



Mutual Services

Local Government Association
of South Australia

Providing unique cover and risk services

Constitution

LGASA Mutual Pty Ltd
ACN 625 310 045

A proprietary company limited by
shares incorporated in South Australia
under the Corporations Act 2001 (Cth)

www.lga.sa.gov.au/mutual

Table of contents

1. Definitions and interpretation	3
1.1. Definitions	3
1.2. Interpretation.....	4
1.3. Business Day.....	5
1.4. Replaceable Rules not to apply.....	5
2. Proprietary company	5
3. Sole Shareholder Resolutions	5
4. Directors	6
4.1. Number and composition of Directors	6
4.2. Appointment and removal	6
4.3. Retirement of Independent Directors.....	7
4.4. No Share qualification.....	7
4.5. Remuneration	7
4.6. Vacation of office	8
4.7. Alternate Directors	8
5. Powers of Directors	9
5.1. Powers of Directors.....	9
5.2. Wholly-owned subsidiary	9
6. Proceedings of Directors.....	9
6.1. Proceedings.....	9
6.2. Meetings by technology	10
6.3. Chair of Directors	10
6.4. Directors' voting rights and exercise of powers	11
6.5. Material personal interests	11
6.6. Committees.....	12
6.7. Circulating resolutions.....	13
6.8. Sole Director decisions	13
6.9. Defects in appointments.....	13
7. Chief Executive Officer, Secretaries and other officers	14
7.1. Chief Executive Officer.....	14
7.2. Secretaries.....	14

7.3. Other officers	14
8. Execution of documents.....	14
8.1. Seals.....	14
8.2. Execution under common seal.....	15
8.3. Execution without common seal.....	15
8.4. Directors' Interests	15
9. Dividends, interest and reserves	15
9.1. Powers to declare Dividends and pay interest.....	15
9.2. Crediting of Dividends	16
9.3. Deduction of unpaid amounts.....	16
9.4. Distributions in kind.....	16
9.5. Payment of distributions.....	16
10. Capitalisation of profits.....	17
11. Notices.....	18
11.1. Notice requirements.....	18
11.2. When Notices considered given and received.....	18
12. Indemnity of officers, insurance and access	19
13. Winding up.....	20
14. Modification or repeal of this Constitution	20

1. Definitions and interpretation

1.1. Definitions

In this Constitution:

Alternate Director	means a person appointed as alternate director of the Company under rule 4.7.
Board	means the Directors and Alternate Directors present at a meeting, duly convened as a meeting of Directors, at which a quorum is present.
Business Day	means a day on which banks are open for business in Adelaide, South Australia, Australia excluding a Saturday, Sunday or public holiday in that city.
Chair	means the person occupying the position of Chair or acting Chair of the Directors under rule 6.3.
Company	means LGASA Mutual Pty Ltd ACN 625 310 045.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth) and the <i>Corporations Regulations 2001</i> (Cth) as amended from time to time.
Director	means a director of the Company and (where appropriate) includes any Alternate Director.
Dividend	means any distribution (including an interim dividend) made, or any amount credited, by the Company to LGASA (as the sole shareholder of the Company) (excluding amounts debited against the share capital account).
Independent Directors	has the meaning given to that term in rule 4.1(b)(iii) .
LGASA	means Local Government Association of South Australia (ABN 83 058 386 353).
LGASA Director	has the meaning given to that term in rule 4.2(a) .
Related Body Corporate	has the meaning given to it in section 9 of the Corporations Act.
Replaceable Rules	means the replaceable rules referred to in Part 2B.4 and section 141 of the Corporations Act.
Secretary	means a person appointed by the Directors to perform the duties of secretary of the Company.

Securities	means Shares, rights to Shares, options, debentures or any similar rights granted over issued or unissued Shares or any other instruments convertible into Shares in the Company.
Share	means a share in the capital of the Company.
State	has the meaning given to that term in rule <u>4.2(b)</u> .
State Director	has the meaning given to that term in rule <u>4.2(b)</u> .

1.2. Interpretation

In this Constitution unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this Constitution;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Constitution have a corresponding meaning;
- (e) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate (whether or not having a separate legal personality);
- (f) a reference to any thing (including any right) includes a part of that thing, but nothing in this rule 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a rule, party, annexure, exhibit or schedule is a reference to a rule of, and a party, annexure, exhibit and schedule to, this Constitution and a reference to this Constitution includes any rule, annexure, exhibit and schedule;
- (h) a reference to a document (including this Constitution) includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing and includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to any document includes that party's successors and permitted assigns;
- (j) a reference to time is to Adelaide, South Australia, Australia time;
- (k) in this Constitution a reference to any legislation includes all delegated legislation made under it and includes all amendments, consolidations, replacements or re-enactments of any of them, from time to time;
- (l) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;

- (m) a reference to a body, other than a party to this Constitution (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (n) the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in this Constitution do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;
- (o) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (p) a reference to a month is a reference to a calendar month;
- (q) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;
- (r) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5.00 pm on that day, it is taken to have occurred or been done on the next day;
- (s) a reference to '\$', 'A\$', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia; and
- (t) an expression which is not defined in this Constitution has the same meaning as given under the Corporations Act.

1.3. Business Day

If anything under this Constitution is required to be done by or on a day that is not a Business Day that thing must be done by or on the next Business Day.

1.4. Replaceable Rules not to apply

The Replaceable Rules are displaced by and do not apply to this Constitution except to the extent that this Constitution provides otherwise.

2. Proprietary company

- (a) The Company is a proprietary company limited by Shares.
- (b) The Company's sole shareholder shall be LGASA.

3. Sole Shareholder Resolutions

LGASA (as the sole shareholder of the Company) may pass a resolution by recording the resolution and signing the record.

4. Directors

4.1. Number and composition of Directors

- (a) The number of Directors (not including Alternate Directors) must be not less than one and at least one Director must ordinarily reside in Australia. Each Director is to be a natural person. LGASA (as the sole shareholder of the Company) may, by passing a resolution, impose or alter a maximum number of Directors.
- (b) Within nine months of the Company's incorporation, LGASA must establish a Board with the following structure:
 - (i) the LGASA Director appointed pursuant to rule 4.2(a);
 - (ii) subject to receipt of notice from the State in accordance with rule 4.2(b), the State Director appointed pursuant to rule 4.2(c); and
 - (iii) at least three independent Directors with appropriate skills and knowledge to manage the business of the Company comprising:
 - (A) the Chair; and
 - (B) two additional independent Directors,
(together, the **Independent Directors**).

4.2. Appointment and removal

- (a) Subject to receipt by the Company of a consent to act as director of the Company in accordance with section 201D of the Corporations Act, the Chief Executive Officer of LGASA (from time to time) shall be automatically appointed as a Director (**LGASA Director**).
- (b) The Crown in Right of the State Of South Australia, acting through the Minister for Transport, Infrastructure and Local Government (or such other Minister who has responsibility for local government in South Australia from time to time) (**State**) may, by notice in writing to the Company, nominate one person to be a Director (**State Director**).
- (c) Subject to receipt of a notice in accordance with rule 4.2(b) and receipt by the Company of a consent to act as director of the Company in accordance with section 201D of the Corporations Act, the Directors must appoint the person nominated by the State in accordance with rule 4.2(b).
- (d) LGASA may resolve to appoint any person to be a Director to fill a vacancy or as an addition to the existing Directors.
- (e) Other than in respect of the State Director, LGASA may, by passing a resolution:
 - (i) remove a Director from office; and
 - (ii) appoint another person as a Director instead.

4.3. Retirement of Independent Directors

- (a) With effect on and from 1 July 2020, one Independent Director must retire from office on 1 July of each year and is eligible for re-election.
- (b) The Independent Director that retires under rule 4.3(a) is that Independent Director that has held office the longest since last being elected or appointed. Subject to rule 4.3(a), if two or more Independent Directors have been in office for the same period, those Independent Directors may agree which of them will retire. If they do not agree, LGASA will determine which of them must retire.
- (c) Notwithstanding the provisions in this rule 4.3, the Chair is not required to be considered for retirement in accordance with rule 4.3(b) if another Independent Director would also be required to be considered for retirement in accordance with that rule.

4.4. No Share qualification

Directors are not required to hold Shares.

4.5. Remuneration

- (a) The Directors are to be paid for their services as Directors.
- (b) As remuneration for services, each Director is to be paid out of the funds of the Company a sum per annum (accruing from day-to-day) determined by LGASA on recommendation by the Board. The Directors may determine to suspend, reduce or postpone payment of any remuneration if it thinks fit. The expression **remuneration** in this rule does not include any amount which may be paid by the Company under any of rules 4.5(d), 4.5(e), 4.7 and 12.
- (c) Subject to a determination by LGASA to the contrary, a Director who is remunerated as an executive Director shall not be paid fees under rule 4.5(a).
- (d) The Directors may also be entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any meeting of the Directors, committee of the Directors, or otherwise in connection with the Company's business.
- (e) If any Director, with the approval of LGASA, performs extra services or makes any special exertions for the benefit of the Company, LGASA may approve the payment to that Director of special and additional remuneration as the Directors determine having regard to the value to the Company of the extra services or special exertions. Any special or additional remuneration must not include a commission on or percentage of profits or operating revenue or turnover.
- (f) A Director may, with the approval of LGASA, be engaged by the Company in any other capacity (other than Auditor) and may be appointed on terms as to remuneration, tenure of office and otherwise as determined by LGASA.

4.6. Vacation of office

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

- (a) is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a Director;
- (b) resigns by notice in writing to the Company;
- (c) is absent without the consent of the Directors from meetings of the Directors held during a continuous period of six months;
- (d) dies;
- (e) in respect of the LGASA Director, ceases to be employed by LGASA as the Chief Executive Officer; or
- (f) in respect of the State Director, is removed by the State by notice in writing to the Company.

4.7. Alternate Directors

- (a) Each of the:
 - (i) LGASA Director; and
 - (ii) State Director,may appoint any person to act as an alternate in that Director's place, either for a stated period or until the happening of a specified event, whenever by absence or illness or otherwise the LGASA Director or the State Director (as the case may be) is unable to attend to duties as a Director.
- (b) Any appointment in accordance with rule 4.7(a) must be in writing and signed by the relevant Director and a copy of the appointment must be sent to the Company's registered office or given at a meeting of the Directors.
- (c) The appointment takes effect on the date specified in the appointment;
- (d) The following provisions apply to any Alternate Director:
 - (i) the appointment of the Alternate Director is terminated or suspended on receipt at the registered office of notice in writing from the Director by whom the Alternate Director was appointed;
 - (ii) the Alternate Director is entitled to receive notice of meetings of the Directors and to attend and vote at the meetings if the Director by whom the Alternate Director was appointed is not present;
 - (iii) the Alternate Director is entitled to exercise all the powers (except the power to appoint an Alternate Director) and perform all the duties of a Director, to the extent the Director by whom the Alternate Director was appointed subject to any limitations set out in the instrument appointing the Alternate Director;

- (iv) the Alternate Director is not, unless the Directors otherwise determine, (except for the right to reimbursement for expenses under rule 4.5(d) entitled to receive any remuneration as a Director of the Company, and any remuneration (not including remuneration authorised by the Directors or reimbursement for expenses) paid to the Alternate Director by the Company is to be deducted from the remuneration of the Director by whom the Alternate Director was appointed;
- (v) the office of the Alternate Director is terminated on the death of, or termination of office by, the Director by whom the Alternate Director was appointed;
- (vi) the Alternate Director is not to be taken into account in determining the number of Directors; and
- (vii) the Alternate Director is, while acting as a Director, responsible to the Company for the Alternate Director's own acts and defaults and is not the agent of the Director by whom the Alternate Director was appointed.

5. Powers of Directors

5.1. Powers of Directors

- (a) The business of the Company is managed by the Directors, who may exercise all powers of the Company which are not, by the law or this Constitution, required to be exercised by the Company in general meeting.
- (b) Any two Directors of the Company (or if the Company has only one Director, that Director), may sign, draw, accept, endorse or otherwise execute a negotiable instrument. The Directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.
- (c) The Directors may, on the terms and conditions and with any restrictions as they determine, delegate to a person any of the powers exercisable by them and may at any time withdraw, suspend or vary all or any of those powers conferred on that person. Any powers which are conferred may be concurrent with or to the exclusion of their own powers. The delegation must be recorded in the Company's minute book in accordance with section 251A of the Corporations Act.

5.2. Wholly-owned subsidiary

At any time when the Company is a wholly-owned subsidiary of a body corporate (the **Holding Company**), each Director is authorised to act in the best interests of the Holding Company.

6. Proceedings of Directors

6.1. Proceedings

- (a) The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they determine.

- (b) A Directors' meeting may be called by a Director giving no less than 48 hours' notice to every Director unless this requirement is waived by all Directors.
- (c) A notice may be given by mail (electronic or otherwise), personal delivery or facsimile transmission to the usual place of business or residence of the Director or at any other address given to the Secretary by the Director or by any technology agreed by all the Directors.
- (d) A Notice of the Meeting that is signed by the Company secretary is to be sent to all Directors that sets out:
 - (e) the date, time and place of the meeting; and
 - (f) the items that are to be included on the agenda.
- (g) Subject to rule 6.1(f), three Directors (including the LGASA Director) form a quorum and the quorum must be present at all times during the meeting.
- (h) Where there is only a sole Director, the sole Director may pass a resolution by recording it and signing it.

6.2. Meetings by technology

- (a) For the purposes of the Corporations Act, each Director, by consenting to be a Director (or by reason of the adoption of this Constitution), consents to the use of each of the following technologies for holding a Directors' meeting:
 - (i) video conferencing;
 - (ii) telephone;
 - (iii) any other technology which permits each Director to communicate with every other Director; or
 - (iv) any combination of these technologies.

A Director may withdraw the consent given under this rule in accordance with the Corporations Act.

- (b) Where the Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors:
 - (i) the participating Directors are, for the purpose of every provision of this Constitution concerning meetings of the Directors, taken to be assembled together at a meeting and to be present at that meeting; and
 - (ii) all proceedings of those Directors conducted in that manner are as valid and effective as if conducted at a meeting at which all of them were physically present in the one location.

6.3. Chair of Directors

Where a meeting of Directors is held and the Chair:

- (a) is not present within 30 minutes of the time appointed for the holding of the meeting; or
- (b) does not wish to chair a meeting,

the Directors present may elect one of the Independent Directors to be chair of the meeting.

6.4. Directors' voting rights and exercise of powers

- (a) Subject to this Constitution, questions arising at a meeting of Directors are decided (where there is more than one Director of the Company) by a majority of votes of Directors entitled to vote on the resolution.
- (b) In the case of an equality of votes, the Chair of the meeting does not have a casting vote in addition to any vote they have in their capacity as a Director.
- (c) Subject to rule 6.5 and the Corporations Act, a Director:
 - (i) who has an interest in a matter may vote in respect of that matter if it comes before the Directors and be counted as part of the quorum;
 - (ii) may enter into contracts with, or otherwise have dealings with, the Company; and
 - (iii) may hold other offices in the Company.
- (d) A Director is not liable to account to the Company for any profit realised by any contract or arrangement, by reason only of holding the office of Director or of the fiduciary relationship established by the office.
- (e) Subject to the Corporations Act, a Director or any person who is an associate of a Director may participate in any issue by the Company of financial products.
- (f) Despite having an interest in any contract or arrangement a Director may participate in the execution of any document evidencing or connected with the contract or arrangement, whether by signing, sealing or otherwise.

6.5. Material personal interests

- (a) A Director is not disqualified from the Director's office by contracting with the Company or any Related Body Corporate of the Company in any capacity by reason of holding of the office of Director.
- (b) In relation to a contract or arrangement in which a Director has a material personal interest:
 - (i) the fact that the Director signed the document evidencing the contract or arrangement will not in any way affect its validity;
 - (ii) a contract or arrangement made by the Company or any of its Related Bodies Corporate with a Director is not void or voidable merely because the Director is a party to the contract or arrangement or otherwise interested in it; and

- (iii) the Director will not be liable to account to the Company for any profit derived in respect of the contract or arrangement merely because of the Director's office or the fiduciary relationship it entails.
- (c) If a Director has a material personal interest in a matter that relates to the affairs of the Company and that interest has been disclosed in accordance with the Corporations Act or is of a type that does not require disclosure:
 - (i) the Director may vote on matters that relate to the interest;
 - (ii) any transactions that relate to the interest may proceed;
 - (iii) the Director can retain benefits from the transaction even though the Director has the interest; and
 - (iv) the Company cannot avoid the transaction merely because of the existence of the interest.
- (d) If the material personal interest of a Director requires disclosure in accordance with the Corporations Act, rule 6.5(c)(iii) and rule 6.5(c)(iv) only apply if the disclosure is made before the transaction is entered into.
- (e) Nothing in the preceding provisions of this rule affects the duty of a Director who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Directors' duties or interests as a Director, to declare at a meeting of Directors, the fact and the nature, character and extent of the conflict.
- (f) The Secretary must record any declarations made or notices given by a Director under this Constitution in the minutes of the meeting.
- (g) Rules 6.5(d) and 6.5(e) do not apply to a Director who is a sole Director of the Company.

6.6. Committees

- (a) The Directors may delegate any of their powers to committees consisting of any one or more Directors or any other person or persons as the Directors think fit. In the exercise of delegated power, any committee formed or person or persons appointed to the committee must conform to any regulations that may be imposed by the Directors. A delegate of the Directors may be authorised to sub-delegate any of the powers for the time being vested in the delegate.
- (b) The Directors must establish and maintain an audit committee which shall comprise the persons appointed to the audit committee of LGASA.
- (c) The Directors must establish and maintain an advisory group comprised of at least 8 persons each being a chief executive officer of a member of the Local Government Association Mutual Liability Scheme or the Local Government Association Workers' Compensation Scheme and, for the purposes of this rule 6.6(c), the Directors may utilise the LGASA CEOs Advisory Group.

- (d) The meetings and proceedings of any committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Directors so far as they are applicable and are not in conflict with or superseded by, any regulations made by the Directors under rule 6.6(a).
- (e) Nothing in this rule 6.6 limits the power of the Directors to delegate.

6.7. Circulating resolutions

A resolution in writing, signed by all of the Directors for the time being entitled to receive notice of a meeting of the Directors, shall be as valid and effectual as if it had been passed at a meeting of the Directors duly convened and held. Separate copies of a document may be used for signing by Directors if the wording of the resolution is identical in each copy. The resolution is passed when the last Director signs.

6.8. Sole Director decisions

- (a) Where the Directors consist of one person only, nothing in this Constitution limits the powers of that person under the Corporations Act to:
 - (i) pass a resolution; or
 - (ii) make a declaration,by recording it and signing the record.
- (b) Where the Directors or a committee consists of one person only, a document signed by that person which records a decision of the person:
 - (i) constitutes a decision of the Directors or committee as the case may be, and is valid and effective as if it were a decision made at a meeting of Directors or the committee; and
 - (ii) has effect as a minute of that decision.

6.9. Defects in appointments

All actions at any meeting of the Directors or by a committee or by any person acting as a Director are, despite the fact that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been properly appointed and was qualified and continued to be a Director or a member of the committee.

7. Chief Executive Officer, Secretaries and other officers

7.1. Chief Executive Officer

- (a) LGASA, upon the recommendation of the Board, may from time to time appoint any person to the position of Chief Executive Officer of the Company.
- (b) LGASA may at any time terminate the appointment of a person holding the position of Chief Executive Officer of the Company.

7.2. Secretaries

- (a) Subject to any contrary provisions of the Corporations Act, a Secretary or Secretaries of the Company may also be appointed by the Directors. The Directors may also appoint acting and assistant Secretaries.
- (b) At least one Secretary must be ordinarily resident in Australia.
- (c) A Secretary holds office on the terms and conditions, as to remuneration and otherwise, as the Directors decide.
- (d) The Directors may at any time terminate the appointment of a Secretary.
- (e) Where the Company has one Director only and that Director is also the Secretary of the Company, the Shareholders may terminate the appointment of the Secretary.

7.3. Other officers

- (a) The Directors may from time to time:
 - (i) create any other position or positions in the Company with the powers and responsibilities as the Directors may from time to time confer; and
 - (ii) appoint any person, whether or not a Director, to any position or positions created under rule 7.3(a)(i).
- (b) The Directors may at any time terminate the appointment of a person holding a position created under rule 7.3(a)(i) and may abolish the position.

8. Execution of documents

8.1. Seals

- (a) The Company may have a common seal and a duplicate common seal which are to be used by the Company as determined by the Directors.
- (b) The seal must be used only by the authority of the Board.

8.2. Execution under common seal

If the Company does have a common seal then it may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:

- (a) two Directors of the Company;
- (b) a Director and a Secretary;
- (c) if the Company has a sole director who is also the sole Secretary – that Director; or
- (d) any person duly authorised to sign on behalf of the Company, whether under authority of a power of attorney or otherwise.

8.3. Execution without common seal

The Company may execute a document without using a common seal if the document is signed by:

- (a) two Directors of the Company;
- (b) a Director and a Secretary;
- (c) if the Company has a sole director who is also the sole Secretary – that Director; or
- (d) any person duly authorised to sign on behalf of the Company, whether under authority of a power of attorney or otherwise.

8.4. Directors' Interests

A Director may sign a document to which the seal of the Company is fixed notwithstanding that the director is interested in the contract or arrangement to which the document relates.

9. Dividends, interest and reserves

9.1. Powers to declare Dividends and pay interest

- (a) Subject to any special rights or restrictions attached to any Shares and the requirements under the Corporations Act, the Directors may determine that a Dividend is payable, and may fix:
 - (i) the amount;
 - (ii) the time for payment; and
 - (iii) the method of payment.

The methods of payment may include the payment of cash, the issue of Securities, the grant of options and the transfer of assets.

- (b) No Dividend bears interest against the Company.

- (c) The Directors may declare and the Company may pay a Dividend in accordance with section 254T of the Corporations Act.

9.2. Crediting of Dividends

- (a) Subject to any special rights or restrictions attached to any Shares, every Dividend is to be paid according to the amounts paid or credited as paid on the Shares.
- (b) An amount paid or credited as paid on a Share in advance of a call is not taken for the purposes of rule 9.2(a) to be paid or credited as paid on the Share.
- (c) Subject to any special rights or restrictions attached to any Shares, the Directors may from time to time resolve that Dividends are to be paid out of a particular source or particular sources, and in those circumstances the Directors may in their absolute discretion:
 - (i) allow LGASA (as the sole shareholder of the Company) to elect from which specified sources the Dividend may be paid by the Company; and
 - (ii) where elections are permitted and LGASA fails to make an election, identify the particular source from which Dividends are payable.

9.3. Deduction of unpaid amounts

The Directors may apply any part of any Dividend otherwise payable to LGASA (as the sole shareholder of the Company) towards satisfaction of all sums of money presently payable by LGASA to the Company on account of calls or otherwise in relation to Shares in the Company.

9.4. Distributions in kind

- (a) The Directors may, when declaring a Dividend, direct payment of the Dividend wholly or partly by the distribution of specific assets including paid up shares in or debentures of another body corporate.
- (b) Where a difficulty arises in regard to a distribution under rule 9.4(a), the Directors may:
 - (i) settle the matter as they determine and fix the value for distribution of the specific assets or any part of those assets;
 - (ii) decide that cash payments may be made, and make the payments to LGASA (as the sole shareholder of the Company) on the basis of the value fixed by them in order to appropriately adjust the rights of LGASA as the Directors determine in their discretion; or
 - (iii) vest any specific assets in trustees.

9.5. Payment of distributions

- (a) Any Dividend, interest or other money payable in cash in respect of Shares may be paid by any of the following means, in the Company's discretion, at the sole risk of the intended recipient:

- (i) by cheque sent through the post directed to:
 - (A) the address of LGASA as shown in the register of shareholders of the Company; or
 - (B) to any other address as LGASA in writing directs;
 - (ii) by electronic funds transfer to an account with a bank or other financial institution nominated by LGASA and acceptable to the Company; or
 - (iii) by any other means determined by the Directors;
- or may otherwise be paid according to law.
- (b) Payments of Dividends and other distributions by the Company must be made in Australian dollars.
 - (c) Subject to law, all Dividends unclaimed may be invested or otherwise used by the Directors for the benefit of the Company until claimed or otherwise paid according to law.

10. Capitalisation of profits

- (a) LGASA (as the sole shareholder of the Company) or the Directors may resolve:
 - (i) to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account, profit and loss account or otherwise available for distribution to LGASA (as the sole shareholder of the Company); and
 - (ii) that the sum referred to in rule 10(a)(i) be applied, in any of the ways mentioned in rule 10(b), for the benefit of LGASA (as the sole shareholder of the Company) in full satisfaction of their interest in the capitalised sum, in the proportions to which LGASA would have been entitled in a distribution of that sum by way of Dividend or if there is no proportional entitlement, as the Directors determine.
- (b) The ways in which a sum may be applied for the benefit of LGASA under rule 10(a) are:
 - (i) in paying up any amounts unpaid on Shares held by LGASA;
 - (ii) in paying up in full unissued Shares to be issued to LGASA as fully paid;
 - (iii) partly as mentioned in rule 10(b)(i) and partly as mentioned in 10(b)(ii); or
 - (iv) any other application permitted by law.
- (c) Where the conditions of issue of a partly paid Share provide, the holder is entitled to participate in any application of a sum under rule 10(b) to a greater extent than would have been the case had those funds been distributed by Dividend but not to any greater extent than permitted by the terms of issue.

- (d) The Directors may do all things they consider necessary to give effect to the resolution and, in particular, to the extent they consider necessary to adjust the rights of LGASA (as the sole shareholder of the Company), may:
 - (i) fix the value for distribution of the specific assets or any part of those assets;
 - (ii) issue fractional certificates or make cash payments in cases where Shares become issuable in fractions or determine that fractions may be disregarded or that any fractional entitlements are to be increased to the next whole number;
 - (iii) vest any cash or specific assets in trustees on trust for the persons entitled as they determine; and
 - (iv) authorise any person to make, on behalf of LGASA (as the sole shareholder of the Company), an agreement with the Company providing for the issue to LGASA, credited as fully paid up, of any further Shares or for the payment by the Company on their behalf the amounts or any part of the amounts remaining unpaid on their existing Shares by the application of their respective proportions of the sum resolved to be capitalised and any agreement made under that authority is effective and binding on LGASA.

11. Notices

11.1. Notice requirements

Any notice, demand, approval, consent or other communication under this agreement (**Notice**) must be in writing in English or accompanied by a certified translation into English and must be:

- (a) delivered personally;
- (b) sent by facsimile;
- (c) sent by regular post (or airmail if posted to or from a place outside Australia); or
- (d) sent by email,

to a party at the address of the party set out in the relevant Company register (**Nominated Contact Details**).

11.2. When Notices considered given and received

A Notice given in accordance with rule 11.1 takes effect when received (or such later time as specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent from and to a place within Australia by regular post, at 9:00 am on the sixth Business Day after the date of posting;
- (c) if sent from a place within Australia to a place outside Australia by airmail, at 9:00 am on the tenth Business Day after the date of posting;

- (d) if sent from a place outside Australia by airmail, at 9.00 am on the twelfth Business Day after the date of posting;
- (e) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the Notice, unless within four business hours (being a period of time between 9.00 am and 5.00 pm on a Business Day) after the transmission, the recipient informs the sender that it has not received the entire Notice;
- (f) if sent by email to the email address set out in the Notified Contact Details, when the email (including any attachment) is sent to the receiving party at that email address, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00 pm on a Business Day, the Notice is taken to be received at 9.00 am on the next Business Day after that delivery, receipt or transmission.

12. Indemnity of officers, insurance and access

- (a) The Company is to indemnify each officer of the Company out of the assets of the Company to the extent permitted at law against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer for the period ending seven years after the date the officer ceases to be an officer of the Company, except for fraud and wilful misconduct or any liability arising out of conduct involving lack of good faith.
- (b) Subject to rule 12, where the Directors consider it appropriate, the Company may execute an indemnity document in any form in favour of any officer of the Company or a subsidiary.
- (c) Where the Directors consider it appropriate, the Company may to the relevant extent:
 - (i) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company or a subsidiary against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer; and
 - (ii) bind itself in any contract or deed with any officer of the Company to make the payments.
- (d) Where the Directors consider it appropriate, the Company may:
 - (i) give a former Director access to certain papers, including documents provided or available to the Directors and other papers referred to in those documents; and
 - (ii) bind itself in any contract with a Director or former Director to give the access.
- (e) In this rule 12:
 - (i) **officer** means:

- (A) a Director, Secretary or executive officer; or
 - (B) a person appointed as a trustee by, or acting as a trustee at the request of, the Company,
- and includes a former officer;
- (ii) **duties of the officer** includes, in any particular case where the Directors consider it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the Company or, where applicable, the subsidiary of the Company to any other corporation;
 - (iii) **to the relevant extent** means:
 - (A) to the extent the Company is not precluded by law from doing so;
 - (B) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and
 - (C) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation; and
 - (iv) **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.

13. Winding up

If the Company is wound up, whether voluntarily or otherwise, the liquidator may transfer any or all of the assets of the Company to, or at the direction of, LGASA (as the sole shareholder of the Company).

14. Modification or repeal of this Constitution

This Constitution and any of its provisions may be modified, repealed or replaced by a resolution of LGASA (as the sole shareholder of the Company).



Mutual Services

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Providing unique cover and risk services

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