferor and the transferee unless the instrument of transfer relates only to fully paid shares and the directors have dispensed with signature by the transferee or the transfer of the

shares is effected by a document which is, or documents which together are, a sufficient transfer of those shares under the Act;

- (ii) if required by law to be stamped, be duly stamped;
 - (iii) in the case of a transfer of partly paid shares, be endorsed by, or accompanied by an instrument executed by, the transferee to the effect that the transferee agrees to accept the shares subject to the terms and conditions on which the transferor held them and to become a member and to be bound by the company's constitution; and
 - (iv) be left for registration at the company's registered office, or at such other place as the directors decide, with the certificate for the shares to which it relates or any other evidence the directors require to prove the transferor's title or right to the shares and the transferee's right to be registered as the owner of the shares.
- (c) Subject to the powers vested in the directors under rules 3.2 and 3.3, where the company receives an instrument of transfer complying with rule 3.1(b), the company must register the transferee named in the instrument as the holder of the shares to which it relates.
- (d) 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 of members as the holder of the shares.
- (e) The company may retain a registered instrument of transfer for any period the directors decide.
- (f) Except in the case of fraud, the company must return any instrument of transfer which the directors decline to register to the person who deposited it with the company.
- (g) The directors may, to the extent permitted by law, waive all or any part of the requirements of this rule 3.1.

3.2 Power to decline registration of transfers

Subject to any special rights conferred on the holders of any shares or class of shares, the directors may, in their absolute discretion, decline to register any transfer of shares.

3.3 Power to suspend registration of transfers

The directors may suspend the registration of transfers at such times and for such periods, not exceeding in total 30 days in any year, as they think fit.

4 GENERAL MEETINGS

4.1 Calling general meetings

- (a) The directors may, whenever they think fit, call and arrange to hold a general meeting.

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- (b) If at any time there is no director in the state of Victoria who is capable of arranging a general meeting which is called by the directors in accordance with rule 4.1(a), any two members of the company may convene any general meeting.
 - (c) A general meeting may be convened only as provided by this rule 4.1 or as otherwise required by the Act.
 - (d) Subject to rule 4.1(e), the directors may postpone, cancel or change the venue for a general meeting.
 - (e) A general meeting called and arranged under section 249D of the Act may not be postponed beyond the date by which section 249D requires it to be held and may not be cancelled without the consent of the requisitioning member or members.

4.2 Notice of general meetings

- (a) Subject to this constitution and to the rights or restrictions attached to any shares or class of shares, notice of a general meeting must be given within the time limits prescribed by the Act.
- (b) The content of a notice of a general meeting called by directors is to be decided by the directors but must state the general nature of the business to be transacted at the meeting and any other matters required by the Act.
- (c) A person may waive notice of any general meeting by notice in writing to the company.
- (d) Subject to the Corporations Act, the omission whether by accident or error to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings of any meeting.

4.3 Quorum at general meetings

- (a) No business may be transacted at any general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) A quorum consists of:
 - (i) if the number of members entitled to vote is 2 or more – 2 of those members; or
 - (ii) if only one member is entitled to vote – that member,present at the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (i) where the meeting was convened on the requisition of members, the meeting must be dissolved; or
 - (ii) in any other case, the meeting stands adjourned to the day, and at the time and place, the directors decide or, if they do not make a decision, to the same day in the next week at the same time and place and if, at the

adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

4.4 Chairperson of general meetings

- (a) The chairperson of directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each general meeting.
- (b) If at a general meeting there is no chairperson of directors or the chairperson of directors is not present or not willing to act as chairperson of the meeting, one of the other directors must act as chairperson.

4.5 Conduct of general meetings

- (a) The chairperson of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in his or her opinion necessary or desirable for:
 - (i) proper and orderly debate or discussion, including limiting the time that a person may speak on a motion or other item of business before the meeting; and
 - (ii) the proper and orderly casting or recording of votes at the general meeting, whether on a show of hands or on a poll, including the appointment of scrutineers.
- (b) The chairperson of a general meeting may at his or her sole discretion at any time during the course of the meeting adjourn from time to time and place to place the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion and may adjourn any business, motion, question or resolution, debate or discussion either to a later time at the same meeting or to an adjourned meeting.
- (c) No business may be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (d) Where a meeting is adjourned, notice need not be given to any person unless the meeting is adjourned for more than 30 days.
- (e) Where a meeting is adjourned, the directors may postpone, cancel or change the venue of the adjourned meeting.
- (f) Where a meeting of members is held at 2 or more venues using any form of technology:
 - (i) a member participating in the meeting is to be taken to be present in person at the meeting;
 - (ii) all the provisions in this constitution relating to meetings of members apply, so far as they can and with such changes as are necessary, to meetings of the members using that technology; and
 - (iii) the meeting is to be taken to be held at the place determined by the

chairperson of the general meeting as long as at least one of the members involved was at that place for the duration of the general meeting.

- (g) If the technology used in accordance with the requirement of rule 4.5(f) encounters a technical difficulty, whether before or during the meeting, which results in a member not being able to participate in the meeting, the chairperson may, subject to the Act, allow the meeting to continue or may adjourn the meeting either for such reasonable period as may be required to fix the technology or to such other time and location as the chairperson deems appropriate.

4.6 Decisions at general meetings

- (a) Except in the case of any resolution which as a matter of law requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the members present at the meeting. A decision made in this way is for all purposes a decision of the members.
- (b) If votes are equal on a proposed resolution:
- (i) the chairperson of the meeting does not have a casting vote in addition to any deliberative vote; and
 - (ii) the proposed resolution is to be taken as having been lost.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands, unless a poll is demanded by:
- (i) the chairperson of the meeting; or
 - (ii) any member present and having the right to vote at the meeting,
- before a show of hands is held or before the result of the show of hands is declared or immediately after the result of the show of hands is declared.
- (d) A demand for a poll does not prevent a general meeting continuing to transact any business except the question on which the poll is demanded.
- (e) Unless a poll is duly demanded, a declaration by the chairperson of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded for or against the resolution.
- (f) If a poll is duly demanded at a general meeting, it is to be taken in a way and subject to rule 4.6(g) either at once or after an interval or adjournment or otherwise as the chairperson of the meeting directs. The result of the poll as declared by the chairperson is the resolution of the meeting at which the poll was demanded.
- (g) A poll demanded at a general meeting on the election of a chairperson of the meeting or on a question of adjournment must be taken immediately.
- (h) The demand for a poll may be withdrawn with the chairperson's consent.

4.7 Voting rights

- (a) Subject to this constitution and to any rights or restrictions attached to any shares or class of shares, at a general meeting:
 - (i) on a show of hands, every member present has one vote; and
 - (ii) on a poll, every member present has one vote for each share held by the member and in respect of which the member is entitled to vote.
- (b) If a person present at a general meeting represents personally or by proxy, attorney or Representative more than one member:
 - (i) on a show of hands the person is entitled to one vote only, even though he or she represents more than one member;
 - (ii) that vote will be taken as having been cast for all the members the person represents; and
 - (iii) the person must not exercise that vote in a way which would contravene any directions given to the person in accordance with rule 4.10(g) in any instrument appointing the person as a proxy or attorney.
- (c) A joint holder may vote at any meeting in person or by proxy, attorney or Representative as if that person were the sole holder. If more than one joint holder tenders a vote, the vote of the holder named first in the register must be accepted to the exclusion of the other or others.
- (d) A member is not entitled to vote at a general meeting unless all calls and other amounts presently payable by that member in respect of shares in the company have been paid.
- (e) An objection to the qualification of a person to vote at a general meeting must be:
 - (i) raised before or at the meeting at which the vote objected to is given or tendered; and
 - (ii) referred to the chairperson of the meeting, whose decision is final.
- (f) A vote not disallowed by the chairperson of a meeting under rule 4.7(e) is valid for all purposes.

4.8 Decisions without general meetings

- (a) When the company has more than one member, the company may pass a resolution (except a resolution to remove an auditor) without a general meeting being held:
 - (i) if all of the members entitled to vote on the resolution sign a document containing a statement that they are in favour of a resolution set out in the document; and
 - (ii) otherwise in accordance with the Act.
- (b) If a share is held jointly, each of the joint members must sign the document.

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- (c) The passage of the resolution satisfies any requirement in the Act, or in this constitution, that the resolution be passed at a general meeting.

4.9 Resolution of single member

When the company has only one member, the member may pass a resolution of the member by recording the resolution and signing that record.

4.10 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
 - (i) in person or, where a member is a body corporate, by its Representatives;
 - (ii) by not more than 2 proxies; or
 - (iii) by not more than 2 attorneys.
- (b) A proxy, attorney or Representative may, but need not, be a member of the company.
- (c) A proxy, attorney or Representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.
- (d) Unless otherwise provided in the instrument, an instrument appointing a proxy, attorney or Representative is to be taken to confer authority:
 - (i) to agree to a meeting being convened by shorter notice than is required by the Act or by this constitution;
 - (ii) to agree to a resolution being proposed and passed as a special resolution at a meeting of which less than the period of notice required by the Act has been given; and
 - (iii) even though the instrument may refer to specific resolutions and may direct the proxy, attorney or Representative how to vote on those resolutions to do any of the acts specified in rule 4.10(e).
- (e) The acts referred to in rule 4.10(d)(iii) are:
 - (i) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (ii) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
 - (iii) to act generally at the meeting.
- (f) Where a member appoints 2 proxies or attorneys to vote at the same general meeting, the following rules apply:
 - (i) subject to rule 4.10(f)(ii), the appointment is of no effect and a proxy or attorney may not vote unless each proxy or attorney (as applicable) is appointed to represent a specified proportion of the member's voting rights;

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- (ii) if the Act precludes the company from treating as invalid the appointment of 2 proxies which fails to specify the proportion or number of votes that each may exercise, each person appointed may exercise half the member's votes;
 - (iii) on a show of hands, neither proxy or attorney may vote;
 - (iv) on a poll, each proxy or attorney may only exercise the voting rights the proxy or attorney represents; and
 - (v) if both appointments cannot be validly exercised at the meeting, the later appointment revokes the earlier appointment of a proxy or attorney.
- (g) An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- (h) Subject to rule 4.10(i), an instrument appointing a proxy or attorney need not be in any particular form as long as it is in writing, legally valid and signed by or on behalf of the appointer or the appointer's attorney.
- (i) A proxy or attorney may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy or attorney, and the authority under which the instrument is signed or a certified copy of the authority, are:
- (i) received at the registered office of the company, a fax number at the company's registered office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting before the time specified in the notice;
 - (ii) in the case of a meeting or an adjourned meeting, tabled at the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
 - (iii) in the case of a poll, produced when the poll is taken.
- (j) The directors may waive all or any of the requirements of rules 4.10(h) and 4.10(i) and in particular may, on the production of such other evidence as the directors require to prove the validity of the appointment of a proxy or attorney, accept:
- (i) an oral appointment of a proxy or attorney;
 - (ii) an appointment of a proxy or attorney which is not signed in the manner required by rule 4.10(h); and
 - (iii) the deposit, tabling or production of a copy (including a copy sent by fax) of an instrument appointing a proxy or attorney or of the power of attorney or other authority under which the instrument is signed.
- (k) A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite:
- (i) a Transmission Event occurring in relation to the appointer; or

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- (ii) the revocation of the instrument or of the authority under which the instrument was executed,

if no written notice of the Transmission Event or revocation has been received by the company by the time and at one of the places at which the instrument appointing the proxy or attorney is required to be deposited, tabled or produced under rule 4.10(i).

- (l) A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite the transfer of the share in respect of which the instrument was given, if the transfer is not registered by the time at which the instrument appointing the proxy or attorney is required to be deposited, tabled or produced under rule 4.10(i).
- (m) The appointment of a proxy or attorney is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on a resolution, the person acting as proxy or attorney for the appointer is not entitled to vote, and must not vote, as the appointer's proxy or attorney on the resolution.

5 Directors

5.1 The Board

- (a) Subject to rule 5.1(b), the directors of the company must comprise the same directors as the Holding Company, provided that the Holding Company is a related body corporate of the company.
- (b) The composition of the Board must at all times be consistent with the requirements in the SIS Act or as otherwise permitted by APRA. To the extent that the Board composition is inconsistent with the requirement in the SIS Act, the Board may take such steps as it determines to be necessary to resolve the inconsistency.

5.2 [Not used].

5.3 [Not used].

5.4 [Not used].

5.5 [Not used].

5.6 [Not used].

5.7 [Not used].

5.8 [Not used].

5.9 [Not used].

5.10 Remuneration of directors

- (a) Each director is entitled to such remuneration out of the funds of the company as determined by the company, but if the company has fixed a limit on the amount of remuneration payable to the directors, the total remuneration of the directors under this rule 5.10 must not exceed that limit.
- (b) The remuneration of directors shall be a share of a fixed sum decided by the company to be the remuneration payable to all directors which is to be divided between the chairperson, the deputy chairperson (if any), the committee chairpersons and the other directors in such proportions as the company determines, and is to be taken to accrue from day to day.
- (c) In addition to their remuneration under rule 5.10(a), the directors are entitled to be paid all travelling and other expenses properly incurred by them in connection with the affairs of the company, including attending and returning from general meetings of the company or meetings of the directors or of committees of the directors.
- (d) If a director renders or is called on to perform extra services or to make any special exertions in connection with the affairs of the company, the directors may arrange for a special remuneration to be paid to that director, either in addition to or in substitution for that director's remuneration under rule 5.10(a).
- (e) Nothing in rule 5.10(a) restricts the remuneration to which a director may be entitled as an officer of the company or of a related body corporate in a capacity other than director, which may be either in addition to or in substitution for that director's remuneration under rule 5.10(a).
- (f) For the purposes of rule 5.10(a), the maximum amount (if any) fixed by the company as remuneration payable to the directors does not include any amount paid by the company or related body corporate:
 - (i) to a superannuation, retirement or pension fund for a director so that the company is not liable to pay the superannuation guarantee charge or similar statutory charge; or
 - (ii) for any insurance premium paid or agreed to be paid for a director under rule 10.4.
- (g) The directors may:
 - (i) at any time after a director dies or otherwise ceases to hold office as a director, pay to the director or a legal personal representative, spouse, relative or dependant of the director, in addition to the remuneration of that

director under rule 5.10(a), a pension or lump sum payment in respect of past services rendered by that director; and

- (ii) cause the company to enter into a contract with the director for the purpose of providing for or giving effect to such a payment.
- (h) The directors may establish or support, or assist in the establishment or support of, funds and trusts to provide pension, retirement, superannuation or similar payments or benefits to or in respect of a director or former director.

5.11 Share qualification

- (a) A director need not hold any shares in the company as a qualification.
- (b) A director who is not a member of the company is entitled to attend and speak at general meetings and at meetings of the holders of a class of shares.

5.12 Interested directors

- (a) A director may hold any other office or place of profit (other than auditor) in the company or any related body corporate in conjunction with his or her directorship and may be appointed to that office or place on such terms as to remuneration, tenure of office and otherwise as the directors think fit.
- (b) A director of the company may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the company or in which the company may be interested as a shareholder or otherwise, and is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of, or from having an interest in, that body corporate.
- (c) The directors may exercise the voting rights conferred by shares in any body corporate held or owned by the company in such manner in all respects as the directors think fit (including voting in favour of any resolution appointing a director as a director or other officer of that body corporate or voting for the payment of remuneration to the directors or other officers of that body corporate) and a director may, if permitted by law, vote in favour of the exercise of those voting rights even though he or she is, or may be about to be appointed, a director or other officer of that other body corporate and, as such, interested in the exercise of those voting rights.
- (d) A director is not disqualified from contracting with the company merely because of being a director of the company.
- (e) No contract made by a director with the company, and no contract or arrangement entered into by or on behalf of the company in which any director may be in any way interested, is avoided or rendered voidable merely because of the director holding office as a director or because of the fiduciary obligations arising out of that office.
- (f) No director contracting with or being interested in any arrangement involving the company is liable to account to the company for any profit realised by or under any contract or arrangement merely because of the director holding office as a director or because of the fiduciary obligations arising out of that office.

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- (g) Subject to the Act, a director who is in any way interested in any contract or arrangement or proposed contract or arrangement may, despite that interest:
 - (i) be counted in determining whether or not a quorum is present at any meeting of directors considering that contract or arrangement or proposed contract or arrangement;
 - (ii) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement; and
 - (iii) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement to which the seal is affixed.

5.13 Powers and duties of directors

- (a) The directors are responsible for managing the business of the company and may exercise to the exclusion of the company in general meeting all the powers of the company which are not required, by the Act or by this constitution, to be exercised by the company in general meeting.
- (b) Without limiting the general nature of rule 5.21(a) but subject to the SIS Act, the directors may exercise all the powers of the company to borrow or raise money in any other way, to charge any of the company's property or business or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.
- (c) The directors may decide how cheques, promissory notes, banker's drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed (as applicable) by or on behalf of the company.
- (d) The directors may pay out of the company's funds all expenses of the promotion, formation and registration of the company and the vesting in it of the assets acquired by it.
- (e) The directors may:
 - (i) appoint or employ any person to be an officer, agent or attorney of the company for such purposes with the powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the directors), for such period and on such conditions as they decide;
 - (ii) authorise an officer, agent or attorney to delegate any of the powers, discretions and duties vested in the officer, agent or attorney; and
 - (iii) subject to any contract between the company and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney of the company at any time, with or without cause.
- (f) A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the directors decide.

5.14 Proceedings of directors

- (a) The directors may meet together to attend to business and adjourn and regulate

their meetings as they decide.

- (b) A meeting of the directors may be held using any technology consented to by all the participating directors (**Approved Technology**) and the consent may be a standing one. The contemporaneous linking together by Approved Technology of a number of the directors sufficient to constitute a quorum, constitutes a meeting of the directors and all the provisions in this constitution relating to meetings of the directors apply, so far as they can and with such changes as are necessary, to meetings of the directors by approved technology.
- (c) A director participating in a meeting by Approved Technology is to be taken to be present in person at the meeting.
- (d) A meeting by Approved Technology is to be taken to be held at the place determined by the chairperson of the meeting as long as at least one of the directors involved was at that place for the duration of the meeting.
- (e) If, before or during the meeting, any technical difficulty occurs as a result of which one or more directors cease to participate, the chairperson may adjourn the meeting until the difficulty is remedied or may, where a quorum of directors remains present, continue with the meeting.

5.15 Convening meetings of directors

- (a) A director may, whenever the director thinks fit, convene a meeting of the directors.
- (b) A secretary must, on the requisition of a director, convene a meeting of the directors.

5.16 Notice of meetings of directors

- (a) Subject to this constitution, notice of a meeting of directors must be given to each person who is at the time of giving the notice a director. A notice of a meeting of directors:
 - (i) must specify the time and place of the meeting;
 - (ii) need not state the nature of the business to be transacted at the meeting;
 - (iii) may be given immediately before the meeting; and
 - (iv) may be given in person or by post or by telephone, fax or other electronic means.
- (b) A director may waive notice of any meeting of directors by notifying the company to that effect in person or by post, telephone, fax or other electronic means.
- (c) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director on leave of absence approved by the directors does not invalidate any act, thing done or resolution passed at the meeting if:
 - (i) the non-receipt or failure occurred by accident or error;
 - (ii) before or after the meeting, the director has waived or waives notice of that

meeting under rule 5.16(b) or has notified or notifies the company of his or her agreement to that thing or resolution personally or by post, telephone, fax or other electronic means; or

- (iii) the director attended the meeting.
- (d) A person who attends a meeting of directors waives any objection that person may have to a failure to give notice of the meeting.

5.17 Quorum at meetings of directors

- (a) No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.
- (b) Unless the company has only one director, a quorum consists of:
 - (i) the greater of two directors and two-thirds of the number of directors in office for the time being including, at least one Employer Director and at least one Member Director; or
 - (ii) such number and/or other combination of directors as may be determined by the directors from time to time either generally or in a particular case.
- (c) If there is a vacancy in the office of director, the remaining director or directors may act. But, if the number of remaining directors is not sufficient to constitute a quorum, the remaining director or directors may act only in an emergency or to increase the number of directors to a number sufficient to constitute a quorum or to call a general meeting of the company.

5.18 Chairperson of directors

- (a) While the Holding Company is a related body corporate of the company, the chairperson of directors will be the chairperson of the Holding Company.
- (b) The chairperson of directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as chairperson at each meeting of directors.
- (c) If at a meeting of directors:
 - (i) there is no chairperson of directors;
 - (ii) the chairperson of directors is not present within 10 minutes after the time appointed for the meeting; or
 - (iii) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,

the directors present must elect one of themselves to be chairperson of the meeting.

- (d) While the Holding Company is a related body corporate of the company, the Holding Company must hold all issued shares in the company.

5.19 Decisions of directors

- (a) A meeting of directors at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under this constitution.
- (b) Subject to the requirements of any relevant legislation, questions arising at a meeting of directors are to be decided by two-thirds of votes cast by the directors in office and any such decision is for all purposes a decision of the directors.

5.20 Written resolutions of directors

- (a) If:
 - (i) all the directors, (other than any director on leave of absence approved by the directors, any director who disqualifies himself or herself from considering the thing or resolution in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest or any director who the directors reasonably believe is not entitled at law to do the thing or to vote on the resolution in question) assent to a document containing a statement to the effect that a thing has been done or resolution has been passed; and
 - (ii) the directors who assent to the document would have constituted a quorum at a meeting of directors held to consider that thing or resolution,

then that thing or resolution is to be taken as having been done at or passed by a meeting of the directors.

- (b) For the purposes of rule 5.20(a):
 - (i) the meeting is to be taken as having been held if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a director or if the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a director;
 - (ii) 2 or more separate documents in identical terms each of which is assented to by one or more directors are to be taken as constituting one document; and
 - (iii) a director may signify assent to a document by signing the document or by notifying the company of the director's assent in person or by post, fax, telephone or other electronic means.
- (c) Where a director signifies assent to a document otherwise than by signing the document, the director must subsequently by way of confirmation sign the document and provide a copy of the signed document to the company's secretary, but failure to do so does not invalidate the thing or resolution to which the document relates.
- (d) Where a document is assented to in accordance with rule 5.20(a), the document is to be taken as a minute of a meeting of directors.

5.21 Committees of directors and delegation to a director

- (a) The directors may delegate any of their powers to a committee or committees consisting of the number of directors they think fit.
- (b) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) The provisions of this constitution applying to meetings and resolutions of directors apply, so far as they can and with such changes as are necessary, to meetings and resolutions of a committee of directors.
- (d) Membership of a committee of directors may, if the directors so resolve, be treated as an extra service or special exertion performed by the members for the purposes of rule 5.10(d).
- (e) The directors may delegate any of their powers to a director.
- (f) A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (g) The acceptance of a delegation of powers by a director may, if the directors so resolve, be treated as an extra service or special exertion performed by the delegate for the purposes of rule 5.10(d).

5.22 Validity of acts

An act done by a person acting as a director or by a meeting of directors or a committee of directors attended by a person acting as a director is not invalidated merely because of:

- (a) a defect in the appointment of the person as a director;
- (b) the person being disqualified from being a director or having vacated office; or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person or the directors or committee (as applicable) when the act was done.

6 Officers

6.1 Secretary

The directors may appoint one or more secretaries.

6.2 Provisions applicable to all officers

- (a) A reference in this rule 6.2 to an officer includes a reference to a secretary appointed under this rule 6 and to the company's officers (as that term is defined by the Act).
- (b) The appointment of an officer may be for the period, at the remuneration and on the conditions the directors think fit.

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- (c) Subject to any contract between the company and the relevant officer, an officer of the company may be removed or dismissed by the directors at any time, with or without cause, and if he or she is also a director, the officer ceases to be a director on termination of his or her employment.
 - (d) The directors may:
 - (i) confer on an officer such powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the directors) as they think fit;
 - (ii) withdraw, suspend or vary any of the powers, discretions and duties so conferred; and
 - (iii) authorise the officer to delegate all or any of the powers, discretions and duties conferred on the officer.
 - (e) An officer need not hold any shares to qualify for appointment.
 - (f) An act done by a person acting as an officer is not invalidated merely because of:
 - (i) a defect in the person's appointment as an officer; or
 - (ii) the person being disqualified from being an officer,if that circumstance was not known by the person when the act was done.

7 Seals

7.1 Common seal

Without limiting the ways in which the company can execute documents in accordance with the Act, if the directors so decide, the company may have a common seal.

7.2 Use of seal

The directors may decide on procedures for the use of the seal.

8 Dividends, Reserves and Profits

8.1 Dividends

The directors have the power to declare or pay dividends.

8.2 Reserves

- (a) The directors may keep such reserves or provisions for such purposes as they decide.
- (b) Setting aside an amount as a reserve or provision does not require the directors to keep the amount separate from the company's other assets or prevent the amount being used in the company's business or being invested as the directors decide.

8.3 Carry forward of profits

The directors must carry forward so much of the profits remaining as is not transferred to a reserve or provision.

9 Winding Up

- (a) Subject to rule 9(b) and 9(c), if upon winding up or dissolution of the company there remains after satisfaction of all of the company's debts and liabilities any property whatsoever, that property must not be distributed amongst the members but must be given or transferred to the Funds proportionately to reflect the value of property which derived from, or which otherwise the company previously received from, each Fund.
- (b) If for any reason it is not reasonably possible to determine the value of property that derives, or has otherwise been received, from each Fund, or it is not reasonably possible to calculate a proportionate distribution among the Funds under rule 9(a), the advice of an actuary registered with the Institute of Actuaries Australia will be obtained to determine a fair and equitable distribution among the Funds. The actuary's advice will be binding.
- (c) If a Fund which would be in receipt of any remaining property under this rule is not in existence at the time of winding up or dissolution of the company, then any property remaining which would have been given or transferred to that Fund must be given or transferred to the trustee of another superannuation fund which the members would regard as being a successor fund to that Fund under the SIS Act. If in the members' opinion there is no successor fund, such remaining property must be given or transferred to some other company, fund, authority or institution which has similar objects to the objects of this company and which prohibits the distribution of its income and property among its members.

10 Indemnity and Insurance

10.1 Persons to whom rules 10.2 and 10.4 apply

Rules 10.2 and 10.4 apply to:

- (a) each person who is or has been a director or officer (within the meaning of rule 5.1) of the company; and
- (b) any other officers or former officers of the company or of its related bodies corporate as the directors in each case decide.

10.2 Indemnity

The company may indemnify, on a full indemnity basis and to the full extent permitted by law, each person to whom this rule 10.2 applies against all losses or liabilities (including costs and expenses) incurred by the person as an officer of the company.

10.3 Extent of indemnity

The indemnity in rule 10.2:

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- (a) is a continuing obligation and is enforceable by a person to whom rule 10.2 applies even though that person has ceased to be an officer of the company; and
 - (b) operates only to the extent that the loss or liability in question is not covered by insurance.

10.4 Insurance

The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this rule 10.4 applies against any liability incurred by the person as an officer of the company where the directors consider it appropriate to do so.

10.5 Savings

Nothing in rule 10.2 or 10.4:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any loss or liability referred to in those rules; or
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom those rules do not apply.

10.6 Deed

Without limiting a person's right under this rule 10, the company may enter into a deed agreeing with the person to give effect to the rights of the person conferred by this rule 10 or the exercise of a discretion under this rule 10, on such terms and conditions as the directors think fit, as long as they are not inconsistent with this rule 10.

11 Access to Documents

- (a) A person who is not a director does not have the right to inspect any of the board papers, books, records or documents of the company, except as provided by law or this constitution, or as authorised by the directors or by a resolution of the members.
- (b) The company may enter into contracts with its directors agreeing to provide continuing access for a specified period after they cease to be a director to board papers, books, records and documents of the company which relate to the period during which the director was a director on such terms and conditions as the directors think fit and which are not inconsistent with this rule 11.

12 Notices

12.1 Notices by the company to members

- (a) The company may give notices, including a notice of general meeting to a member:

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- (i) personally;
 - (ii) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member; or
 - (iii) by sending it to the fax number or electronic address (if any) nominated by the member.
- (b) A notice may be given by the company to the joint holders of a share by giving the notice in the manner authorised by rule 12.1(a) to the joint holder first named in the register of members in respect of the share.
- (c) A notice given to a member in accordance with rule 12.1(a) or 12.1(b) is, despite the occurrence of a Transmission Event and whether or not the company has notice of that occurrence, duly given in respect of any shares registered in that person's name, whether solely or jointly with another person.
- (d) Any person who, because of a transfer of shares, becomes entitled to any shares registered in the name of a member is bound by every notice which, before that person's name and address is entered in the register of members in respect of those shares, is given to the member in accordance with this rule 12.1.
- (e) A certificate signed by a director or secretary of the company to the effect that a notice has been given in accordance with this constitution is conclusive evidence of that fact.

12.2 Notices by the company to directors

Subject to this constitution, a notice may be given by the company to any director either by serving it personally at, or by sending it by post in a prepaid envelope to, the director's usual residential or business address, or by electronic means or fax to such electronic address or fax number, as the director has supplied to the company for giving notices.

12.3 Notices by members or directors to the company

Subject to this constitution, a notice may be given by a member or director to the company by serving it on the company at, or by sending it by post in a prepaid envelope to, the registered office of the company or by fax or electronic means to the principal fax number or the principal electronic address of the company at its registered office.

12.4 Time of service

- (a) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
- (i) in the case of a notice of a general meeting, on the day after the date of its posting; or
 - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (b) Where a notice is sent by fax, service of the notice is to be taken to be effected if the correct fax number appears on the fax report generated by the sender's fax machine and to have been effected at the time the fax is sent.

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- (c) Where a notice is sent by electronic means, service of the notice is to be taken to be effected:
- (i) in the case of an electronic messaging system that contains a delivery verification function, on the generation by the electronic messaging system of a delivery verification notice or log entry, or other confirmation; or
 - (ii) in the case of electronic mail or other electronic messaging system (other than those referred to in rule 12.4(c)(i)), on the delivery to where the addressee is a natural person, the addressee's electronic mail or electronic messaging system account or where the addressee is a corporation, the corporation's computer systems.
- (d) If service under rule 12.4(b) or rule 12.4(c) is on a day which is not a business day or is after 4.00pm (addressee's time), the notice is regarded as having been received at 9.00am on the next following business day.
- (e) For the purposes of rule 12.4(d), business day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in the place concerned.

12.5 Other communications and documents

Rules 12.1 to 12.4 (inclusive) apply, so far as they can and with any necessary changes, to the service of any communication or document.

12.6 Notices in writing

A reference in this constitution to a written notice includes a notice given by fax or electronic transmission or any other form of written communication.

13 General

13.1 Submission to jurisdiction

Each member submits to the non-exclusive jurisdiction of the Supreme Court of Victoria, the Federal Court of Australia and the courts which may hear appeals from those courts.

13.2 Prohibition and enforceability

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