

## BABCOCK & BROWN WIND PARTNERS

Babcock & Brown Wind Partners Limited · ABN 39 105 051 616  
Babcock & Brown Wind Partners Trust · ARSN 116 244 118  
Babcock & Brown Wind Partners (Bermuda) Limited · ARBN 116 360 715  
Level 23 The Chifley Tower · 2 Chifley Square · Sydney NSW 2000 Australia  
T +61 2 9229 1800 · F +61 2 9231 5619 · www.bbwindpartners.com



### ASX Release

29 April 2009

### **BBW NAME CHANGE AND UPDATED CONSTITUTIONS**

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In relation to the extraordinary general meetings of securityholders of Babcock & Brown Wind Partners (ASX: BBW) held today approving the change of name of Babcock & Brown Wind Partners Limited and Babcock & Brown Wind Partners (Bermuda) Limited:

- (a) attached is a certificate of registration on change of name for Babcock & Brown Wind Partners Limited (now known as **Infigen Energy Limited**);
- (b) the responsible entity of Babcock & Brown Wind Partners Trust has determined that the name of the Trust be changed to **Infigen Energy Trust**; and
- (c) the responsible entity of the Trust, a wholly-owned subsidiary of Infigen Energy Limited, has also changed its name to **Infigen Energy RE Limited**.

The ASX trading code of the securities of Babcock & Brown Wind Partners (now known as **Infigen Energy**) is expected to change from "BBW" to "**IFN**" effective from Monday, 4 May 2009.

Consistent with the other matters approved at the general meetings held today, also attached are the following:

- (a) the Constitution of Babcock & Brown Wind Partners Limited (now known as Infigen Energy Limited), with amendments approved in accordance with the securityholders' resolutions;
- (b) the Bye-Laws of Babcock & Brown Wind Partners (Bermuda) Limited (to be known as Infigen Energy (Bermuda) Limited), with amendments approved in accordance with the securityholders' resolutions; and
- (c) the Constitution of Babcock & Brown Wind Partners Trust (now known as Infigen Energy Trust), with amendments approved by the Board of the responsible entity (a copy of the amendments has been lodged with ASIC today).

### **ENDS**

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#### **Further Information:**

Rosalie Duff  
Head of Investor Relations & Media  
Babcock & Brown Wind Partners  
Phone: + 61 2 9216 1362

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## BABCOCK & BROWN WIND PARTNERS

### **About Babcock & Brown Wind Partners**

Babcock & Brown Wind Partners is a pure renewable energy business which owns and operates wind farms on three continents. BBW is the leading wind energy generator in Australia and the fourth largest in the USA. BBW listed on the Australian Securities Exchange on 28 October 2005 and has a market capitalisation of approximately A\$1.0 billion.

BBW's business comprises interests in 41 wind farms that have a total installed capacity of approximately 2,246MW and are diversified by wind resource, currency, equipment supplier, off-take arrangements and regulatory regime.

BBW is a stapled entity comprising Babcock & Brown Wind Partners Limited (ABN 39 105 051 616), Babcock & Brown Wind Partners Trust (ARSN 116 244 118) and Babcock & Brown Wind Partners (Bermuda) Limited (ARBN 116 360 715).

At an Extraordinary General Meeting held today, securityholder approval was given to change the name of Babcock & Brown Wind Partners to **Infigen Energy** and to establish an equity incentive scheme for employees.

For further information please visit our website: [www.bbwindpartners.com](http://www.bbwindpartners.com)

MALLESONS STEPHEN JAQUES  
Level 61  
1 Farrer Place  
SYDNEY NSW 2000

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## Certificate of Registration on Change of Name



This is to certify that

**BABCOCK & BROWN WIND PARTNERS LIMITED**

**Australian Company Number 105 051 616**

did on the twenty-ninth day of April 2009 change its name to

**INFIGEN ENERGY LIMITED**

**Australian Company Number 105 051 616**

The company is a public company.

The company is limited by shares.

The company is registered under the Corporations Act 2001 and is taken to be registered in Victoria and the date of commencement of registration is the eleventh day of June, 2003.

Issued by the  
Australian Securities and Investments Commission  
on this twenty-ninth day of April, 2009.

A handwritten signature in black ink, appearing to read 'A. D'Aloisio'.

Anthony Michael D'Aloisio  
Chairman

CERTIFICATE

# Constitution

of

## **Infigen Energy Limited** (ACN 105 051 616)

**A Company Limited by Shares**

**(consolidated to include amendments made by resolution of  
members on 29 April 2009)**

**Mallesons Stephen Jaques**

Level 60

Governor Phillip Tower

1 Farrer Place

Sydney NSW 2000

(61 2) 9296 2000

(61 2) 9296 3999

Email [syd@mallesons.com](mailto:syd@mallesons.com)

DX 113 Sydney

[www.mallesons.com](http://www.mallesons.com)

Ref: GH/MMcF

# Constitution

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## **1 Share capital and variation of rights**

### **1.1 Power of Directors to issue shares**

The issue of shares in the Company is under the control of the Directors who:

- (a) may issue or dispose of shares to any person at any time and on any terms and conditions and having attached to them any preferred, deferred or other special rights or restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the Directors think fit;
- (b) may grant to any person an option over shares or pre-emptive rights at any time and for any consideration as they think fit; and
- (c) have the right to settle the manner in which fractions of a share, however arising, are to be dealt with,

subject to the Stapling Provisions, the Corporations Act, the Listing Rules and any special rights conferred on the holders of any shares or class of shares.

### **1.2 Issue of further shares - no variation**

The rights conferred on the holders of the shares of any class are not to be taken as varied by the issue of further shares ranking equally with the first-mentioned shares unless:

- (a) expressly provided by the terms of issue of the first-mentioned shares; or
- (b) required by the Corporations Act or, while the Company remains on the official list of ASX, the Listing Rules.

### **1.3 Variation of class rights**

If at any time the capital of the Company is divided into different classes of shares, the special rights for the time being attached to any class of shares on issue may from time to time (whether or not the Company is being wound up) be varied subject to any necessary additional requirement to comply with the provisions of the Corporations Act and the Listing Rules:

- (a) in such manner (if any) as may be provided by those rights; or
- (b) in the absence of any such provision, with the consent in writing of the holders of three quarters in nominal value of the issued shares in that class, or with the sanction of a Special Resolution passed at a separate meeting of the holders of the shares of that class,

but not otherwise.

#### **1.4 Class Meetings**

The provisions of this Constitution relating to general meetings apply so far as they are capable of application and with any necessary changes to every separate meeting of the holders of a class of shares held under the Corporations Act except that:

- (a) a quorum is constituted by at least two persons who hold or represent the holders of shares of the class (unless only one person holds all of the shares of the class, in which case that person constitutes a quorum); and
- (b) any holder of shares of the class, present in person or by proxy, or attorney or Representative, may demand a poll.

#### **1.5 Non-recognition of interests**

Except as required by law, the Company is not required to recognise:

- (a) a person as holding a share on any trust; or
- (b) any other interest in any share or any other right in respect of a share except an absolute right of ownership in the registered holder, whether or not it has notice of the interest or right.

#### **1.6 Joint holders of shares**

Where two or more persons are registered as the joint holders of shares then they are taken to hold the shares as joint tenants with rights of survivorship, but the Company is not bound:

- (a) to register more than three persons as joint holders of a share; or
- (b) to issue more than one certificate or holding statement in respect of shares jointly held.

#### **1.7 Ordinary Shares**

The holders of the Ordinary Shares are:

- (a) entitled to receive notice of and attend any meeting of the Company and are entitled to vote on all matters;
- (b) entitled to such dividends as may be declared by the Directors from time to time; and
- (c) in the event of the winding up or dissolution of the Company, whether voluntary or involuntary or for the reorganisation or otherwise or upon the distribution of capital, after the capital paid up on preference shares on issue, if any has been paid to the holders of these shares, entitled pari passu to receive a distribution of capital paid up on the Ordinary Shares and to share pari passu in the surplus assets of the Company.

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## **2 Issue of IFN Stapled Securities**

### **2.1 Paramountcy**

The provisions of this article 2 apply notwithstanding the provisions of article 1.

### **2.2 Stapling**

From the Stapling Commencement Date, each Ordinary Share will, subject to article 23.12, be Stapled to one Stapled Trust Unit (and any other Attached Securities that are from time to time Stapled to the Ordinary Share) to form a IFN Stapled Security.

Each Ordinary Share (if any) allotted and issued before Stapling applies will, subject to article 23.12, from the Stapling Commencement Date become Stapled to one Stapled Trust Unit to form (along with any other Attached Securities that are from time to time Stapled to the Ordinary Share) a IFN Stapled Security.

If further Attached Securities are from time to time Stapled to the Ordinary Shares the intention is that, so far as the law permits, an Ordinary Share and one of each of the Attached Securities which are stapled together shall be treated as one security (IFN Stapled Security).

While Stapling applies, the number of issued Ordinary Shares must equal the number of issued Attached Securities of each category at that time.

This article 2 does not restrict the issue of shares which are not Ordinary Shares. Only Ordinary Shares will be stapled to Stapled Trust Units or other Attached Securities.

### **2.3 Registration**

The Stapled Securities must be registered in the IFN Stapled Security Register and, subject to articles 1.5 and 1.6, the Company must issue a certificate, or a holding statement in accordance with the requirements of the CS Facility in respect of the IFN Stapled Securities, identifying the IFN Stapled Securities to which the certificate or holding statement relates.

### **2.4 No issue without corresponding issue of Attached Securities**

The Directors may not allot or issue an Ordinary Share unless there is an issue at the same time of an Attached Security of each category to the same person to form a IFN Stapled Security.

### **2.5 Partly-paid shares**

The Directors may allot or issue any share on the basis that the issue price is payable by instalments. If an Ordinary Share is to be issued as part of a IFN Stapled Security and the Attached Securities are to be partly paid the Ordinary Share must be issued with terms for the making and payment of calls and forfeiture which are compatible with the terms of issue of the Attached Securities.

### **2.6 Shares to remain Stapled**

Subject to article 23.12, each issued Ordinary Share will remain Stapled for so long as those shares remain on issue.

While Stapling applies:

- (a) the Directors and the Company must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so, as the case may be, would result directly or indirectly in any Ordinary Share no longer being Stapled to the relevant Attached Securities to form a IFN Stapled Security;
- (b) without limiting paragraph (a), the Directors and the Company must not re-organise any Ordinary Shares unless at the same time there is a corresponding re-organisation of the relevant Attached Securities that are Stapled to those shares to form IFN Stapled Securities so that the person holding Ordinary Shares holds an equal number of Attached Securities of each category.

For the purposes of this article 2.6, the term “re-organise” has the meaning given in Listing Rules 7.18 to 7.24 (inclusive) and the term “re-organisation” has a corresponding meaning and

includes any consolidation, division, cancellation, subdivision, buy back or reduction of any share capital.

## **2.7 IFN Stapled Security Register**

The Directors must maintain or cause to be maintained the IFN Stapled Security Register which records the names and addresses of the Members holding Ordinary Shares, the number of Ordinary Shares held, the number of relevant Attached Securities held by the Members and any additional information required by the Corporations Act, the Listing Rules or by the Directors from time to time. The Directors may establish and maintain a Register jointly with:

- (a) the register of Stapled Trust Unitholders; and
- (b) if applicable, the register of holders of other Attached Securities.

The IFN Stapled Security Register will, for so long as Stapling applies, be deemed to constitute part of the Register of Members, and in this case all other provisions of this Constitution applicable to the Register of Members will apply only to any part of the Register of Members kept in addition to the IFN Stapled Security Register.

The Directors must maintain in accordance with the Corporations Act a Register of Members recording details of any class of shares other than Ordinary Shares.

## **2.8 Amendment to Stapling Provisions**

Without limitation to the provisions of this Constitution or the Corporations Act, no Stapling Provision (including this article 2.8) may be deleted or amended without the approval of a Special Resolution of the Unitholders.

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# **3 Lien**

## **3.1 Lien on share**

The Company has a first and paramount lien on every share for:

- (a) all due and unpaid calls and instalments in respect of that share;
- (b) all money which the Company has been called on by law to pay, and has paid, in respect of that share;
- (c) interest at the Prescribed Interest Rate on the amount due from the date it becomes due until payment, such interest being calculated daily and payable monthly in arrears; and

- (d) reasonable expenses of the Company in respect of the default on payment.

### **3.2 Lien on loans under employee incentive schemes**

The Company also has a first and paramount lien on each share registered in the name of the Member for all money payable to the Company by the Member under loans made under an employee incentive scheme.

### **3.3 Lien on distributions**

A lien on a share under article 3.1 (“Lien on share”) or 3.2 (“Lien on loans under employee incentive schemes”) extends to all distributions in respect of that share, including dividends.

### **3.4 Exemption from article 3.1 or 3.2**

The Directors may at any time exempt a share wholly or in part from the provisions of article 3.1 (“Lien on share”) or 3.2 (“Lien on loans under employee incentive schemes”).

### **3.5 Extinguishment of lien**

The Company’s lien on a share is extinguished if a transfer of the share is registered without the Company giving notice of the lien to the transferee.

### **3.6 Company’s rights to recover payments**

A Member must reimburse the Company on demand in writing for all payments the Company makes to a government or taxing authority in respect of the Member, the death of a Member or the Member’s shares or any distributions on the Member’s shares, including dividends, where the Company is either:

- (a) obliged by law to make the relevant payment; or
- (b) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxing authority that the Company is obliged by law to make the relevant payment.

The Company is not obliged to advise the Member in advance of its intention to make the payment.

### **3.7 Reimbursement is a debt due**

The obligation of the Member to reimburse the Company is a debt due to the Company as if it were a call on all the Member’s shares, duly made at the time when the written demand for reimbursement is given by the Company to the Member. The provisions of this Constitution relating to non-



payment of calls, including payment of interest and sale of the Member's shares under lien, apply to the debt.

### **3.8 Sale under lien**

Subject to article 3.9 ("Limitations on sale under lien"), the Company may sell, in any manner the Directors think fit, any share on which the Company has a lien and an equal number of Attached Securities.

### **3.9 Limitations on sale under lien**

A share on which the Company has a lien may not be sold by the Company unless:

- (a) an amount in respect of which the lien exists is presently payable; and
- (b) the Company has, not less than 14 days before the date of sale, given to the registered holder of the share or the person entitled to the share by reason of the death or bankruptcy of the registered holder, a notice in writing setting out, and demanding payment of, the amount which is presently payable in respect of which the lien exists.

### **3.10 Transfer on sale under lien**

For the purpose of giving effect to a sale under article 3.8 ("Sale under lien"), the Company may receive the consideration, if any, given for the share and the Attached Securities so sold and may execute a transfer of the share and the Attached Securities sold in favour of the purchaser of the share and the Attached Securities, or do all such other things as may be necessary or appropriate for it to do to effect the transfer. The purchaser is not bound to see to the application of the purchase money.

### **3.11 Irregularity or invalidity**

The title of the purchaser to the share and the Attached Securities is not affected by any irregularity or invalidity in connection with the sale or disposal of the share and the Attached Securities.

### **3.12 Proceeds of sale**

The proceeds of a sale under article 3.8 ("Sale under lien") must be applied by the Company in payment of the amount in respect of which the lien exists as is presently payable, and the residue, if any, must be paid to the person entitled to the share immediately before the sale.

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## **4 Calls on shares**

### **4.1 Directors to make calls**

The Directors may:

- (a) make calls on a Member in respect of any money unpaid on the shares of that Member, if the money is not by the terms of issue of those shares made payable at fixed times;
- (b) make a call payable by instalments; and
- (c) revoke or postpone a call.

### **4.2 Time of call**

A call is taken to be made at the time when the resolution of the Directors authorising the call is passed.

### **4.3 Members' liability**

Each Member must upon receiving not less than 30 business days' notice specifying the time or times and place of payment, pay to the Company at the time or times and place so specified the amount called on that Member's shares.

### **4.4 Joint holders' liability**

The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

### **4.5 Non-receipt of notice**

The non-receipt of a notice of any call by, or the accidental omission to give notice of a call to, a Member does not invalidate the call.

### **4.6 Interest on default**

If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due must pay interest on the sum to the time of actual payment at the Prescribed Interest Rate, calculated daily and payable monthly in arrears. The Directors may waive payment of that interest wholly or in part.

### **4.7 Fixed instalments**

Subject to any notice requirements under the Listing Rules, any sum that, by the terms of issue of a share, becomes payable on issue of the share or at a fixed date, is to be taken to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable. In case of non-payment, all the relevant provisions of this Constitution as

to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

#### **4.8 Differentiation between shareholders as to calls**

The Directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

#### **4.9 Prepayment of calls and interest**

The Directors may:

- (a) accept from a Member the whole or a part of the amount unpaid on a share although no part of that amount has been called; and
- (b) authorise payment by the Company of interest on the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the Prescribed Interest Rate, as is agreed on between the Directors and the Member paying the sum.

#### **4.10 Payment of calls**

While Stapling applies any issue of partly paid Ordinary Shares shall be upon the basis that a call will not be regarded as having been validly paid unless any amount payable at the same time in relation to the partly paid Attached Securities is also paid.

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## **5 Transfer of shares**

### **5.1 Forms of instrument of transfer**

Subject to this Constitution and the Listing Rules, a share in the Company is transferable:

- (a) as provided by the Operating Rules of a CS Facility if applicable; or
- (b) by any other method of transfer which is required or permitted by the Corporations Act and ASX.

### **5.2 Execution and delivery of transfer**

If an instrument of transfer:

- (a) is used to transfer a share in accordance with article 5.1(b); and
- (b) is left for registration at the share registry of the Company, accompanied by any information that the

Directors properly require to show the right of the transferor to make the transfer,

the Company must, subject to the powers vested in the Directors by this Constitution, register the transferee as the holder of the share.

### **5.3 Effect of registration**

Except as provided by any applicable Operating Rules of a CS Facility, a transferor of a share remains the holder of the share transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the share.

### **5.4 Company to register forms without charge**

The Company must register all registrable transfer forms, split certificates, renunciations and transfers, issue certificates and transmission receipts and mark or note transfer forms without imposing a charge except where a charge is permitted by the Listing Rules.

### **5.5 Power to refuse to register**

If permitted to do so by the Listing Rules the Directors may:

- (a) request any applicable CS Facility Operator to apply a holding lock to prevent a transfer of shares in the Company from being registered on the CS Facility's subregister; or
- (b) refuse to register a transfer of shares in the Company to which paragraph (a) does not apply.

### **5.6 Obligation to refuse to register**

The Directors must:

- (a) request any applicable CS Facility Operator to apply a holding lock to prevent transfer of shares in the Company from being registered on the CS Facility's subregister; or
- (b) refuse to register any transfer of shares in the Company to which paragraph (a) does not apply,

if:

- (c) the Listing Rules require the Company to do so;
- (d) article 5.10(b) requires the Directors not to register the transfer; or
- (e) the transfer is in breach of the Listing Rules or a Restriction Agreement.

### **5.7 Written notice to security holder of holding lock or refusal**

If in the exercise of their rights under articles 5.5 and 5.6 the Directors request application of a holding lock to prevent a transfer of shares in the Company or refuse to register a transfer of shares they must give written notice of the request or refusal to the holder of the shares, the transferee and the broker lodging the transfer, if any. Failure to give such notice does not invalidate the decision of the Directors.

### **5.8 Company to retain instrument of transfer**

The Company must retain every instrument of transfer which is registered for such period as the Directors determine.

### **5.9 Refusal to register**

If the Directors refuse registration of a transfer, the transfer must be returned to the person who deposited it if demand is made by that person within 12 months of the giving of notice of refusal to register unless there has been an allegation of fraud concerning the transfer or the transaction to which it relates.

### **5.10 Effect of Stapling**

- (a) A transfer of an Ordinary Share will only be accepted as a proper transfer in registrable form if, in addition to the requirements of this article 5 or article 6, as the case may be, the transfer relates to or is accompanied by a transfer or a copy of a transfer of the relevant Attached Securities to which the share is Stapled in favour of the same transferee.
- (b) Subject to the Operating Rules and the Listing Rules, the Directors must not register a transfer of an Ordinary Share unless the relevant Attached Securities are also to be transferred, or are capable of transfer, simultaneously.
- (c) A transfer of an Ordinary Share which is not accompanied by a transfer referred to in article 5.10(a) or a copy of such a transfer of the relevant Attached Securities to which the share is Stapled will be taken to authorise the Company as agent for the transferor to effect in accordance with the provisions of the relevant constitution or constitutions, a transfer of the Attached Securities, to the same transferee.

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## **6 Transmission of shares**

### **6.1 Transmission of shares on death of holder**

If a Member who does not own shares jointly dies, the Company will recognise only the personal representative of the Member as being entitled to the Member's interest in the shares.

### **6.2 Information given by personal representative**

If the personal representative gives the Directors the information they reasonably require to establish the representative's entitlement to be registered as a holder of the shares:

- (a) the personal representative may:
  - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
  - (ii) by giving a completed transfer form to the Company, transfer the shares to another person; and
- (b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.

On receiving an election under paragraph (a)(i), the Company must register the personal representative as the holder of the shares.

A transfer under paragraph (a)(ii) is subject to the articles that apply to transfers generally.

### **6.3 Death of joint owner**

If a Member who owns shares jointly dies, the Company will recognise only the survivor as being entitled to the Member's interest in the shares. Neither the estate of the Member nor the survivor is released from any liability in respect of the shares.

### **6.4 Transmission of shares on bankruptcy**

If a person entitled to shares because of the bankruptcy of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares, the person may:

- (a) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or

- (b) by giving a completed transfer form to the Company, transfer the shares to another person.

On receiving an election under paragraph (a), the Company must register the person as the holder of the shares.

A transfer under paragraph (b) is subject to the articles that apply to transfers generally.

This article has effect subject to the Bankruptcy Act 1966 (Cwlth).

## **6.5 Transmission of shares on mental incapacity**

If a person entitled to shares because of the mental incapacity of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:

- (a) the person may:
  - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; and
  - (ii) by giving a completed transfer form to the Company, transfer the shares to another person; and
- (b) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.

On receiving an election under paragraph (a)(i), the Company must register the person as the holder of the shares.

A transfer under paragraph (a)(ii) is subject to the articles that apply to transfers generally.

## **6.6 Stapling**

Notwithstanding any other provision of this Constitution, no person under this article 6 may become a registered holder of Ordinary Shares unless that person is also entitled to become the registered holder of each category of Attached Securities to which those shares are Stapled.

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# **7 Forfeiture of shares**

## **7.1 Notice requiring payment of call**

If a Member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the Directors may, at any time afterwards during such time as any part of the call or instalment remains unpaid, give a notice on

the Member requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all costs and expenses that may have been incurred by the Company by reason of that non-payment.

## **7.2 Contents of notice**

The notice must name a further day, not earlier than the expiration of 14 days from the date of service of the notice, on or before which the payment required by the notice is to be made and must state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made and an equal number of Attached Securities to which the shares are Stapled will be liable to be forfeited. If the shares are officially quoted by ASX the notice must contain such other information as is required by the Listing Rules (or ASX under the Listing Rules).

## **7.3 Forfeiture for failure to comply with notice**

A share in respect of which the notice under article 7.1 (“Notice requiring payment of call”) has not been complied with may at any time, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect.

## **7.4 Dividends and distributions included in forfeiture**

A forfeiture under article 7.3 (“Forfeiture for failure to comply with notice”) includes all dividends and other distributions declared or to be made in respect of the forfeited shares and not actually paid or distributed before the forfeiture.

## **7.5 Sale or re-issue of forfeited shares**

Subject to the Corporations Act and Listing Rules:

- (a) a share (other than an Ordinary Share) forfeited under article 7.3 may be sold, re-issued or otherwise disposed of to whom and on such terms as the Directors think fit; and
- (b) an Ordinary Share forfeited under article 7.3 (together with the Attached Securities) may be sold or otherwise disposed of as a fully paid Ordinary Share (together with the Attached Securities) at a price equal to the fair value thereof as determined by the Directors with the balance of the sale price of the IFN Stapled Security being allocated between the Attached Securities in accordance with the Stapled Trust Constitution.



## **7.6 Notice of forfeiture**

If any share is forfeited under article 7.3 (“Forfeiture for failure to comply with notice”) notice of the forfeiture must be given to the Member holding the share immediately before the forfeiture and an entry of the forfeiture and its date must be made in the Register.

## **7.7 Surrender instead of forfeiture**

The Directors may accept the surrender of any share which they are entitled to forfeit on any terms they think fit and any surrendered share is taken to be a forfeited share.

## **7.8 Cancellation of forfeiture**

At any time before a sale or disposition of a share, the forfeiture of that share may be cancelled on such terms as the Directors think fit.

## **7.9 Effect of forfeiture on former holder’s liability**

A person whose shares have been forfeited:

- (a) ceases to be a Member in respect of the forfeited shares and ceases to be a member of each Stapled Entity in respect of the Attached Securities and loses all entitlement to dividends and other distributions or entitlements on the shares and relevant Attached Securities; and
- (b) remains liable to pay the Company all money that, at the date of forfeiture, was payable by that person to the Company in respect of the shares, plus interest at the Prescribed Interest Rate from the date of forfeiture and also reasonable expenses of sale but the former Member’s liability ceases if and when the Company receives payment in full of all such money and, if applicable, interest in respect of forfeited shares.

## **7.10 Evidence of forfeiture**

A statement in writing declaring that the person making the statement is a director or a secretary of the Company, and that a share in the Company has been forfeited in accordance with this Constitution on the date stated in the statement, is prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.

## **7.11 Transfer of forfeited share**

The Company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute or effect a transfer of the share in favour of the person to whom the share is sold or disposed of. Any surplus

remaining after satisfaction of any liability to the Company in respect of the forfeited share (including costs and expenses) must, subject to the terms of issue of the share, be paid to the person who held the share immediately before forfeiture.

#### **7.12 Registration of transferee**

On the execution of the transfer, the transferee must be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.

#### **7.13 Irregularity or invalidity**

The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.

#### **7.14 Forfeiture applies to non-payment of instalment**

The provisions of this Constitution as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, as if that sum had been payable by virtue of a call duly made and notified.

#### **7.15 Attached Securities**

Where the share is an Ordinary Share, a reference to a share in this clause is deemed to be a reference to the Ordinary Share and the Attached Securities where applicable.

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## **8 General meetings**

### **8.1 Annual general meeting**

Annual general meetings of the Company are to be held in accordance with the Corporations Act.

### **8.2 Convening general meeting**

The Directors may:

- (a) convene and arrange to hold a general meeting of the Company whenever they think fit and must do so if required to do so under the Corporations Act; and
- (b) while Stapling applies, convene a meeting of Members in conjunction with a meeting of the Stapled Trust Unitholders and if applicable, the holders of other Attached Securities and, subject to the Corporations Act, make such rules for the conduct of such a meeting as they think fit.

### **8.3 Notice of general meeting**

Notice of a meeting of Members must be given in accordance with Part 18 and the Corporations Act.

### **8.4 Calculation of period of notice**

In computing the period of notice under article 8.3 (“Notice of general meeting”), both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

### **8.5 Cancellation or postponement of a meeting**

Where a meeting of Members (including an annual general meeting) is convened by the Directors they may, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place for the meeting. This article does not apply to a meeting convened in accordance with the Corporations Act by a single director, by Members or by the Directors on the request of Members or meetings convened by the Court.

### **8.6 Notice of cancellation or postponement of a meeting**

Notice of cancellation or postponement of a general meeting must state the reason for cancellation or postponement and be given:

- (a) to each Member individually; and
- (b) to each other person entitled to be given notice of a meeting of the Company’s Members under the Corporations Act.

### **8.7 Contents of notice of postponement of meeting**

A notice of postponement of a general meeting must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

### **8.8 Number of clear days for postponement of meeting**

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed

meeting must not be less than the number of clear days notice of the general meeting required to be given by this Constitution or the Corporations Act.

### **8.9 Business at postponed meeting**

The only business that may be transacted at a general meeting the holding of which is postponed is the business specified in the original notice convening the meeting.

### **8.10 Proxy, attorney or Representative at postponed meeting**

Where:

- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a Representative, a proxy or an attorney or a Representative is authorised to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, by force of this article, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of a Representative unless the Member appointing the proxy, attorney or Representative gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

### **8.11 Non-receipt of notice**

The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

### **8.12 Director entitled to notice of meeting**

A Director is entitled to receive notice of and to attend all general meetings and all separate general meetings of the holders of any class of shares in the capital of the Company and is entitled to speak at those meetings.

### **8.13 Stapling**

While Stapling applies, the auditor of each Stapled Entity, the Stapled Trust Manager and representatives of each other Stapled Entity (if any) may attend and speak at any general meeting.

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## **9 Proceedings at general meetings**

### **9.1 Reference to a Member**

Unless the contrary intention appears, a reference to a Member in Part 9 means a person who is a Member, a proxy, attorney or a Representative of that Member.

### **9.2 Number for a quorum**

Subject to article 9.5 (“Adjourned meeting”) two Members present in person or by proxy, attorney or Representative are a quorum at a general meeting unless the Company has only one Member entitled to vote, in which case that one Member constitutes a quorum.

### **9.3 Requirement for a quorum**

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the beginning of a meeting it is taken to be present throughout the meeting unless the chairman of the meeting (on the chairman’s own motion or at the instance of a Member, proxy, attorney or Representative who is present) declares otherwise.

### **9.4 Quorum and time**

If within 15 minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened by a Director, or by or on requisition of, Members, is dissolved; and
- (b) in any other case stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

### **9.5 Adjourned meeting**

At a meeting adjourned under article 9.4(b) (“Quorum and time”), the Member or Members present in person or by proxy, attorney or Representative are a quorum. If no Members are present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

## **9.6 Appointment and powers of chairman of general meeting**

If the Directors have elected one of their number as chairman of their meetings, that person is entitled to preside as chairman at a general meeting.

## **9.7 Absence of chairman at general meeting**

If a general meeting is held and:

- (a) a chairman has not been elected by the Directors; or
- (b) the elected chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairman of the meeting (in order of precedence):

- (c) the deputy chairman (if any);
- (d) a Director chosen by a majority of the Directors present;
- (e) the only Director present;
- (f) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

## **9.8 Conduct of general meetings**

The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairman under this article is final.

## **9.9 Adjournment of general meeting**

The chairman of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.

In exercising this discretion, the chairman may, but need not, seek the approval of the Members present. Unless required by the chairman, no vote may be taken or demanded by the Members present in respect of any adjournment.

Only unfinished business is to be transacted at a meeting resumed after an adjournment.

## **9.10 Notice of adjourned meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

## **9.11 Demand for a poll**

A poll may be demanded by at least 5 Members entitled to vote on the resolution, Members with at least 5% of the votes that may be cast on the resolution on a poll or by the chairman. A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

## **9.12 Declaration of poll**

Unless a poll is properly demanded and the demand is not withdrawn, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or 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. Neither the chairman nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

## **9.13 Questions decided by majority**

Subject to the requirements of the Corporations Act and the Listing Rules, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

#### **9.14 Poll**

If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is the resolution of the meeting at which the poll was demanded.

A poll demanded on the election of a chairman or on a question of adjournment must be taken immediately.

A demand for a poll may be withdrawn.

#### **9.15 Equality of votes - no casting vote for chairman**

If at a meeting of Members there is an equality of votes, either on a show of hands or on a poll, the chairman of the meeting is not entitled to a casting vote in addition to any votes to which the chairman is entitled as a Member or proxy or attorney or Representative.

#### **9.16 Entitlement to vote**

Subject to any rights or restrictions for the time being attached to any class or classes of shares and to this Constitution:

- (a) on a show of hands, each Member present in person and each other person present as a proxy, attorney or Representative of a Member has one vote; and
- (b) on a poll, each Member present in person has one vote for each fully paid share held by the Member and each person present as proxy, attorney or Representative of a Member has one vote for each fully paid share held by the Member that the person represents.

A Member is not entitled to vote at a general meeting in respect of shares which are the subject of a current Restriction Agreement for so long as any breach of that agreement subsists.

#### **9.17 Voting on a poll for partly paid shares**

If a Member holds partly paid shares, the number of votes the Member has in respect of those shares on a poll is the proportion that the aggregate amount paid on the shares bears to their aggregate issue price.

To determine the aggregate amount paid on the shares, exclude any amount:

- (a) paid or credited as paid in advance of a call; and
- (b) credited as paid on those shares to the extent that it exceeds the value (ascertained at the time of issue of



those shares) of the consideration given or to be given for the issue of those shares.

**9.18 Fractions disregarded for a poll**

On the application of article 9.17 (“Voting on a poll for partly paid shares”), disregard any fraction which arises so that the number of votes is rounded down.

**9.19 Joint shareholders’ vote**

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

**9.20 Vote of shareholder of unsound mind**

If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, then the Member’s committee or trustee or any other person who properly has the management of the Member’s estate may exercise any rights of the Member in relation to a general meeting as if the committee, trustee or other person were the Member.

**9.21 Effect of unpaid call**

A Member is not entitled at a general meeting to cast a vote attached to a share on which a call is due and payable and has not been paid.

**9.22 Objection to voting qualification**

An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the chairman of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

**9.23 Validity of vote in certain circumstances**

A vote cast by a person as a proxy, attorney or Representative is valid even if:

- (a) the previous revocation of that person’s authority by the death of the holder of the shares in respect of which the vote is cast or otherwise; or

- (b) the execution of a transfer of those shares by that holder,

unless a notice in writing of the revocation or transfer has been received at the Registered Office or by the chairman of the meeting before the vote is cast.

#### **9.24 Proxy form while Stapling applies<sup>1</sup>**

While Stapling applies, unless the Corporations Act requires otherwise, the form of proxy used may be the same form as the Member uses to appoint a proxy to vote on their behalf in respect of the Attached Securities which they hold.

#### **9.25 Meetings by technology**

A meeting of the shareholders or any class of shareholders may be held at two or more venues by means of such telephone, electronic or other communication facilities as permit all persons in the meeting to communicate with each other simultaneously and instantaneously and participation in such a meeting shall constitute presence in person at such meeting.

#### **9.26 Joint Meetings**

While Stapling applies, meetings of Members may be held in conjunction with meetings of the holders of Attached Securities and, unless the Corporations Act requires otherwise, the Directors may make such rules of the conduct of such meetings as the Directors determine.

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## **10 The Directors**

### **10.1 Appointment of Directors**

Unless otherwise determined by the Company in general meeting, the number of Directors is to be not less than 3 nor more than 10. The Directors in office at the time of adoption of this Constitution continue in office subject to this Constitution.

### **10.2 Change of number of Directors**

The Company in general meeting may by resolution increase or reduce the number of Directors, and may also determine the rotation in which the increased or reduced number is to retire from office.

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<sup>1</sup> The provisions of the Corporations Act relating to proxies and body corporate representatives govern the appointment of Members' proxies and the content of proxy documents - see sections 249X to 250C(1), and section 250D for body corporate representatives. Section 250C(2) is a replaceable rule, and does not apply because it is excluded by article 23.5.

### **10.3 Rotation of Directors**

At each annual general meeting there must be an election of Directors. The Directors who must retire from office (but are eligible to stand for re-election) at the annual general meeting are determined as follows:

- (a) each Director (other than the Managing Director exempt from rotation under article 12.20) who has held office (without re-election):
  - (i) beyond the third annual general meeting following the Director's appointment or last election; or
  - (ii) for at least three years,whichever is the longer period;
- (b) each Director who was appointed by the Directors under article 10.8; and
- (c) if none of (a), (b) or (c) is applicable, the Director who has held office longest without re-election.

### **10.4 Office held until conclusion of meeting**

A retiring Director holds office until the conclusion of the meeting at which that Director retires but is eligible for re-election.

### **10.5 Directors to retire**

The Directors to retire at any annual general meeting must be those who have been longest in office since their last election, but, as between persons who were last elected as Directors on the same day, those to retire must be determined by lot, unless they otherwise agree among themselves.

### **10.6 Directors elected at general meeting**

- (a) The Company may, at a general meeting at which a Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office.
- (b) The Company may also, subject to article 10.1(a), at any general meeting appoint any person nominated by the existing Directors to be an additional Director.

### **10.7 Eligibility for election as Director**

Except for a person who is eligible for election or re-election under article 10.4 ("Office held until conclusion of meeting") or 10.8 ("Casual Vacancy"), a person is not eligible for

election as a Director at a general meeting of the Company unless a consent to nomination signed by the person has been lodged at the Registered Office:

- (a) while the Company is Listed, in the case of a person recommended for election by the Directors, at least 20 business days before the general meeting;
- (b) in any other case while the Company is Listed, at least 30 business days before the general meeting; and
- (c) while the Company is not Listed, at least 1 business day before the general meeting.

#### **10.8 Casual Vacancy**

- (a) The Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided the total number of Directors does not exceed the maximum number determined in accordance with article 10.1 (“Number of Directors”) or 10.2 (“Change of number of Directors”).

A Director appointed under this article holds office until the conclusion of the next annual general meeting of the Company but is eligible for election at that meeting.

#### **10.9 Remuneration of Directors**

The Directors are entitled to be remunerated for their services as Directors and the total amount or value of the remuneration of the Directors must not in any year exceed in aggregate the amount last fixed by ordinary resolution of Members in general meeting. The remuneration is to be divided among the Directors in the proportion and manner agreed between them or, in default of agreement, equally. This article does not apply to the remuneration of a Managing Director or an Executive Director in either capacity. The Directors’ remuneration accrues from day to day.

#### **10.10 Additional or special duties**

If a Director at the request of the Directors performs additional or special duties for the Company, the Company may remunerate that Director as determined by the Directors and that remuneration may be either in addition to or in substitution for that Director’s remuneration under article 10.9 (“Remuneration of Directors”).

### **10.11 Retirement benefit**

Subject to limitations imposed by the Listing Rules and Corporations Act, the Company may pay a former Director, or the personal representatives of a Director who dies in office, a retirement benefit in recognition of past services of an amount determined by the Directors. The Company may also enter into a contract with a Director providing for payment of a retirement benefit. A retirement benefit paid under this article is not remuneration to which article 10.9 (“Remuneration of Directors”) applies.

### **10.12 Expenses**

A Director is also entitled to be reimbursed out of the funds of the Company such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company.

### **10.13 Director’s interests**

- (a) Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:
  - (i) hold any office or place of profit in the Company, except that of auditor;
  - (ii) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
  - (iii) enter into any contract or arrangement with the Company;
  - (iv) participate in any association, institution, fund, trust or scheme for past or present employees or directors of the Company or persons dependent on or connected with them;
  - (v) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor; and
  - (vi) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors.
- (b) A Director may do any of the above despite the fiduciary relationship of the Director’s office:

- (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement.
- (c) A reference to the Company in this article is also a reference to each related body corporate of the Company and to each of the Stapled Entities.

#### **10.14 Signing documents**

A Director is not disqualified because of a material personal interest from signing or participating in the execution of a document by or on behalf of the Company.

#### **10.15 Vacation of office of Director**

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) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) resigns from the office by notice in writing to the Company; or
- (c) is not present personally or by proxy or represented by an Alternate Director at meetings of the Directors for a continuous period of six months without leave of absence from the Directors.

#### **10.16 Removal of Directors**

- (a) The Company may at a special general meeting called for that purpose remove a Director provided notice of any such meeting shall be served upon the Director concerned not less than 14 days before the meeting and he shall be entitled to be heard at that meeting.
- (b) A Director can only be removed at a special general meeting by a resolution of Ordinary Shares. Any vacancy created by that removal may be filled at the meeting by the election of another Director in his or her place or, in the absence of any such election, by the Directors.

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## **11 Powers and duties of Directors**

### **11.1 Directors to manage Company**

The business of the Company is to be managed by the Directors, who may exercise all such powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting. To the extent permitted by law, while Stapling applies, the Directors may have regard to the interests of the Stapled Trust Unitholders and, if applicable, the members of any other Stapled Entity and must act in the best interests of Infigen Energy as a whole rather than only in the interests of the Company.

### **11.2 Specific powers of Directors**

Without limiting the generality of article 11.1 (“Directors to manage Company”), the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company or all 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.

### **11.3 Appointment of attorney**

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for such period and subject to such conditions as they think fit.

### **11.4 Provisions in power of attorney**

Any power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

### **11.5 Minutes**

The Directors must cause minutes of meetings to be made and kept in accordance with the Corporations Act.

### **11.6 Signing of cheques**

Cheques, promissory notes, bankers’ drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed in the manner and by the persons as the Directors determine.

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## **12 Proceedings of Directors**

### ***General***

#### **12.1 Directors' meetings**

The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.

#### **12.2 Director may convene a meeting**

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

#### **12.3 Questions decided by majority**

Questions arising at a meeting of Directors are to be decided by a majority of votes of Directors present and entitled to vote. Their decision is for all purposes a decision of the Directors.

#### **12.4 Chairman's Casting Vote**

If at a meeting of Directors an equal number of votes is cast for and against a resolution, the chairman of the meeting has a second or casting vote unless (i) only two Directors are entitled to vote; or (ii) the chairman of the meeting is not entitled to vote.

#### **12.5 Director attending and voting by proxy**

A Director may attend and vote by proxy at a meeting of the Directors if the proxy:

- (a) is another Director; and
- (b) has been appointed in writing signed by the appointor.

The appointment may be general or for one or more particular meetings. A Director present as a proxy for another Director who would be entitled to vote if present at the meeting has one vote for that other Director and one vote as a Director in that capacity.

#### **12.6 Quorum for Directors' meeting**

- (a) The quorum necessary for the transaction of the business of the Directors shall be 2 directors entitled to vote or another number determined by the Directors;
- (b) Unless the Directors determine otherwise, the quorum need only be present at the time the meeting commences.



### **12.7 Remaining Directors may act**

The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by article 10.1 (“Number of Directors”), the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a general meeting.

### **12.8 Chairman of Directors**

The Directors may elect one of their number as chairman of their meetings and may also determine the period for which the person elected as chairman is to hold that office.

### **12.9 Absence of chairman at Directors’ meeting**

If a Directors’ meeting is held and:

- (a) a chairman has not been elected under article 12.8 (“Chairman of Directors”); or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number to be a chairman of the meeting.

### **12.10 Directors’ committees**

The Directors may delegate any of their powers to a committee or committees consisting of at least one Director and such other persons as they think fit.

### **12.11 Powers delegated to Directors’ committees**

A committee to which any powers have been delegated under article 12.10 (“Directors’ committees”) must exercise those powers in accordance with any directions of the Directors. A power exercised by a committee is taken to have been exercised by the Directors. Subject to the terms on which a power of the Directors is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the provisions of this constitution which regulate the meetings and proceedings of Directors.

### **12.12 Chairman of Directors’ committee**

The members of a committee may elect one of their number as chairman of their meetings. If a meeting of a committee is held and:

- (a) a chairman has not been elected; or

- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members involved may elect one of their number to be chairman of the meeting.

### **12.13 Meetings of Directors' committee**

A committee may meet and adjourn as it thinks proper.

### **12.14 Determination of questions**

Questions arising at a meeting of a committee are to be determined by a majority of votes of the members involved and voting. The provisions of article 12.4 apply in relation to the chairman of the meeting having a casting vote.

### **12.15 Circulating resolutions**

- (a) The Directors may pass a resolution without a Directors' meeting being held if either:
  - (i) all of the Directors who are then in Australia and entitled to vote on the resolution; or
  - (ii) all of the Directors who are entitled to vote on the resolution:

sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs.
- (b) If a resolution in writing is signed by an Alternate Director, it must not also be signed by the appointor of the Alternate Director and vice versa.
- (c) In relation to a resolution in writing:
  - (i) a document generated by electronic means which purports to be a facsimile of a resolution of Directors is to be treated as a resolution in writing; and
  - (ii) a document bearing a facsimile of a signature is to be treated as signed.

### **12.16 Validity of acts of Directors**

All acts done at a meeting of the Directors or of a committee of Directors, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

#### **12.17 Participation where Directors interested**

- (a) A Director who has a material personal interest in a matter that is being considered at a meeting of Directors must not:
  - (i) be present while the matter is being considered at the meeting;
  - (ii) be present during the consideration of a proposed resolution of a kind referred to in article 12.17(c) in relation to the matter, whether in relation to that or another Director; or
  - (iii) vote in respect of that matter or that proposed resolution.
- (b) Despite article 12.17(a), a Director may be present and may vote on a matter if the Director's interest is held:
  - (i) as a Member of the Company; and
  - (ii) in common with other Members of the Company.
- (c) Despite article 12.17(a), a Director may be present and, unless prohibited from voting by the Listing Rules, may vote on a matter if the board of directors has at any time passed a resolution that:
  - (i) specifies the Director, the interest and the matter; and
  - (ii) states that the Directors voting for the resolution are satisfied that the interest should not disqualify the Director from considering and voting on the matter.
- (d) a quorum is not present during the consideration of a matter at a meeting of Directors unless 2 directors are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.

- (e) Despite articles 12.17(c) and 12.17(a) but subject to the Corporations Act, a Director may be counted in the quorum and may vote on a resolution proposed by a person other than the Director if:
  - (i) the resolution is in connection with a general meeting of the company dealing with the matter; and
  - (ii) section 195 of the Corporations Act would otherwise prevent the proposed resolution from being considered.
- (f) A Director may attest the affixing of the seal to a contract or arrangement entered into by the director or in which the director is, directly or indirectly, interested.

### ***Managing and Executive Directors***

#### **12.18 Appointment of Managing and Executive Directors**

- (a) The Directors may appoint one of their number to be Managing Director and may likewise remove any Director so appointed from the office of Managing Director and appoint another in that Director's place.
- (b) The Directors may:
  - (i) appoint one or more of their number as an Executive Director or to any other office, except auditor, of employment by the Company for the period and on the terms they think fit; and
  - (ii) subject to the terms of any contract between the relevant Director and the Company, at any time remove or dismiss any Executive Director from that office and appoint another Director in their place.
- (c) A person removed from the office of Managing Director or Executive Director under this article 12.18 continues to hold office as a Director unless they retire or are removed from that office under another provision of this constitution.

#### **12.19 Ceasing to be Managing or Executive Director**

A Managing Director or Executive Director automatically ceases to be a Managing Director or Executive Director on ceasing to be a Director.

#### **12.20 One Managing Director exempt from retirement by rotation**

If at any time there is more than one Managing Director appointed under article, 12.18(a), only one of their number, nominated by the Directors, is exempt from retirement by rotation and is not counted under article 10.3 (“Rotation of Directors”) for determining the number of Directors to retire by rotation.

#### **12.21 Remuneration of Managing and Executive Directors**

The remuneration of a Managing Director or an Executive Director may be fixed by the Directors and may be by way of salary or commission or participation in profits or by all or any of those modes, but may not be by a commission on or percentage of operating revenue.

#### **12.22 Powers of Managing and Executive Directors**

The Directors may:

- (a) confer on a Managing Director or an Executive Director such of the powers exercisable by them, on such terms and conditions and with such restrictions, as they think fit; and
- (b) withdraw or vary any of the powers conferred on a Managing Director or an Executive Director.

#### ***Alternate Directors***

#### **12.23 Appointment of Alternate Director**

Subject to the Corporations Act, a Director may appoint a person, approved by a majority of the other Directors, to be an Alternate Director in the Director’s place during such period as the Director thinks fit.

#### **12.24 Alternate Director and meetings**

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not attend a meeting, is entitled to attend and vote in the appointor’s place.

#### **12.25 Alternate Director’s powers**

An Alternate Director may exercise all the powers except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor insofar as the appointor has not exercised or performed them.

### **12.26 Alternate Director or proxy and voting**

A person who is present at a meeting of Directors as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or proxy and, if that person is also a Director, has one vote as a Director in that capacity.

### **12.27 Alternate Director responsible for own acts and defaults**

Whilst acting as a Director, an Alternate Director is responsible to the Company for the Alternate Director's own acts and defaults and the appointor is not responsible for them.

### **12.28 Alternate Director and remuneration**

An Alternate Director is not entitled to receive from the Company any remuneration or benefit under article 10.9 ("Remuneration of Directors") or 10.11 ("Retirement benefit").

### **12.29 Termination of appointment of Alternate Director**

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director.

### **12.30 Appointment or termination in writing**

An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment and delivered to the Company.

### **12.31 Alternate Director and number of Directors**

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

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## **13 Secretary**

### **13.1 Appointment of Secretary**

There must be at least one secretary of the Company who is to be appointed by the Directors.

### **13.2 Suspension and removal of Secretary**

The Directors may suspend or remove a Secretary from that office.

### **13.3 Powers, duties and authorities of Secretary**

The Directors may vest in a Secretary such powers, duties and authorities as they may from time to time determine and the Secretary must exercise all such powers and authorities subject at all times to the control of the Directors.

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## **14 Seals**

### **14.1 Safe custody of common seals**

The Directors must provide for the safe custody of any seal of the Company.

### **14.2 Use of common seal**

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

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## **15 Inspection of records**

### **15.1 Inspection by Members**

The Directors may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than Directors) but must make them available to the extent required by the Corporations Act.

### **15.2 Right of a Member to inspect**

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

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## **16 Dividends and reserves**

### **16.1 Payment of dividend**

Subject to the Corporations Act, this Constitution and the rights of persons (if any) entitled to shares with special rights to dividend, the Directors may determine that a dividend is

payable, fix the amount and the time for payment and authorise the payment or crediting by the Company to, or at the direction of, each Member entitled to that dividend.

#### **16.2 No interest on dividends**

Interest is not payable by the Company on a dividend.

#### **16.3 Reserves and profits carried forward**

The Directors may, before paying any dividend, set aside out of the profits of the Company such sums as they think proper as reserves, to be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied.

Pending any application, the reserves may, at the discretion of the Directors, be used in the business of the Company or be invested in such investments as the Directors think fit.

The Directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

#### **16.4 Calculation and apportionment of dividends**

Subject to the rights of any persons entitled to shares with special rights as to dividend and to the terms of any shares issued to the contrary, the profits of the Company are divisible among the Members so that, on each occasion on which a dividend is paid:

- (a) the same sum is paid on each share on which all amounts payable have been paid; and
- (b) the sum paid on a share on which all amounts payable have not been paid is the proportion of the sum referred to in paragraph (a) that the amount paid on the shares bears to the total of the amounts paid and payable on the share.

To determine the amount paid on a share, exclude any amount:

- (c) paid or credited as paid in advance of a call; and
- (d) credited as paid on a share to the extent that it exceeds the value (ascertained at the time of issue of the share) of the consideration received for the issue of the share.

#### **16.5 Deductions from dividends**

The Directors may deduct from any dividend payable to, or at the direction of, a Member all sums of money (if any) presently payable by that Member to the Company on account of calls or otherwise in relation to shares in the Company.



## **16.6 Distribution of specific assets**

When resolving to pay a dividend, the Directors may:

- (a) resolve that the dividend be satisfied either wholly or partly by the distribution of specific assets to some or all of the persons entitled to the dividend, including fully paid shares in or debentures of the Company or fully paid shares in or debentures of any other body corporate or units in a trust;
- (b) direct that the dividend payable in respect of any particular shares be satisfied wholly or partly by such a distribution and that the dividend payable in respect of other shares be paid in cash; and
- (c) deduct the costs involved in the transfer of those assets from the dividend payable to the Members.

## **16.7 Resolution of distribution difficulties**

If a difficulty arises in regard to a distribution under article 16.6 (“Distribution of specific assets”), the Directors may:

- (a) settle the matter as they consider expedient;
- (b) fix the value for distribution of the specific assets or any part of those assets based on a valuation done within 1 month of the proposed transfer;
- (c) determine that cash payments will be made to, or at the direction of, any Members on the basis of the value so fixed in order to adjust the rights of all parties; and
- (d) vest any such specific assets in trustees as the Directors consider expedient.

If a distribution of specific assets to, or at the direction of, a particular Member or Members is illegal or, in the Directors’ opinion, impracticable the Directors may make a cash payment to the Member or Members on the basis of the cash amount of the dividend instead of the distribution of specific assets.

## **16.8 Payment by cheque and receipts from joint holders**

A dividend, interest or other money payable in cash in respect of shares may be paid:

- (a) by cheque sent through the post directed to the address of the holder as shown in the Register or, in the case of joint holders, to the address of the joint holder first named in the Register;

- (b) by cheque sent through the post directed to such other address as the holder or joint holder in writing directs; or
- (c) by some other method of direct credit determined by the Directors to the holder or holders shown on the Register or to such person or place directed by them.

#### **16.9 Unsuccessful payments**

- (a) Cheques that are not presented within 6 months of issue may be cancelled and where a cheque which is cancelled was drawn in favour of a Member, the money is to be held by the Company for the Member or paid by the Company in accordance with the legislation relating to unclaimed money unless the Company in its discretion decides to reinvest the money in Ordinary Shares and Attached Securities in which event the provisions of articles 16.11 and 16.12 will apply.
- (b) Where payment is attempted to be made to a Member by electronic transfer of funds or any other means and the transfer is unsuccessful, the money may be held for the Member as a non-interest bearing deposit until it is claimed or required to be dealt with in accordance with applicable laws relating to unclaimed money.

#### **16.10 Effectual receipt from one joint holder**

Any one of two or more joint holders may give an effectual receipt for any dividend, interest or other money payable in respect of the shares held by them as joint holders.

#### **16.11 Election to reinvest dividend**

The Directors may decide whether to permit or require Members or any class of Members to reinvest cash dividends paid by the Company by subscribing for shares in the Company of the same class on such terms and conditions as the Directors think fit.

#### **16.12 Reinvestment while Stapling applies**

While Stapling applies:

- (a) no reinvestment by Members holding Ordinary Shares may occur unless at the same time the Member acquires an identical number of each category of Attached Securities which when issued or acquired are Stapled to the additional Ordinary Shares;
- (b) the Directors may make provisions governing the amount of the reinvested dividends to be used to

subscribe for shares in the Company and the amount to be used to subscribe for the Attached Securities having regard to the issue price of the Attached Securities;

- (c) if the amount to be reinvested in additional Stapled Securities results in a fraction of a Stapled Security, the amount representing the fraction may be paid by the Company to the Member, or held for future reinvestment in Shares and Attached Securities in such proportions as the Company and the Stapled Entities may determine.

### **16.13 Election to accept shares in lieu of dividend**

Subject to the Listing Rules, the Directors may determine in respect of any dividend which it is proposed to pay on any shares of the Company that holders of the shares may elect:

- (a) to forego the right to share in the proposed dividend or part of such proposed dividend; and
- (b) to receive instead an issue of shares credited as fully paid on such terms as the Directors think fit.

The provisions of article 16.12 apply (with such changes as may be necessary) to this article 16.13.

### **16.14 Unclaimed dividends**

Unclaimed dividends may be invested by the Directors as they think fit for the benefit of the Company until claimed or until required to be dealt with in accordance with any law relating to unclaimed moneys.

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## **17 Capitalisation of profits**

### **17.1 Capitalisation of reserves and profits**

The Directors:

- (a) may resolve 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 or the profit and loss account or otherwise available for distribution to Members; and
- (b) may, but need not, resolve to apply the sum in any of the ways mentioned in article 17.2 (“Applying a sum for the benefit of Members”), for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of that sum by way of dividend.

## **17.2 Applying a sum for the benefit of Members**

The ways in which a sum may be applied for the benefit of Members under article 17.1 (“Capitalisation of reserves and profits”) are:

- (a) in paying up any amounts unpaid on shares and, while Stapling applies, Attached Securities held by Members;
- (b) in paying up in full unissued shares or debentures to be issued to Members as fully paid; or
- (c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

## **17.3 Effecting the resolution**

The Directors may do all things necessary to give effect to a resolution under article 17.1 and, in particular, to the extent necessary to adjust the rights of the Members among themselves, may:

- (a) make cash payments in cases where shares or debentures become issuable in fractions; and
- (b) authorise any person to make, on behalf of all or any of the Members entitled to any further shares or debentures on the capitalisation, an agreement with the Company providing for:
  - (i) the issue to them, credited as fully paid up, of any further shares or debentures; or
  - (ii) the payment by the Company on their behalf of 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 so made is effective and binding on all the Members concerned;
- (c) fix the value of specific assets; and
- (d) vest property in trustees.

## **17.4 Issue of further shares while Stapling applies**

While Stapling applies, the Directors must not resolve to issue any Ordinary Shares to Members under this article 17 unless, at the same time as the issue, an identical number of Attached Securities are issued to those Members.

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## **18 Service of documents**

### **18.1 Document includes notice**

In Part 18, a reference to a document includes a notice.

### **18.2 Methods of service**

The Company may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or
- (c) by sending it to a fax number or electronic address nominated by the Member.

### **18.3 Post**

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and in either case is taken to have been received on the day after the date of its posting.

### **18.4 Fax or electronic transmission**

If a document (other than a notice of meeting of Members) is sent by fax or electronic transmission, delivery of the document is taken:

- (a) to be effected by properly addressing and transmitting the fax or electronic transmission; and
- (b) to have occurred 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine or computer to which the message was transmitted.

### **18.5 Evidence of service**

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

## **18.6 Joint holders**

A document may be given by the Company to the joint holders of a share by giving it to the joint holder first named in the Register in respect of the share.

## **18.7 Persons entitled to shares**

A person who by operation of law, transfer or other means whatsoever becomes entitled to any share is absolutely bound by every document given in accordance with this article to the person from whom that person derives title prior to registration of that person's title in the Register.

## **18.8 Service on the Company**

A document required under this Constitution or the Corporations Act to be given to the Company must be given in writing (which includes a fax), or in such other manner as the Directors determine. The Document must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member unless the Directors dispense with this requirement. Service is only effective at the time of receipt.

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# **19 Winding up**

## **19.1 Distribution of assets**

If the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company, divide among the Members in kind the whole or any part of the property of the Company and may for that purpose set such value as the liquidator considers fair on any property to be so divided and may determine how the division is to be carried out as between the Members or different classes of Members.

## **19.2 Powers of liquidator to vest property**

The liquidator may, with the sanction of a special resolution of the Company, vest the whole or any part of any such property in trustees on such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Member is compelled to accept any shares or other securities in respect of which there is any liability on the part of the holder.

## **19.3 Notice to other Stapled Entities**

On or before commencement of a winding up of the Company in accordance with this article 19, the liquidator must give the Stapled Trust Manager and any other Stapled Entity written notice that the Company is to be wound up. Notwithstanding any other terms of this Constitution, should the Stapled Trust be terminated or wound up under the provisions of the Stapled

Trust Constitution or by force of law, the Stapling Provisions will cease to apply.

#### **19.4 Shares issued on special terms**

Articles 19.1 (“Distribution of assets”), 19.2 (“Powers of liquidator to vest property”) and 19.3 (“Notice to Stapled Trust Manager”) do not prejudice or affect the rights of a Member holding shares issued on special terms and conditions.

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## **20 Indemnity and insurance**

### **20.1 Indemnity**

Every person who is or has been:

- (a) a director of the Company or executive officer of the Company; or
- (b) a secretary of the Company or executive officer of the Company,

is entitled to be indemnified out of the property of the Company against:

- (c) every liability incurred by the person in that capacity (except a liability for legal costs); and
- (d) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

unless:

- (e) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- (f) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

### **20.2 Insurance**

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a director, secretary or executive officer of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or

- (b) the contract would, if the Company paid the premium, be made void by statute.

### **20.3 Contract**

The Company may enter into an agreement with a person referred to in articles 20.1 and 20.2 with respect to the matters covered by these articles. An agreement entered into pursuant to this article may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

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## **21 Restricted Securities**

### **21.1 Disposal during Escrow Period**

Restricted Securities cannot be disposed of during the Escrow Period except as permitted by the Listing Rules or ASX.

The Company must not acknowledge a disposal (including by registering a transfer) of Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.

### **21.2 Breach of Restriction Agreement or Listing Rules**

During a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement, the holder of the Restricted Securities is not entitled to any dividend or distribution, or voting rights, in respect of the Restricted Securities.

### **21.3 Interpretation - Restricted Securities**

In this article, the expressions “disposed of”, “disposed”, “Escrow Period” and “Restricted Securities” have the same meaning as in the Listing Rules.

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## **22 Small Holdings**

### **22.1 Application of this Part**

This Part 22 applies while the Shares or IFN Stapled Securities are Officially Quoted.

### **22.2 Divestment Notice**

If the Directors determine that a Member is a Small Holder or a New Small Holder the Company may give the Member a Divestment Notice to notify the Member:

- (a) that the Member is a Small Holder or a New Small Holder, the number of Shares making up and the



Market Value of the Small Holding or New Small Holding and the date on which the Market Value was determined;

- (b) that the Company intends to sell the Relevant Shares in accordance with this article after the end of the Relevant Period specified in the Divestment Notice;
- (c) if the Member is a Small Holder, that the Member may at any time before the end of the Relevant Period notify the Company in writing that the Member desires to retain the Relevant Shares and that if the Member does so the Company will not be entitled to sell the Relevant Shares under that Divestment Notice; and
- (d) after the end of the Relevant Period the Company may for the purpose of selling the Relevant Shares that are in a CS Facility holding initiate a holding adjustment to move those Shares from that CS Facility holding to an Issuer Sponsored Holding or certificated holding.

If the Operating Rules of a CS Facility apply to the Relevant Shares, the Divestment Notice must comply with those Operating Rules.

### **22.3 Relevant Period**

For a Divestment Notice given to a Small Holder, the Relevant Period must be at least six weeks from the date the Divestment Notice was given. For a Divestment Notice given to a New Small Holder, the Relevant Period must be at least seven days from the date the Divestment Notice was given.

### **22.4 Company can sell Relevant Shares**

At the end of the Relevant Period the Company is entitled to sell on-market or in any other way determined by the Directors:

- (a) the Relevant Shares of a Member who is a Small Holder, unless that Member has notified the Company in writing before the end of the Relevant Period that the Member desires to retain the Relevant Shares, in which event the Company must not sell those Relevant Shares under that Divestment Notice; and
- (b) the Relevant Shares of a Member who is a New Small Holder.

### **22.5 No obligation to sell**

The Company is not bound to sell any Relevant Shares which it is entitled to sell under this Part 22 but unless the Relevant Shares are sold within 10 weeks after the end of the Relevant

Period the Company's right to sell the Relevant Shares under the Divestment Notice relating to those Shares lapses and it must notify the Member to whom the Divestment Notice was given accordingly.

## **22.6 Company as Member's attorney**

To effect the sale and transfer by the Company of Relevant Shares of a Member, the Member appoints the Company and each Director and Secretary jointly and severally as the Member's attorney in the Member's name and on the Member's behalf to do all acts and things which the Company considers necessary or appropriate to effect the sale or transfer of the Relevant Shares and, in particular:

- (a) to initiate a holding adjustment to move the Relevant Shares from a CS Facility holding to an Issuer Sponsored Holding or a certificated holding; and
- (b) to execute on behalf of the Member all deeds instruments or other documents necessary to transfer the Relevant Shares and to deliver any such deeds, instruments or other documents to the purchaser.

## **22.7 Conclusive evidence**

A statement in writing by or on behalf of the Company under this Part 22 is (in the absence of manifest error) binding on and conclusive against a Member. In particular, a statement that the Relevant Shares specified in the statement have been sold in accordance with this Part is conclusive against all persons claiming to be entitled to the Relevant Shares and discharges the purchaser from all liability in respect of the Relevant Shares.

## **22.8 Registering the purchaser**

The Company must register the purchaser of Relevant Shares as the holder of the Relevant Shares transferred to the purchaser under this article. The purchaser is not bound to see to the application of any money paid as consideration. The title of the purchaser to the Relevant Shares transferred to the purchaser is not affected by any irregularity or invalidity in connection with the actions of the Company under this Part.

## **22.9 Payment of proceeds**

Subject to article 22.10 ("Costs"), where:

- (a) Relevant Shares of a Member are sold by the Company on behalf of the Member under this article; and
- (b) the certificate for the Relevant Shares (unless the Company is satisfied that the certificate has been lost

or destroyed or the Relevant Shares are Uncertificated Securities) has been received by the Company,

the Company must, within 60 days of the completion of the sale, send the proceeds of sale to the Member entitled to those proceeds by sending a cheque payable to the Member through the post to the address of the Member shown in the Register, or in the case of joint holders, to the address shown in the Register as the address of the Member whose name first appears in the Register. Payment of any money under this article is at the risk of the Member to whom it is sent.

#### **22.10 Costs**

In the case of a sale of the Relevant Shares of a New Small Holder in accordance with this Part, the Company is entitled to deduct and retain from the proceeds of sale, the costs of the sale as determined by the Company. In any other case, the Company or a purchaser must bear the costs of sale of the Relevant Shares. The costs of sale include all stamp duty, brokerage and government taxes and charges (except for tax on income or capital gains of the Member) payable by the Company in connection with the sale and transfer of the Relevant Shares.

#### **22.11 Remedy limited to damages**

The remedy of a Member to whom this article applies, in respect of the sale of the Relevant Shares of that Member is expressly limited to a right of action in damages against the Company to the exclusion of any other right, remedy or relief against any other person.

#### **22.12 Dividends and voting suspended**

Unless the Directors determine otherwise, where a Divestment Notice is given to a New Small Holder in accordance with this Part, then despite any other provision in this Constitution, the rights to receive payment of dividends and to vote attached to the Relevant Shares of that Member are suspended until the Relevant Shares are transferred to a new holder or that Member ceases to be a New Small Holder. Any dividends that would, but for this article 22.12, have been paid to that Member must be held by the Company and paid to that Member within 60 days after the earlier of:

- (a) the date the Relevant Shares of that Member are transferred; and
- (b) the date that the Relevant Shares of that Member cease to be subject to a Divestment Notice.

### **22.13 Twelve month limit**

If it is a requirement of the Listing Rules, the Company must not give a Small Holder more than one Divestment Notice in any 12 month period (except as contemplated by article 22.14).

### **22.14 Effect of takeover bid**

From the date of the announcement of a takeover bid for the Shares until the close of the offers made under the takeover bid, the Company's powers under this Part to sell Relevant Shares of a Member cease. After the close of the offers under the takeover bid, the Company may give a Divestment Notice to a Member who is a Small Holder or a New Small Holder, despite article 22.13 and the fact that it may be less than 12 months since the Company gave a Divestment Notice to that Member.

### **22.15 While Stapling applies**

While Stapling applies:

- (a) the references to Shares and Relevant Shares in this article 22 will apply to Stapled Securities held by the Member; and
- (b) no sale under this article 22 may occur unless, at the same time as Ordinary Shares are sold, an identical number of each category of Attached Securities are also sold.

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## **23 Definitions and Interpretation and Stapling generally**

### **23.1 Definitions**

In this Constitution unless the contrary intention appears:

**Admission Date** means the date on which Stapled Securities are first Officially Quoted.

**Alternate Director** means a person appointed as an alternate director under article 12.23 ("Appointment of Alternate Director").

**associate** has the meaning given in the Corporations Act, and **associated** and **associated company** have a corresponding meaning.

**Attached Securities** means a Stapled Unit and any other security or securities (including a share in the Foreign Company) which are from time to time Stapled or to be Stapled to an Ordinary Share.

**ASX** means Australian Stock Exchange Limited or the market operated by it as the context requires.

**Auditor** means the appointed auditor of the Company.

**BBSW** for a period:

- (a) the rate determined by the Directors to be the arithmetic mean (rounded up, if necessary, to the nearest 0.01%) of the bid rates displayed at or about 10.30am Sydney time on the first day of that period on the Reuters screen BBSW page for a term of one month after eliminating one of the highest and one of the lowest of those rates; or
- (b) if for any reason there are no rates displayed for a term then BBSW will be the rate determined by the Directors to be the average of the buying rates quoted to the Directors by 3 Australian banks selected by the Directors at or about that time on that day. The buying rates must be for bills of exchange which are accepted by an Australian bank and which have a term equivalent to one month.

**Company** means Infigen Energy Limited (ACN 105 051 616).

**Constitution** means this constitution as amended from time to time, and a reference to an article is a reference to an article of this Constitution.

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

**CS Facility** has the same meaning as prescribed CS facility in the Corporations Act.

**CS Facility Operator** means the operator of a CS Facility.

**Director** means a person holding office as a director of the Company, and where appropriate includes an Alternate Director.

**Directors** means all or some of the Directors acting as a board.

**Divestment Notice** means a notice given under article 22.2 to a Small Holder or a New Small Holder.

**Executive Director** means a person appointed as an executive director under article 12.18 (“Appointment of Managing and Executive Directors”).

**Foreign Company** means Infigen Energy (Bermuda) Limited.

**IFN Stapled Security** means one Ordinary Share and one Stapled Trust Unit, and, if applicable, one security in each other Stapled Entity, Stapled together.

**IFN Stapled Security Register** means the register of Stapled Securities to be established and maintained in accordance with article 2.7.

**Infigen Energy** means the group formed by the Company and the Stapled Entities once Stapling has commenced.

**Issuer Sponsored Holding** means a holding on an electronic sub-register maintained by the Company in accordance with the Listing Rules.

**Listed** means entered in the Official List of ASX.

**Listing Rules** means the listing rules of the ASX which are applicable while the Company is admitted to the official list of the ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by the ASX.

**Managing Director** means a person appointed as a managing director under article 12.18(a).

**Market Value** in relation to a Share means the closing price of the Share on ASX.

**Member** means a person entered in the Register as the holder of shares in the capital of the Company.

**New Small Holder** is a Member who is the holder or a joint holder of a New Small Holding.

**New Small Holding** means a holding of Shares created after the date on which Part 22 came into effect by the transfer of a parcel of Shares the aggregate Market Value of which at the time a proper transfer was initiated or a paper based transfer was lodged, was less than a marketable parcel of Shares as provided under the Listing Rules.

**Operating Rules** means the operating rules of a CS Facility regulating the settlement, clearing and registration of uncertificated shares as amended, varied or waived (whether in respect of the Company or generally) from time to time.

**Ordinary Shares** means ordinary, voting shares in the capital of the Company issuable by the Directors pursuant to article 1.7 in such classes as the Directors may from time to time determine and having the rights, and being subject to the restrictions, specified in this Constitution or by the Directors.

**Ordinary Share** has a corresponding meaning.

**Officially Quoted** means quotation in the official list of ASX, including when quotation is suspended for a continuous period of not more than 60 days.

**Part** means a part of this Constitution.

**Prescribed Interest Rate** means the rate determined by the Directors for the purpose of this Constitution, being a rate not exceeding BBSW plus 3% per annum, and in the absence of a determination means BBSW plus 3% per annum.

**Register** means the register of members of the Company under the Corporations Act and if appropriate includes a branch register.

**Registered Office** means the registered office of the Company.

**related body corporate** has the meaning given to that term in the Corporations Act.

**Relevant Period** means the period specified in a Divestment Notice under article 22.2.

**Relevant Shares** are the Shares specified in a Divestment Notice.

**Representative** means a person appointed to represent a corporate Member at a general meeting of the Company in accordance with the Corporations Act.

**Restriction Agreement** means a restriction agreement within the meaning and for the purposes of the Listing Rules.

**Secretary** means a person appointed under article 13.1 (“Appointment of Secretary”) as a secretary of the Company and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

**share** means a share in the capital of the Company, and for the purposes of Part 22 shares in the Company all of the same class (unless the context otherwise requires).

**Small Holder** is a Member who is the holder or a joint holder of a Small Holding; and

**Small Holding** means a holding of Shares the aggregate Market Value of which at the relevant date is less than a marketable parcel of Shares as provided under the Listing Rules.

**Special Resolution** has the same meaning as in the Corporations Act.

**Stapled Entity** means the Stapled Trust and any other trust, body corporate or managed investment scheme whose securities are Stapled to the Ordinary Shares.

**Stapled Trust** means the trust currently known as Infigen Energy Trust and registered with ASIC as a managed investment scheme (ARSN 116 244 118).

**Stapled Trust Constitution** means the constitution dated 16 June 2003 in relation to the Stapled Trust, as amended, which binds the Stapled Trust Manager as responsible entity of the Stapled Trust.

**Stapled Trust Manager** means, while the Stapled Trust is not a registered managed investment scheme, the trustee of the Stapled Trust from time to time and, while the Stapled Trust is a registered managed investment scheme, Infigen Energy RE Limited (ACN 113 813 997) in its capacity as responsible entity of the Stapled Trust or its successor as the responsible entity of the Stapled Trust.

**Stapled Trust Unitholder** means a person shown on the register of Stapled Trust members as the holder of a Stapled Trust Unit.

**Stapled Trust Unit** means an ordinary unit in the Stapled Trust.

**Stapling** means the linking together of Ordinary Shares and Attached Securities so that one may not be transferred, or otherwise dealt with, without the other or others and which may, if the Directors so resolve, be quoted on the ASX jointly as a “Stapled Security” or such other term as the ASX permits. **Stapled** has a corresponding meaning.

**Stapling Commencement Date** means the first date upon which Stapling of Shares to Stapled Trust Units is to commence as determined by the Stapled Trust Manager and approved by the Directors.

**Stapling Provisions** means the provisions of this Constitution relating to, referring to or connected with Stapling and, for avoidance of doubt, includes those provisions relating to, referring to or connected with Stapling contained in articles, 2, 5.10, 6.6, 7.2, 7.5(b), 7.9(a), 7.15, 8.2(b), 8.13, 9.24, 9.26, 10.13(c), 11.1, 16.12, 16.13, 17.2(a), 17.4, 19.3, 22.15, 23.1 and 23.8 to 23.12 (inclusive) and **Stapling Provision** has a corresponding meaning.

**State** means the State or Territory in which the Company is for the time being registered.



## 23.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) **(gender)** words importing any gender include all other genders;
- (b) **(person)** the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (c) **(singular includes plural)** the singular includes the plural and vice versa;
- (d) **(regulations)** a reference to a law includes regulations and instruments made under the law;
- (e) **(amendments to statutes)** a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;
- (f) **(from time to time)** a power, an authority or a discretion reposed in a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
- (g) **(amount paid)** a reference to an amount paid on a share includes an amount credited as paid on that share;
- (h) **(signed)** where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the directors; and
- (i) **(writing)** “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise.

## 23.3 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act; and

- (b) “section” means a section of the Corporations Act.

#### **23.4 Headings, footnotes and Parts**

Headings and footnotes are inserted for convenience and are not to affect the interpretation of this Constitution.

This Constitution is divided into Parts as indicated by its Contents.

#### **23.5 Replaceable rules not to apply**

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

#### **23.6 Currency**

The Directors may:

- (a) differentiate between Members as to the currency in which any amount payable to a Member is paid (whether by way of or on account of dividends, repayment of capital, participation in surplus property of the Company or otherwise);
- (b) determine to pay a distribution in a currency other than Australian dollars and the amount payable will be converted from Australian currency in any manner, at any time and at any exchange rate as the Directors think fit; and
- (c) in deciding the currency in which a payment is to be made to a Member, have regard to the registered address of the Member, the register on which a Member’s Shares are registered and any other matters as the Directors consider appropriate.

#### **23.7 Application of Listing Rules**

While the Company is Officially Quoted:

- (a) despite anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act must not be done;
- (b) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);

- (d) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
- (e) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision; and
- (f) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

### **23.8 Application of Stapling Provisions**

If there is an inconsistency between any Stapling Provision and any other provision of this Constitution, then the Stapling Provision prevails to the extent of the inconsistency, except where this would result in a breach of the Listing Rules, the Operating Rules, the Corporations Act or any other law. The Stapling Provision prevails in this way, even if the other provisions are expressed to apply notwithstanding any other provisions in this Constitution.

### **23.9 Effective time for Stapling**

The Stapling Provisions only apply and come into effect in accordance with this article 23.9. Each Ordinary Share will be Stapled to a Stapled Trust Unit on the Stapling Commencement Date and the Stapling Provisions will, subject to article 23.12, apply from that time. The Directors may, subject to the Corporations Act and, while the Ordinary Shares are Officially Quoted, the Listing Rules, cause the Stapling of any other security or securities (including a share in the Foreign Company) to the Ordinary Shares at the same time as Stapling commences or resumes under clause 23.12, or at any other time.

### **23.10 Listing and consistency with Stapled Trust Constitution**

On and from the Admission Date and subject to clause 23.12, the Directors must use every reasonable endeavour to procure that IFN Stapled Securities are and continue to be Listed as one joint security and that the IFN Stapled Securities are dealt with under this Constitution in a manner consistent with the provisions as to stapling relating to the IFN Stapled Securities in the Stapled Trust Constitution and the constitution of any other Stapled Entity.

### **23.11 Intentions concerning issue and transfer of IFN Stapled Securities**

The Ordinary Shares are intended to be Stapled to Stapled Trust Units and any other Attached Securities in the ratio of one Ordinary Share to one Stapled Trust Unit and one of each other category of Attached Securities (if any). It is the intention of the Company (as more specifically set out in this Constitution) that:

- (a) the Members holding Ordinary Shares shall be identical to the Stapled Trust Unitholders and the holders of other Attached Securities (if any);
- (b) as far as the law permits, an Ordinary Share and one of each of the Attached Securities which are Stapled together shall be treated as one security;
- (c) no transfer of an Ordinary Share is to occur without one of each of the Attached Securities being transferred at the same time from the same transferor to the same transferee; and
- (d) no Ordinary Share is to be issued unless one of each of the Attached Securities is issued at the same time to the same person.

### **23.12 Stapling - cessation, suspension or change**

Subject to the Corporations Act, the Listing Rules, approval by special resolution at a meeting of Members, and approval by a special resolution of Stapled Trust Unitholders and of any other Stapled Entity, the Directors may determine that:

- (a) the Stapling Provisions will cease to apply, or be suspended for a specified time or until a specified event occurs and will resume at that time or upon occurrence of that event, provided that at the same time each Stapled Entity also causes the provisions relating to Stapling contained in the constitutions of the Stapled Entities to cease to apply, or be suspended and resume, in accordance with those provisions; or
- (b) a Stapled Entity other than the Stapled Trust will cease to have its securities stapled to shares in the Company, and the Stapling Provisions will cease to apply to its securities.

The date on which Stapling ceases to apply or is suspended or resumes or is changed will be as determined by the Directors in co-operation with the other Stapled Entities. On and from the date on which Stapling ceases, the Directors must do all things reasonably necessary to procure that each Share ceases to be Stapled.

A determination by the Directors under this article 23.12 that the Stapling Provisions will cease to apply or that Stapling will be suspended does not prevent the Directors from subsequently determining that the Stapling Provisions should recommence or resume, as the case requires.

# BYE-LAWS

of

## INFIGEN ENERGY (BERMUDA) LIMITED

I HEREBY CERTIFY that the within-written Bye-laws are a true copy of the Bye-laws of the Company as amended by resolution of the Members of the Memorandum of Association at the Statutory Meeting of the Company on the 29th day of April, 2009.



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Secretary

*Prepared by  
Cox Hallett Wilkinson  
Barristers and Attorneys  
Milner House, 18 Parliament Street  
Hamilton, Bermuda*

# Bye-Laws

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## **1 Registered Office**

- 1.1 The Registered Office shall be at such place in Bermuda as the Directors shall from time to time appoint.

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## **2 Share capital and variation of rights**

### **2.1 Share capital**

The share capital of the Company at the date of adoption of these Bye-laws is AS\$500 divided into 500,000,000 shares having par value of AS\$0.000001 each which, subject as otherwise provided in these Bye-laws, shall rank pari passu with each other in all respects.

### **2.2 Power of Directors to issue shares**

The issue of shares in the Company is under the control of the Directors who:

- (a) may issue or dispose of shares to any person at any time and on any terms and conditions and having attached to them any preferred, deferred or other special rights or restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the Directors think fit;
- (b) may grant to any person an option over shares or pre-emptive rights at any time and for any consideration as they think fit; and
- (c) have the right to settle the manner in which fractions of a share, however arising, are to be dealt with,

subject to the Stapling Provisions, the Companies Act, the Listing Rules and any special rights conferred on the holders of any shares or class of shares.

### **2.3 Issue of further shares - no variation**

The rights conferred on the holders of the shares of any class are not to be taken as varied by the issue of further shares ranking equally with the first-mentioned shares unless:

- (a) expressly provided by the terms of issue of the first-mentioned shares; or
- (b) required by the Companies Act or, while the Company remains on the official list of ASX, the Listing Rules.

## **2.4 Variation of class rights**

It at any time the capital of the Company is divided into different classes of shares, the special rights for the time being attached to any class of shares on issue may from time to time (whether or not the Company is being wound up) be varied subject to any necessary additional requirement to comply with the provisions of the Companies Act and the Listing Rules:

- (a) in such manner (if any) as may be provided by those rights; or
- (b) in the absence of any such provision, with the consent in writing of the holders of three quarters in nominal value of the issued shares in that class, or with the sanction of a Special Resolution passed at a separate meeting of the holders of the shares of that class,

but not otherwise.

## **2.5 Class Meetings**

The provisions of these Bye-laws relating to general meetings apply so far as they are capable of application and with any necessary changes to every separate meeting of the holders of a class of shares held under the Companies Act except that:

- (a) a quorum is constituted by at least two persons who hold or represent the holders of shares of the class (unless only one person holds all of the shares of the class, in which case that person constitutes a quorum); and
- (b) any holder of shares of the class, present in person or by proxy, or attorney, may demand a poll.

## **2.6 Non-recognition of interests**

Except as required by law, the Company is not required to recognise:

- (a) a person as holding a share on any trust; or
- (b) any other interest in any share or any other right in respect of a share except an absolute right of ownership in the registered holder, whether or not it has notice of the interest or right.

## **2.7 Joint holders of shares**

Where two or more persons are registered as the joint holders of shares then they are taken to hold the shares as joint tenants with rights of survivorship, but the Company is not bound:

- (a) to register more than three persons as joint holders of a share; or
- (b) to issue more than one certificate or holding statement in respect of shares jointly held.

## **2.8 Ordinary Shares**

The holders of the Ordinary Shares are:

- (a) entitled to receive notice of and attend any meeting of the Company and are entitled to vote on all matters;
- (b) entitled to such dividends as may be declared by the Directors from time to time; and
- (c) in the event of the winding up or dissolution of the Company, whether voluntary or involuntary or for the reorganisation or otherwise or upon the distribution of capital, after the capital paid up on the preference shares in issue, if any, has been paid to the holders of such shares, entitled pari passu to receive a distribution of capital paid up on the Ordinary Shares and to share pari passu in the surplus assets of the Company.

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## **3 Issue of IFN Stapled Securities**

### **3.1 Paramountcy**

The provisions of this bye-law 3 apply notwithstanding the provisions of bye-law 2.

### **3.2 Stapling**

From the Stapling Commencement Date, each Ordinary Share will, subject to bye-law 26.11, be Stapled to one Stapled Trust Unit (and any other Attached Securities that are from time to time Stapled to the Ordinary Share) to form a IFN Stapled Security.

Each Ordinary Share (if any) allotted and issued before Stapling applies will, subject to bye-law 26.11, from the Stapling Commencement Date become Stapled to one Stapled Trust Unit to form (along with any other Attached Securities that are from time to time Stapled to the Ordinary Share) a IFN Stapled Security.

If further Attached Securities are from time to time Stapled to the Ordinary Shares the intention is that, so far as the law permits, an Ordinary Share and one of each of the Attached Securities which are stapled together shall be treated as one security (IFN Stapled Security).



While Stapling applies, the number of issued Ordinary Shares must equal the number of issued Attached Securities of each category at that time.

This bye-law 3 does not restrict the issue of shares which are not Ordinary Shares. Only Ordinary Shares will be stapled to Stapled Trust Units or other Attached Securities.

### **3.3 Registration**

The Stapled Securities must be registered in the IFN Stapled Security Register and, subject to bye-laws 3.5 and 3.6, the Company must issue a certificate, or a holding statement in accordance with the requirements of the CS Facility in respect of the IFN Stapled Securities, identifying the IFN Stapled Securities to which the certificate or holding statement relates.

### **3.4 No issue without corresponding issue of Attached Securities**

The Directors may not allot or issue an Ordinary Share unless there is an issue at the same time of an Attached Security of each category to the same person to form a IFN Stapled Security.

### **3.5 Partly-paid shares**

The Directors may allot or issue any share on the basis that the issue price is payable by instalments. If an Ordinary Share is to be issued as part of a IFN Stapled Security and the Attached Securities are to be partly paid the Ordinary Share must be issued with terms for the making and payment of calls and forfeiture which are compatible with the terms of issue of the Attached Securities.

### **3.6 Shares to remain Stapled**

Subject to bye-law 26.11, each issued Ordinary Share will remain Stapled for so long as those shares remain on issue.

While Stapling applies:

- (a) the Directors and the Company must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so, as the case may be, which would result directly or indirectly in any Ordinary Share no longer being Stapled to the relevant Attached Securities to form a IFN Stapled Security;
- (b) without limiting paragraph (a), the Directors and the Company must not re-organise any Ordinary Shares unless at the same time there is a corresponding re-organisation of the relevant Attached Securities that are Stapled to those shares to form IFN Stapled

Securities so that the person holding Ordinary Shares holds an equal number of Attached Securities of each category.

For the purposes of this bye-law 3.6, the term “re-organise” has the meaning given in Listing Rules 7.18 to 7.24 (inclusive) and the term “re-organisation” has a corresponding meaning and includes any consolidation, division, cancellation, subdivision, buy back or reduction of any share capital.

### **3.7 IFN Stapled Security Register**

The Directors must maintain or cause to be maintained the IFN Stapled Security Register which records the names and addresses of the Members holding Ordinary Shares, the number of Ordinary Shares held, the number of relevant Attached Securities held by the Members and any additional information required by the Companies Act, the Listing Rules or by the Directors from time to time. The Directors may establish and maintain a Register jointly with:

- (a) the register of Stapled Trust Unitholders; and
- (b) if applicable, the register of holders of other Attached Securities.

The IFN Stapled Security Register will, for so long as Stapling applies, be deemed to constitute part of the Register of Members, and in this case all other provisions of these Bye-laws applicable to the Register of Members will apply only to any part of the Register of Members kept in addition to the IFN Stapled Security Register.

The Directors must maintain in accordance with the Companies Act a Register of Members recording details of any class of shares other than Ordinary Shares.

### **3.8 Amendment to Stapling Provisions**

Without limitation to the provisions of these Bye-laws or the Companies Act, no Stapling Provision (including this bye-law 3.8) may be deleted or amended without the approval of a Special Resolution of the Stapled Trust Unitholders.

---

## **4 Lien**

### **4.1 Lien on share**

The Company has a first and paramount lien on every share for:

- (a) all due and unpaid calls and instalments in respect of that share;

- (b) all money which the Company has been called on by law to pay, and has paid, in respect of that share;
- (c) interest at the Prescribed Interest Rate on the amount due from the date it becomes due until payment, such interest being calculated daily and payable monthly in arrears; and
- (d) reasonable expenses of the Company in respect of the default on payment.

#### **4.2 Lien on loans under employee incentive schemes**

The Company also has a first and paramount lien on each share registered in the name of the Member for all money payable to the Company by the Member under loans made under an employee incentive scheme.

#### **4.3 Lien on distributions**

A lien on a share under bye-law 4.1 (“Lien on share”) or 4.2 (“Lien on loans under employee incentive schemes”) extends to all distributions in respect of that share, including dividends.

#### **4.4 Exemption from bye-law 4.1 or 4.2**

The Directors may at any time exempt a share wholly or in part from the provisions of bye-law 4.1 (“Lien on share”) or 4.2 (“Lien on loans under employee incentive schemes”).

#### **4.5 Extinguishment of lien**

The Company’s lien on a share is extinguished if a transfer of the share is registered without the Company giving notice of the lien to the transferee.

#### **4.6 Company’s rights to recover payments**

A Member must reimburse the Company on demand in writing for all payments the Company makes to a government or taxing authority in respect of the Member, the death of a Member or the Member’s shares or any distributions on the Member’s shares, including dividends, where the Company is either:

- (a) obliged by law to make the relevant payment; or
- (b) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxing authority that the Company is obliged by law to make the relevant payment.

The Company is not obliged to advise the Member in advance of its intention to make the payment.

#### **4.7 Reimbursement is a debt due**

The obligation of the Member to reimburse the Company is a debt due to the Company as if it were a call on all the Member's shares, duly made at the time when the written demand for reimbursement is given by the Company to the Member. The provisions of these Bye-laws relating to non-payment of calls, including payment of interest and sale of the Member's shares under lien, apply to the debt.

#### **4.8 Sale under lien**

Subject to bye-law 4.9 ("Limitations on sale under lien"), the Company may sell, in any manner the Directors think fit, any share on which the Company has a lien and an equal number of Attached Securities.

#### **4.9 Limitations on sale under lien**

A share on which the Company has a lien may not be sold by the Company unless:

- (a) an amount in respect of which the lien exists is presently payable; and
- (b) the Company has, not less than 14 days before the date of sale, given to the registered holder of the share or the person entitled to the share by reason of the death or bankruptcy of the registered holder, a notice in writing setting out, and demanding payment of, the amount which is presently payable in respect of which the lien exists.

#### **4.10 Transfer on sale under lien**

For the purpose of giving effect to a sale under bye-law 4.8 ("Sale under lien"), the Company may receive the consideration, if any, given for the share and the Attached Securities so sold and may execute a transfer of the share and the Attached Securities sold in favour of the purchaser of the share and the Attached Securities, or do all such other things as may be necessary or appropriate for it to do to effect the transfer. The purchaser is not bound to see to the application of the purchase money.

#### **4.11 Irregularity or invalidity**

The title of the purchaser to the share and the Attached Securities is not affected by any irregularity or invalidity in connection with the sale or disposal of the share and the Attached Securities.

#### **4.12 Proceeds of sale**

The proceeds of a sale under bye-law 4.8 (“Sale under lien”) must be applied by the Company in payment of the amount in respect of which the lien exists as is presently payable, and the residue, if any, must be paid to the person entitled to the share immediately before the sale.

---

## **5 Calls on shares**

### **5.1 Directors to make calls**

The Directors may:

- (a) make calls on a Member in respect of any money unpaid on the shares of that Member, if the money is not by the terms of issue of those shares made payable at fixed times;
- (b) make a call payable by instalments; and
- (c) revoke or postpone a call.

### **5.2 Time of call**

A call is taken to be made at the time when the resolution of the Directors authorising the call is passed.

### **5.3 Members’ liability**

Each Member must upon receiving not less than 30 business days’ notice specifying the time or times and place of payment, pay to the Company at the time or times and place so specified the amount called on that Member’s shares.

### **5.4 Joint holders’ liability**

The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

### **5.5 Non-receipt of notice**

The non-receipt of a notice of any call by, or the accidental omission to give notice of a call to, a Member does not invalidate the call.

### **5.6 Interest on default**

If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due must pay interest on the sum to the time of actual payment at the Prescribed Interest Rate, calculated daily and payable monthly in arrears. The Directors may waive payment of that interest wholly or in part.

## **5.7 Fixed instalments**

Subject to any notice requirements under the Listing Rules, any sum that, by the terms of issue of a share, becomes payable on issue of the share or at a fixed date, is to be taken to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable. In case of non-payment, all the relevant provisions of these Bye-laws as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

## **5.8 Differentiation between Members as to calls**

The Directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

## **5.9 Prepayment of calls and interest**

The Directors may:

- (a) accept from a Member the whole or a part of the amount unpaid on a share although no part of that amount has been called; and
- (b) authorise payment by the Company of interest on the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the Prescribed Interest Rate, as is agreed on between the Directors and the Member paying the sum.

## **5.10 Payment of calls**

While Stapling applies any issue of partly paid Ordinary Shares shall be upon the basis that a call will not be regarded as having been validly paid unless any amount payable at the same time in relation to the partly paid Attached Securities is also paid.

---

# **6 Transfer of shares**

## **6.1 Forms of instrument of transfer**

Subject to these Bye-laws and the Listing Rules, a share in the Company is transferable:

- (a) as provided by the Operating Rules of a CS Facility if applicable; or
- (b) by any other method of transfer which is required or permitted by the Companies Act and ASX.

## **6.2 Execution and delivery of transfer**

If an instrument of transfer:

- (a) is used to transfer a share in accordance with by-law 6.1(b); and
- (b) is left for registration at the share registry of the Company, accompanied by any information that the Directors properly require to show the right of the transferor to make the transfer,

the Company must, subject to the powers vested in the Directors by these Bye-laws, register the transferee as the holder of the share.

## **6.3 Effect of registration**

Except as provided by any applicable Operating Rules of a CS Facility, a transferor of a share remains the holder of the share transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the share.

## **6.4 Company to register forms without charge**

The Company must register all registrable transfer forms, split certificates, renunciations and transfers, issue certificates and transmission receipts and mark or note transfer forms without imposing a charge except where a charge is permitted by the Listing Rules.

## **6.5 Power to refuse to register**

If permitted to do so by the Listing Rules the Directors may:

- (a) request any applicable CS Facility Operator to apply a holding lock to prevent a transfer of shares in the Company from being registered on the CS Facility's subregister; or
- (b) refuse to register a transfer of shares in the Company to which paragraph (a) does not apply.

## **6.6 Obligation to refuse to register**

The Directors must:

- (a) request any applicable CS Facility Operator to apply a holding lock to prevent transfer of shares in the Company from being registered on the CS Facility's subregister; or
- (b) refuse to register any transfer of shares in the Company to which paragraph (a) does not apply,

if:

- (c) the Listing Rules require the Company to do so;
- (d) bye-law 6.10(b) requires the Directors not to register the transfer; or
- (e) the transfer is in breach of the Listing Rules or a Restriction Agreement.

#### **6.7 Written notice to security holder of holding lock or refusal**

If in the exercise of their rights under bye-laws 6.5 and 6.6 the Directors request application of a holding lock to prevent a transfer of shares in the Company or refuse to register a transfer of shares they must give written notice of the request or refusal to the holder of the shares, the transferee and the broker lodging the transfer, if any. Failure to give such notice does not invalidate the decision of the Directors.

#### **6.8 Company to retain instrument of transfer**

The Company must retain every instrument of transfer which is registered for such period as the Directors determine.

#### **6.9 Refusal to register**

If the Directors refuse registration of a transfer, the transfer must be returned to the person who deposited it if demand is made by that person within 12 months of the giving of notice of refusal to register unless there has been an allegation of fraud concerning the transfer or the transaction to which it relates.

#### **6.10 Effect of Stapling**

- (a) A transfer of an Ordinary Share will only be accepted as a proper transfer in registrable form if, in addition to the requirements of this bye-law 6 or bye-law 7, as the case may be, the transfer relates to or is accompanied by a transfer or a copy of a transfer of the relevant Attached Securities to which the share is Stapled in favour of the same transferee.
- (b) Subject to the Operating Rules and the Listing Rules, the Directors must not register a transfer of an Ordinary Share unless the relevant Attached Securities are also to be transferred, or are capable of transfer, simultaneously.
- (c) A transfer of an Ordinary Share which is not accompanied by a transfer referred to in bye-law 6.10(a) or a copy of such a transfer of the relevant Attached Securities to which the share is Stapled will



be taken to authorise the Company as agent for the transferor to effect in accordance with the provisions of the relevant constitution or constitutions, a transfer of the Attached Securities, to the same transferee.

---

## **7 Transmission of shares**

### **7.1 Transmission of shares on death of holder**

If a Member who does not own shares jointly dies, the Company will recognise only the personal representative of the Member as being entitled to the Member's interest in the shares.

### **7.2 Information given by personal representative**

If the personal representative gives the Directors the information they reasonably require to establish the representative's entitlement to be registered as a holder of the shares:

- (a) the personal representative may:
  - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
  - (ii) by giving a completed transfer form to the Company, transfer the shares to another person; and
- (b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.

On receiving an election under paragraph (a)(i), the Company must register the personal representative as the holder of the shares.

A transfer under paragraph (a)(ii) is subject to the Bye-laws that apply to transfers generally.

### **7.3 Death of joint owner**

If a Member who owns shares jointly dies, the Company will recognise only the survivor as being entitled to the Member's interest in the shares. Neither the estate of the Member nor the survivor is released from any liability in respect of the shares.

### **7.4 Transmission of shares on bankruptcy**

If a person entitled to shares because of the bankruptcy of a Member gives the Directors the information they reasonably

require to establish the person's entitlement to be registered as holder of the shares, the person may:

- (a) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
- (b) by giving a completed transfer form to the Company, transfer the shares to another person.

On receiving an election under paragraph (a), the Company must register the person as the holder of the shares.

A transfer under paragraph (b) is subject to the Bye-laws that apply to transfers generally.

This bye-law has effect subject to the Bankruptcy Act 1989.

### **7.5 Transmission of shares on mental incapacity**

If a person entitled to shares because of the mental incapacity of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:

- (a) the person may:
  - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; and
  - (ii) by giving a completed transfer form to the Company, transfer the shares to another person; and
- (b) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.

On receiving an election under paragraph (a)(i), the Company must register the person as the holder of the shares.

A transfer under paragraph (a)(ii) is subject to the Bye-laws that apply to transfers generally.

### **7.6 Stapling**

Notwithstanding any other provision of these Bye-laws, no person under this bye-law 7 may become a registered holder of Ordinary Shares unless that person is also entitled to become the registered holder of each category of Attached Securities to which those shares are Stapled.

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## **8 Increase, alteration and reduction of capital**

### **8.1 Increase of Capital**

- (a) The Company may from time to time increase its capital by such sum to be divided into shares of such par value as the Company by Resolution shall prescribe.
- (b) The Company may, by Resolution increasing the capital, direct that the new shares or any of them shall be offered in the first instance either at par or at a premium or (subject to the provisions of the Companies Act) at a discount to all the holders for the time being of shares of any class or classes in proportion to the number of such shares held by each of them or make any other provision as to the issue of the new shares.
- (c) The new shares shall be subject to all the provisions of these Bye-laws with reference to lien, the payment of calls, forfeiture, transfer, transmission and otherwise.

### **8.2 Alteration of Capital**

The Company may, subject to bye-law 2.4, from time to time by Resolution:

- (a) Divide its shares into several classes and attach thereto any preferential deferred, qualified or special rights, privileges or conditions;
- (b) Consolidate and divide all or any of its share capital into shares of larger par value than its existing shares;
- (c) Sub-divide its shares or any of them into shares of smaller par value than is fixed by its Memorandum so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- (d) Make provision for the issue and allotment of shares which do not carry any voting rights;
- (e) Cancel shares which, at the date of the passing of the Resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled; and
- (f) Change the currency of denomination of its share capital.

Where any difficulty arises in regard to any division, consolidation or subdivision under this bye-law 8.2, the directors may settle the same as they think expedient and, in particular, may arrange for the sale of the shares representing fractions and the distribution of the net proceeds of sale in due proportion amongst the Members who would have been entitled to the fractions, and for this purpose the Directors may authorise some person to transfer the shares representing fractions to the purchaser thereof, who shall not be bound to see to the application of the purchase money nor shall the purchaser's title to the shares be affected by any irregularity or invalidity in the proceedings relating to the sale.

While Stapling applies, the Company may not effect an alteration of capital pursuant to this bye-law 8.2 (save for bye-law 8.2(f)) that affects a shares in the Company that is a component of a IFN Stapled Security unless there is a similar alteration by each other Stapled Security.

### **8.3 Reduction of Capital**

- (a) Subject to the Companies Act, its Memorandum, the Listing Rules and any confirmation or consent required by law or these Bye-laws, the Company may from time to time by Resolution authorise the reduction of its issued share capital (including by the purchase of its own shares) or any capital redemption reserve fund or any share premium or contributed surplus account in any manner;
- (b) In relation to any such reduction, the Company may by Resolution determine the terms upon which such reduction is to be effected including, in the case of a reduction of part only of a class of shares, those shares to be affected; and
- (c) While the Stapling applies, the Company may not effect a reduction of capital unless there is a similar reduction of capital in each Stapled Entity to which the shares are Stapled.

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## **9 Forfeiture of shares**

### **9.1 Notice requiring payment of call**

If a Member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the Directors may, at any time afterwards during such time as any part of the call or instalment remains unpaid, give a notice on the Member requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all costs and expenses that may have been incurred by the Company by reason of that non-payment.

## **9.2 Contents of notice**

The notice must name a further day, not earlier than the expiration of 14 days from the date of service of the notice, on or before which the payment required by the notice is to be made and must state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made and an equal number of Attached Securities to which the shares are Stapled will be liable to be forfeited. If the shares are officially quoted by ASX the notice must contain such other information as is required by the Listing Rules (or ASX under the Listing Rules).

## **9.3 Forfeiture for failure to comply with notice**

A share in respect of which the notice under bye-law 9.1 (“Notice requiring payment of call”) has not been complied with may at any time, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect.

## **9.4 Dividends and distributions included in forfeiture**

A forfeiture under bye-law 9.3 (“Forfeiture for failure to comply with notice”) includes all dividends and other distributions declared or to be made in respect of the forfeited shares and not actually paid or distributed before the forfeiture.

## **9.5 Sale or re-issue of forfeited shares**

Subject to the Companies Act and the Listing Rules:

- (a) a share (other than an Ordinary Share) forfeited under bye-law 9.3 may be sold, re-issued or otherwise disposed of to whom and on such terms as the Directors think fit; and
- (b) an Ordinary Share forfeited under bye-law 9.3 (together with the Attached Securities) may be sold or otherwise disposed of as a fully paid Ordinary Share (together with the Attached Securities) at a price equal to the fair value thereof as determined by the Directors with the balance of the sale price of the IFN Stapled Security being allocated between the Attached Securities in accordance with the Stapled Trust Constitution.

## **9.6 Notice of forfeiture**

If any share is forfeited under bye-law 9.3 (“Forfeiture for failure to comply with notice”) notice of the forfeiture must be given to the Member holding the share immediately before the forfeiture and an entry of the forfeiture and its date must be made in the Register.

**9.7 Surrender instead of forfeiture**

The Directors may accept the surrender of any share which they are entitled to forfeit on any terms they think fit and any surrendered share is taken to be a forfeited share.

**9.8 Cancellation of forfeiture**

At any time before a sale or disposition of a share, the forfeiture of that share may be cancelled on such terms as the Directors think fit.

**9.9 Effect of forfeiture on former holder's liability**

A person whose shares have been forfeited:

- (a) ceases to be a Member in respect of the forfeited shares and ceases to be a member of each Stapled Entity in respect of the Attached Securities and loses all entitlement to dividends and other distributions or entitlements on the shares and relevant Attached Securities; and
- (b) remains liable to pay the Company all money that, at the date of forfeiture, was payable by that person to the Company in respect of the shares, plus interest at the Prescribed Interest Rate from the date of forfeiture and also reasonable expenses of sale but the former Member's liability ceases if and when the Company receives payment in full of all such money and, if applicable, interest in respect of forfeited shares.

**9.10 Evidence of forfeiture**

A statement in writing declaring that the person making the statement is a director or a secretary of the Company, and that a share in the Company has been forfeited in accordance with these Bye-laws on the date stated in the statement, is prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.

**9.11 Transfer of forfeited share**

The Company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute or effect a transfer of the share in favour of the person to whom the share is sold or disposed of. Any surplus remaining after satisfaction of any liability to the Company in respect of the forfeited share (including costs and expenses) must, subject to the terms of issue of the share, be paid to the person who held the share immediately before forfeiture.

### **9.12 Registration of transferee**

On the execution of the transfer, the transferee must be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.

### **9.13 Irregularity or invalidity**

The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.

### **9.14 Forfeiture applies to non-payment of instalment**

The provisions of these Bye-laws as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, as if that sum had been payable by virtue of a call duly made and notified.

### **9.15 Attached Securities**

Where the share is an Ordinary Share, a reference to a share in this clause is deemed to be a reference to the Ordinary Share and the Attached Securities where applicable.

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## **10 General meetings**

### **10.1 Annual general meeting**

Annual general meetings of the Company are to be held in accordance with the Companies Act.

### **10.2 Convening special general meeting**

The Directors may:

- (a) convene and arrange to hold a special general meeting of the Company whenever they think fit and must do so if required to do so under the Companies Act; and
- (b) while Stapling applies, convene a meeting of Members in conjunction with a meeting of the Stapled Trust Unitholders and if applicable, the holders of other Attached Securities and, subject to the Companies Act, make such rules for the conduct of such a meeting as they think fit.

### **10.2A When meeting of Stapled Entity required under Australian law**

While Stapling applies, if members of any Stapled Entity requisition a meeting of the Stapled Entity under the Corporations Act 2001, the Directors must convene a meeting of Members of the Company to be held consecutively or

concurrently with the meeting of members of that Stapled Entity, and the business to be considered at each meeting will be the same in so far as it is applicable to the Company.

**10.3 Notice of general meeting**

Notice of a meeting of Members must be given in accordance with bye-law 20 and the Companies Act.

**10.4 Calculation of period of notice**

In computing the period of notice under bye-law 10.3 (“Notice of general meeting”), both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

**10.5 Cancellation or postponement of a meeting**

Where a meeting of Members (including an annual general meeting) is convened by the Directors they may, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place for the meeting. This bye-law does not apply to a meeting convened in accordance with the Companies Act by a single director, by Members or by the Directors on the request of Members or meetings convened by the Court.

**10.6 Notice of cancellation or postponement of a meeting**

Notice of cancellation or postponement of a general meeting must state the reason for cancellation or postponement and be given:

- (a) to each Member individually; and
- (b) to each other person entitled to be given notice of a meeting of the Company’s Members under the Companies Act.

**10.7 Contents of notice of postponement of meeting**

A notice of postponement of a general meeting must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.



#### **10.8 Number of clear days for postponement of meeting**

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days notice of the general meeting required to be given by these Bye-laws or the Companies Act.

#### **10.9 Business at postponed meeting**

The only business that may be transacted at a general meeting the holding of which is postponed is the business specified in the original notice convening the meeting.

#### **10.10 Proxy or attorney at postponed meeting**

Where:

- (a) by the terms of an instrument appointing a proxy or attorney, a proxy or an attorney is authorised to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy or power of attorney,

then, by force of this bye-law, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy or power of attorney unless the Member appointing the proxy or attorney gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

#### **10.11 Non-receipt of notice**

The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

#### **10.12 Director entitled to notice of meeting**

A Director is entitled to receive notice of and to attend all general meetings and all separate general meetings of the holders of any class of shares in the capital of the Company and is entitled to speak at those meetings.

### **10.13 Stapling**

While Stapling applies, the auditor of each Stapled Entity, the Stapled Trust Manager and representatives of each other Stapled Entity (if any) may attend and speak at any general meeting.

### **10.14 Resolutions in writing**

- (a) Except in the case of the removal of Auditors and Directors, anything which may be done by resolution of the Company in general meeting or by resolution of a meeting of any class of the Members of the Company may, without a meeting and without any previous notice being required, be done by resolution in writing, signed by all of the Members (entitled to vote thereon) or their proxies, or in the case of a Member (entitled to vote thereon) that is a corporation (whether or not a company within the meaning of the Companies Act) on behalf of such Member, being all of the Members who at the date of the resolution in writing would be entitled to attend a meeting and vote on the resolution.
- (b) Such resolution in writing may be signed by, or in the case of a Member that is a corporation (whether or not a company within the meaning of the Companies Act), on behalf of, all the Members (entitled to vote thereon), or any class thereof, in as many counterparts as may be necessary.
- (c) For the purposes of this bye-law 10.14, the date of the resolution in writing is the date when the resolution is signed by, or in the case of a Member (entitled to vote thereon) that is a corporation (whether or not a company within the meaning of the Companies Act), on behalf of, the last Member to sign and any reference in any enactment to the date of passing of a resolution is, in relation to a resolution in writing made in accordance with this section, a reference to such date.
- (d) A resolution in writing made in accordance with this bye-law 10.14 is a valid as if it has been passed by the Company in general meeting or, if applicable, by a meeting of the relevant class of Members (entitled to vote thereon) as the case may be.
- (e) A resolution in writing made in accordance with this bye-law 10.14 shall constitute minutes for the purposes of the Companies Act and these Bye-Laws.

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## **11 Proceedings at general meetings**

### **11.1 Reference to a Member**

Unless the contrary intention appears, a reference to a Member in bye-law 11 means a person who is a Member, a proxy or attorney of that Member.

### **11.2 Number for a quorum**

Subject to bye-law 11.5 (“Adjourned meeting”) two Members present in person or by proxy or attorney are a quorum at a general meeting unless the Company has only one Member entitled to vote, in which case that one Member constitutes a quorum.

### **11.3 Requirement for a quorum**

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the beginning of a meeting it is taken to be present throughout the meeting unless the chairman of the meeting (on the chairman’s own motion or at the instance of a Member, proxy or attorney who is present) declares otherwise.

### **11.4 Quorum and time**

If within 15 minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened by the Directors, or by or on requisition of, Members, is dissolved; and
- (b) in any other case stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

### **11.5 Adjourned meeting**

At a meeting adjourned under bye-law 11.4(b) (“Quorum and time”), the Member or Members present in person or by proxy or attorney are a quorum. If no Members are present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

### **11.6 Appointment and powers of chairman of general meeting**

If the Directors have elected one of their number as chairman of their meetings, that person is entitled to preside as chairman at a general meeting.

### **11.7 Absence of chairman at general meeting**

If a general meeting is held and:

- (a) a chairman has not been elected by the Directors; or
- (b) the elected chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairman of the meeting (in order of precedence):

- (c) the deputy chairman (if any);
- (d) a Director chosen by a majority of the Directors present;
- (e) the only Director present;
- (f) a Member chosen by a majority of the Members present in person or by proxy or attorney.

### **11.8 Conduct of general meetings**

The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the Companies Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairman under this bye-law is final.

### **11.9 Adjournment of general meeting**

The chairman of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.

In exercising this discretion, the chairman may, but need not, seek the approval of the Members present. Unless required by

the chairman, no vote may be taken or demanded by the Members present in respect of any adjournment.

Only unfinished business is to be transacted at a meeting resumed after an adjournment.

#### **11.10 Notice of adjourned meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

#### **11.11 Demand for a poll**

A poll may be demanded by at least 5 Members entitled to vote on the resolution, Members with at least 5% of the votes that may be cast on the resolution on a poll or by the chairman. A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

#### **11.12 Declaration of poll**

Unless a poll is properly demanded and the demand is not withdrawn, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or 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. Neither the chairman nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

#### **11.13 Questions decided by majority**

Subject to the requirements of the Companies Act and the Listing Rules, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

#### **11.14 Poll**

If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is the resolution of the meeting at which the poll was demanded.

A poll demanded on the election of a chairman or on a question of adjournment must be taken immediately.

A demand for a poll may be withdrawn.

### **11.15 Equality of votes - no casting vote for chairman**

If at a meeting of Members there is an equality of votes, either on a show of hands or on a poll, the chairman of the meeting is not entitled to a casting vote in addition to any votes to which the chairman is entitled as a Member or proxy or attorney.

### **11.16 Entitlement to vote**

Subject to any rights or restrictions for the time being attached to any class or classes of shares and to these Bye-laws:

- (a) on a show of hands, each Member present in person and each other person present as a proxy or attorney of a Member has one vote; and
- (b) on a poll, each Member present in person has one vote for each fully paid share held by the Member and each person present as proxy or attorney of a Member has one vote for each fully paid share held by the Member that the person represents.

A Member is not entitled to vote at a general meeting in respect of shares which are the subject of a current Restriction Agreement for so long as any breach of that agreement subsists.

### **11.17 Voting on a poll for partly paid shares**

If a Member holds partly paid shares, the number of votes the Member has in respect of those shares on a poll is the proportion that the aggregate amount paid on the shares bears to their aggregate issue price.

To determine the aggregate amount paid on the shares, exclude any amount:

- (a) paid or credited as paid in advance of a call; and
- (b) credited as paid on those shares to the extent that it exceeds the value (ascertained at the time of issue of those shares) of the consideration given or to be given for the issue of those shares.

### **11.18 Fractions disregarded for a poll**

On the application of bye-law 11.17 (“Voting on a poll for partly paid shares”), disregard any fraction which arises so that the number of votes is rounded down.

### **11.19 Joint Members’ vote**

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

#### **11.20 Vote of Member of unsound mind**

If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, then the Member's committee or trustee or any other person who properly has the management of the Member's estate may exercise any rights of the Member in relation to a general meeting as if the committee, trustee or other person were the Member.

#### **11.21 Effect of unpaid call**

A Member is not entitled at a general meeting to cast a vote attached to a share on which a call is due and payable and has not been paid.

#### **11.22 Objection to voting qualification**

An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the chairman of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

#### **11.23 Validity of vote in certain circumstances**

A vote cast by a person as a proxy, or attorney is valid even if:

- (a) the previous revocation of that person's authority by the death of the holder of the shares in respect of which the vote is cast or otherwise; or
- (b) the execution of a transfer of those shares by that holder,

unless a notice in writing of the revocation or transfer has been received at the Registered Office or by the chairman of the meeting before the vote is cast.

#### **11.24 Proxy form while Stapling applies**

While Stapling applies, unless the Companies Act requires otherwise, the form of proxy used may be the same form as the Member uses to appoint a proxy to vote on their behalf in respect of the Attached Securities which they hold.

### **11.25 Meetings by technology**

A meeting of the Members or any class of Members may be held at two or more venues by means of such telephone, electronic or other communication facilities as permit all persons in the meeting to communicate with each other simultaneously and instantaneously and participation in such a meeting shall constitute presence in person at such meeting.

### **11.26 Joint Meetings**

While Stapling applies, meetings of Members may be held in conjunction with meetings of the holders of Attached Securities and, unless the Companies Act requires otherwise, the Directors may make such rules of the conduct of such meetings as the Directors determine.

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## **12 The Directors**

### **12.1 Appointment of Directors**

Unless otherwise determined by the Company in general meeting, the number of Directors is to be not less than 3 nor more than 10. The Directors in office at the time of adoption of these Bye-laws continue in office subject to these Bye-laws.

### **12.2 Change of number of Directors**

The Company in general meeting may by resolution increase or reduce the number of Directors, and may also determine the rotation in which the increased or reduced number is to retire from office.

### **12.3 Rotation of Directors**

At each annual general meeting there must be an election of Directors. The Directors who must retire from office (but are eligible to stand for re-election) at the annual general meeting are determined as follows:

- (a) each Director (other than the Managing Director exempt from rotation under bye-law 14.20) who has held office (without re-election):
  - (i) beyond the third annual general meeting following the Director's appointment or last election; or
  - (ii) for at least three years,whichever is the longer period;
- (b) each Director who was appointed by the Directors under bye-law 12.8; and



- (c) if none of (a), (b) or (c) is applicable, the Director who has held office longest without re-election.

#### **12.4 Office held until conclusion of meeting**

A retiring Director holds office until the conclusion of the meeting at which that Director retires but is eligible for re-election.

#### **12.5 Directors to retire**

The Directors to retire at any annual general meeting must be those who have been longest in office since their last election, but, as between persons who were last elected as Directors on the same day, those to retire must be determined by lot, unless they otherwise agree among themselves.

#### **12.6 Directors elected at general meeting**

- (a) The Company may, at a general meeting at which a Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office.
- (b) The Company may also, subject to bye-law 12.1, at any general meeting appoint any person nominated by the existing Directors to be an additional Director.

#### **12.7 Eligibility for election as Director**

Except for a person who is eligible for election or re-election under bye-law 12.4 (“Office held until conclusion of meeting”) or 12.8 (“Casual Vacancy”), a person is not eligible for election as a Director at a general meeting of the Company unless a consent to nomination signed by the person has been lodged at the Registered Office:

- (a) while the Company is Listed, in the case of a person recommended for election by the Directors, at least 20 business days before the general meeting;
- (b) in any other case while the Company is Listed, at least 30 business days before the general meeting; and
- (c) while the Company is not Listed, at least 1 business day before the general meeting.

#### **12.8 Casual Vacancy**

The Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided the total number of Directors does not exceed the maximum number determined in accordance with bye-law 12.1 (“Number of Directors”) or 12.2 (“Change of number of Directors”).

A Director appointed under this bye-law holds office until the conclusion of the next annual general meeting of the Company but is eligible for election at that meeting.

#### **12.9 Remuneration of Directors**

The Directors are entitled to be remunerated for their services as Directors and the total amount or value of the remuneration of the Directors must not in any year exceed in aggregate the amount last fixed by ordinary resolution of Members in general meeting. The remuneration is to be divided among the Directors in the proportion and manner agreed between them or, in default of agreement, equally. This bye-law does not apply to the remuneration of a Managing Director or an Executive Director in either capacity. The Directors' remuneration accrues from day to day.

#### **12.10 Additional or special duties**

If a Director at the request of the Directors performs additional or special duties for the Company, the Company may remunerate that Director as determined by the Directors and that remuneration may be either in addition to or in substitution for that Director's remuneration under bye-law 12.9 ("Remuneration of Directors").

#### **12.11 Retirement benefit**

Subject to limitations imposed by the Listing Rules and Companies Act, the Company may pay a former Director, or the personal representatives of a Director who dies in office, a retirement benefit in recognition of past services of an amount determined by the Directors. The Company may also enter into a contract with a Director providing for payment of a retirement benefit. A retirement benefit paid under this bye-law is not remuneration to which bye-law 12.9 ("Remuneration of Directors") applies.

#### **12.12 Expenses**

A Director is also entitled to be reimbursed out of the funds of the Company such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company.

#### **12.13 Director's interests**

- (a) Subject to complying with the Companies Act regarding disclosure of and voting on matters involving material personal interests, a Director may:
  - (i) hold any office or place of profit in the Company, except that of auditor;

- (ii) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
  - (iii) enter into any contract or arrangement with the Company;
  - (iv) participate in any association, institution, fund, trust or scheme for past or present employees or directors of the Company or persons dependent on or connected with them;
  - (v) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor; and
  - (vi) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors.
- (b) A Director may do any of the above despite the fiduciary relationship of the Director's office:
- (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement.
- (c) A reference to the Company in this bye-law is also a reference to each related body corporate of the Company and to each of the Stapled Entities.

#### **12.14 Signing documents**

A Director is not disqualified because of a material personal interest from signing or participating in the execution of a document by or on behalf of the Company.

#### **12.15 Vacation of office of Director**

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

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;

- (b) resigns from the office by notice in writing to the Company; or
- (c) is not present personally or by proxy or represented by an Alternate Director at meetings of the Directors for a continuous period of six months without leave of absence from the Directors.

#### **12.16 Removal of Directors**

- (a) The Company may at a special general meeting called for that purpose remove a Director provided notice of any such meeting shall be served upon the Director concerned not less than 14 days before the meeting and he shall be entitled to be heard at that meeting.
- (b) A Director can only be removed at a special general meeting by a resolution of Ordinary Shares. Any vacancy created by that removal may be filled at the meeting by the election of another Director in his or her place or, in the absence of any such election, by the Directors.

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### **13 Powers and duties of Directors**

#### **13.1 Directors to manage Company**

The business of the Company is to be managed by the Directors, who may exercise all such powers of the Company as are not, by the Companies Act or by these Bye-laws, required to be exercised by the Company in general meeting. To the extent permitted by law, while Stapling applies, the Directors may have regard to the interests of the Stapled Trust Unitholders and, if applicable, the members of any other Stapled Entity and must act in the best interests of Infigen Energy as a whole rather than only in the interests of the Company.

#### **13.2 Specific powers of Directors**

Without limiting the generality of bye-law 13.1 (“Directors to manage Company”), the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company or all 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.

#### **13.3 Appointment of attorney**

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions

vested in or exercisable by the Directors for such period and subject to such conditions as they think fit.

#### **13.4 Provisions in power of attorney**

Any power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

#### **13.5 Minutes**

The Directors must cause minutes of meetings to be made and kept in accordance with the Companies Act.

#### **13.6 Signing of cheques**

Cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed in the manner and by the persons as the Directors determine.

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### **14 Proceedings of Directors**

#### *General*

#### **14.1 Directors' meetings**

The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.

#### **14.2 Director may convene a meeting**

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

#### **14.3 Questions decided by majority**

Questions arising at a meeting of Directors are to be decided by a majority of votes of Directors present and entitled to vote. Their decision is for all purposes a decision of the Directors.

#### **14.4 Chairman's Casting Vote**

If at a meeting of Directors an equal number of votes is cast for and against a resolution, the chairman of the meeting has a second or casting vote unless (i) only two Directors are entitled to vote; or (ii) the chairman of the meeting is not entitled to vote.

#### **14.5 Director attending and voting by proxy**

A Director may attend and vote by proxy at a meeting of the Directors if the proxy:

- (a) is another Director; and
- (b) has been appointed in writing signed by the appointor.

The appointment may be general or for one or more particular meetings. A Director present as a proxy for another Director who would be entitled to vote if present at the meeting has one vote for that other Director and one vote as a Director in that capacity.

#### **14.6 Quorum for Directors' meeting**

- (a) The quorum necessary for the transaction of the business of the Directors shall be 2 directors entitled to vote or another number determined by the Directors;
- (b) Unless the Directors determine otherwise, the quorum need only be present at the time the meeting commences.

#### **14.7 Remaining Directors may act**

The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by bye-law 12.1("Appointment of Directors"), the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a general meeting.

#### **14.8 Chairman of Directors**

The Directors may elect one of their number as chairman of their meetings and may also determine the period for which the person elected as chairman is to hold that office.

#### **14.9 Absence of chairman at Directors' meeting**

If a Directors' meeting is held and:

- (a) a chairman has not been elected under bye-law 14.8 ("Chairman of Directors"); or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number to be a chairman of the meeting.

#### **14.10 Directors' committees**

The Directors may delegate any of their powers to a committee or committees consisting of at least one Director and such other persons as they think fit.

#### **14.11 Powers delegated to Directors' committees**

A committee to which any powers have been delegated under bye-law 14.10 ("Directors' committees") must exercise those powers in accordance with any directions of the Directors. A power exercised by a committee is taken to have been exercised by the Directors. Subject to the terms on which a power of the Directors is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the provisions of these Bye-laws which regulate the meetings and proceedings of Directors.

#### **14.12 Chairman of Directors' committee**

The members of a committee may elect one of their number as chairman of their meetings. If a meeting of a committee is held and:

- (a) a chairman has not been elected; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members involved may elect one of their number to be chairman of the meeting.

#### **14.13 Meetings of Directors' committee**

A committee may meet and adjourn as it thinks proper.

#### **14.14 Determination of questions**

Questions arising at a meeting of a committee are to be determined by a majority of votes of the members involved and voting. The provisions of bye-law 14.4 apply in relation to the chairman of the meeting having a casting vote.

#### **14.15 Circulating resolutions**

- (a) The Directors may pass a resolution without a Directors' meeting being held if either:
  - (i) all of the Directors who are then in Australia and entitled to vote on the resolution; or
  - (ii) all of the Directors who are entitled to vote on the resolution:

sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs.

- (b) If a resolution in writing is signed by an Alternate Director, it must not also be signed by the appointor of the Alternate Director and vice versa.
- (c) In relation to a resolution in writing:
  - (i) a document generated by electronic means which purports to be a facsimile of a resolution of Directors is to be treated as a resolution in writing; and
  - (ii) a document bearing a facsimile of a signature is to be treated as signed.

#### **14.16 Validity of acts of Directors**

All acts done at a meeting of the Directors or of a committee of Directors, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

#### **14.17 Participation where Directors interested**

- (a) A Director who has a material personal interest in a matter that is being considered at a meeting of Directors must not:
  - (i) be present while the matter is being considered at the meeting;
  - (ii) be present during the consideration of a proposed resolution of a kind referred to in bye-law 14.17(c) in relation to the matter, whether in relation to that or another Director; or



- (iii) vote in respect of that matter or that proposed resolution.
- (b) Despite bye-law 14.17(a), a Director may be present and may vote on a matter if the Director's interest is held:
  - (i) as a Member of the Company; and
  - (ii) in common with other Members of the Company.
- (c) Despite bye-law 14.17(a), a Director may be present and, unless prohibited from voting by the Listing Rules, may vote on a matter if the board of directors has at any time passed a resolution that:
  - (i) specifies the Director, the interest and the matter; and
  - (ii) states that the Directors voting for the resolution are satisfied that the interest should not disqualify the Director from considering and voting on the matter.
- (d) a quorum is not present during the consideration of a matter at a meeting of Directors unless 2 directors are present who are entitled to vote on any motion that may be moved at the meeting in relation to the matter.
- (e) Despite bye-laws 14.17(c) and 14.17(a) but subject to the Companies Act, a Director may be counted in the quorum and may vote on a resolution proposed by a person other than the Director if:
  - (i) the resolution is in connection with a general meeting of the company dealing with the matter; and
  - (ii) section 195 of the Companies Act would otherwise prevent the proposed resolution from being considered.
- (f) A Director may attest the affixing of the seal to a contract or arrangement entered into by the director or in which the director is, directly or indirectly, interested.

### ***Managing and Executive Directors***

#### **14.18 Appointment of Managing and Executive Directors**

- (a) The Directors may appoint one of their number to be Managing Director and may likewise remove any

Director so appointed from the office of Managing Director and appoint another in that Director's place.

- (b) The Directors may:
  - (i) appoint one or more of their number as an Executive Director or to any other office, except auditor, of employment by the Company for the period and on the terms they think fit; and
  - (ii) subject to the terms of any contract between the relevant Director and the Company, at any time remove or dismiss any Executive Director from that office and appoint another Director in their place.
- (c) A person removed from the office of Managing Director or Executive Director under this bye-law 14.18 continues to hold office as a Director unless they retire or are removed from that office under another provision of these Bye-laws.

#### **14.19 Ceasing to be Managing or Executive Director**

A Managing Director or Executive Director automatically ceases to be a Managing Director or Executive Director on ceasing to be a Director.

#### **14.20 One Managing Director exempt from retirement by rotation**

If at any time there is more than one Managing Director appointed under bye-law 14.18(a), only one of their number, nominated by the Directors, is exempt from retirement by rotation and is not counted under bye-law 12.3 ("Rotation of Directors") for determining the number of Directors to retire by rotation.

#### **14.21 Remuneration of Managing and Executive Directors**

The remuneration of a Managing Director or an Executive Director may be fixed by the Directors and may be by way of salary or commission or participation in profits or by all or any of those modes, but may not be by a commission on or percentage of operating revenue.

#### **14.22 Powers of Managing and Executive Directors**

The Directors may:

- (a) confer on a Managing Director or an Executive Director such of the powers exercisable by them, on such terms and conditions and with such restrictions, as they think fit; and

- (b) withdraw or vary any of the powers conferred on a Managing Director or an Executive Director.

### *Alternate Directors*

#### **14.23 Appointment of Alternate Director**

Subject to the Companies Act, a Director may appoint a person, approved by a majority of the other Directors, to be an Alternate Director in the Director's place during such period as the Director thinks fit.

#### **14.24 Alternate Director and meetings**

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not attend a meeting, is entitled to attend and vote in the appointor's place.

#### **14.25 Alternate Director's powers**

An Alternate Director may exercise all the powers except the power to appoint an Alternate Director and, subject to the Companies Act, may perform all the duties of the appointor insofar as the appointor has not exercised or performed them.

#### **14.26 Alternate Director or proxy and voting**

A person who is present at a meeting of Directors as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or proxy and, if that person is also a Director, has one vote as a Director in that capacity.

#### **14.27 Alternate Director responsible for own acts and defaults**

Whilst acting as a Director, an Alternate Director is responsible to the Company for the Alternate Director's own acts and defaults and the appointor is not responsible for them.

#### **14.28 Alternate Director and remuneration**

An Alternate Director is not entitled to receive from the Company any remuneration or benefit under bye-law 12.9 ("Remuneration of Directors") or 12.11 ("Retirement benefit").

#### **14.29 Termination of appointment of Alternate Director**

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director.

#### **14.30 Appointment or termination in writing**

An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment and delivered to the Company.

#### **14.31 Alternate Director and number of Directors**

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

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### **15 Secretary and other officers**

#### **15.1 Appointment of Secretary**

There must be at least one secretary of the Company who is to be appointed by the Directors at such remuneration (if any) and upon such terms as they may think fit.

#### **15.2 Suspension and removal of Secretary**

The Directors may suspend or remove a Secretary from that office.

#### **15.3 Powers, duties and authorities of Secretary**

The duties of the Secretary shall be those prescribed by the Companies Act together with such other powers, duties and authorities as the Directors may from time to time determine and the Secretary must exercise all such powers and authorities subject at all times to the control of the Directors.

#### **15.4 President or Chairman**

- (a) The officers of the Company shall include a president and vice-president or a chairman and a deputy chairman who shall be Directors, provided that the residency for tax purposes of such one or more of them shall not cause the Company to be resident for tax purposes outside Bermuda, and shall be elected by the Directors as soon as possible after the statutory meeting.
- (b) In addition, the Directors may appoint any person whether or not that person is a Director to hold such office as the Directors may from time to time determine.
- (c) Any person elected or appointed pursuant to this By-law 15.4 shall hold office for such period and upon such terms as the Directors may determine and the Directors may revoke or terminate any such election or appointment. Any such revocation or termination shall

be without prejudice to any claim for damage that such officer may have against the Company or the Company may have against such officer of any breach of any contract of service between that person and the Company which may be involved in such revocation or termination. Save as provided in the Companies Act or these Bye-laws, the powers and duties of the officers of the Company shall be such (if any) as are determined from time to time by the Directors.

- (d) Where a meeting of the Directors is held and:
- (i) The chairman is not present at the time appointed for the holding of the meeting; or
  - (ii) The chairman is present but does not wish to chair the meeting;

The Directors present shall elect one of their number to be chairman of the meeting.

### **15.5 Resident Representative**

- (a) A Resident Representative shall be appointed by the Directors at such remuneration (if any) and upon such terms as they may think fit and any Resident Representative so appointed may be removed by the Directors.
- (b) The duties of the Resident Representative shall be those prescribed by the Companies Act together with such other powers, duties and authorities as shall from time to time be determined by the Directors.

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## **16 Seals**

### **16.1 Safe custody of common seals**

The Directors must provide for the safe custody of any seal of the Company.

### **16.2 Use of common seal**

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

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## **17 Inspection of records**

### **17.1 Inspection by Members**

The Directors may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than Directors) but must make them available to the extent required by the Companies Act.

### **17.2 Right of a Member to inspect**

A Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

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## **18 Dividends and reserves**

### **18.1 Payment of dividend**

Subject to the Companies Act, these Bye-laws and the rights of persons (if any) entitled to shares with special rights to dividend, the Directors may determine that a dividend is payable, fix the amount and the time for payment and authorise the payment or crediting by the Company to, or at the direction of, each Member entitled to that dividend.

### **18.2 No interest on dividends**

Interest is not payable by the Company on a dividend.

### **18.3 Reserves and profits carried forward**

The Directors may, before paying any dividend, set aside out of the profits of the Company such sums as they think proper as reserves, to be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied.

Pending any application, the reserves may, at the discretion of the Directors, be used in the business of the Company or be invested in such investments as the Directors think fit.

The Directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

### **18.4 Calculation and apportionment of dividends**

Subject to the rights of any persons entitled to shares with special rights as to dividend and to the terms of any shares issued to the contrary, the profits of the Company are divisible

among the Members so that, on each occasion on which a dividend is paid:

- (a) the same sum is paid on each share on which all amounts payable have been paid; and
- (b) the sum paid on a share on which all amounts payable have not been paid is the proportion of the sum referred to in paragraph (a) that the amount paid on the shares bears to the total of the amounts paid and payable on the share.

To determine the amount paid on a share, exclude any amount:

- (c) paid or credited as paid in advance of a call; and
- (d) credited as paid on a share to the extent that it exceeds the value (ascertained at the time of issue of the share) of the consideration received for the issue of the share.

#### **18.5 Deductions from dividends**

The Directors may deduct from any dividend payable to, or at the direction of, a Member all sums of money (if any) presently payable by that Member to the Company on account of calls or otherwise in relation to shares in the Company.

#### **18.6 Distribution of specific assets**

When resolving to pay a dividend, the Directors may:

- (a) resolve that the dividend be satisfied either wholly or partly by the distribution of specific assets to some or all of the persons entitled to the dividend, including fully paid shares in or debentures of the Company or fully paid shares in or debentures of any other body corporate or units in a trust;
- (b) direct that the dividend payable in respect of any particular shares be satisfied wholly or partly by such a distribution and that the dividend payable in respect of other shares be paid in cash; and
- (c) deduct the costs involved in the transfer of those assets from the dividend payable to the Members.

#### **18.7 Resolution of distribution difficulties**

If a difficulty arises in regard to a distribution under bye-law 18.6 (“Distribution of specific assets”), the Directors may:

- (a) settle the matter as they consider expedient;

- (b) fix the value for distribution of the specific assets or any part of those assets based on a valuation done within 1 month of the proposed transfer;
- (c) determine that cash payments will be made to, or at the direction of, any Members on the basis of the value so fixed in order to adjust the rights of all parties; and
- (d) vest any such specific assets in trustees as the Directors consider expedient.

If a distribution of specific assets to, or at the direction of, a particular Member or Members is illegal or, in the Directors' opinion, impracticable the Directors may make a cash payment to the Member or Members on the basis of the cash amount of the dividend instead of the distribution of specific assets.

### **18.8 Payment by cheque and receipts from joint holders**

A dividend, interest or other money payable in cash in respect of shares may be paid:

- (a) by cheque sent through the post directed to the address of the holder as shown in the Register or, in the case of joint holders, to the address of the joint holder first named in the Register;
- (b) by cheque sent through the post directed to such other address as the holder or joint holder in writing directs; or
- (c) by some other method of direct credit determined by the Directors to the holder or holders shown on the Register or to such person or place directed by them.

### **18.9 Unsuccessful payments**

- (a) Cheques that are not presented within 6 months of issue may be cancelled and where a cheque which is cancelled was drawn in favour of a Member, the money is to be held by the Company for the Member or paid by the Company in accordance with the legislation relating to unclaimed money unless the Company in its discretion decides to reinvest the money in Ordinary Shares and Attached Securities in which event the provisions of bye-laws 18.11 and 18.12 will apply.
- (b) Where payment is attempted to be made to a Member by electronic transfer of funds or any other means and the transfer is unsuccessful, the money may be held for the Member as a non-interest bearing deposit until it is claimed or required to be dealt with in accordance with applicable laws relating to unclaimed money.



#### **18.10 Effectual receipt from one joint holder**

Any one of two or more joint holders may give an effectual receipt for any dividend, interest or other money payable in respect of the shares held by them as joint holders.

#### **18.11 Election to reinvest dividend**

The Directors may decide whether to permit or require Members or any class of Members to reinvest cash dividends paid by the Company by subscribing for shares in the Company of the same class on such terms and conditions as the Directors think fit.

#### **18.12 Reinvestment while Stapling applies**

While Stapling applies:

- (a) no reinvestment by Members holding Ordinary Shares may occur unless at the same time the Member acquires an identical number of each category of Attached Securities which when issued or acquired are Stapled to the additional Ordinary Shares;
- (b) the Directors may make provisions governing the amount of the reinvested dividends to be used to subscribe for shares in the Company and the amount to be used to subscribe for the Attached Securities having regard to the issue price of the Attached Securities;
- (c) if the amount to be reinvested in additional Stapled Securities results in a fraction of a Stapled Security, the amount representing the fraction may be paid by the Company to the Member, or held for future reinvestment in Shares and Attached Securities in such proportions as the Company and the Stapled Entities may determine.

#### **18.13 Election to accept shares in lieu of dividend**

Subject to the Listing Rules, the Directors may determine in respect of any dividend which it is proposed to pay on any shares of the Company that holders of the shares may elect:

- (a) to forego the right to share in the proposed dividend or part of such proposed dividend; and
- (b) to receive instead an issue of shares credited as fully paid on such terms as the Directors think fit.

The provisions of bye-law 18.12 apply (with such changes as may be necessary) to this bye-law 18.13.

#### **18.14 Unclaimed dividends**

Unclaimed dividends may be invested by the Directors as they think fit for the benefit of the Company until claimed or until required to be dealt with in accordance with any law relating to unclaimed moneys.

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### **19 Capitalisation of profits**

#### **19.1 Capitalisation of reserves and profits**

The Directors:

- (a) may resolve 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 or the profit and loss account or otherwise available for distribution to Members; and
- (b) may, but need not, resolve to apply the sum in any of the ways mentioned in bye-law 19.2 (“Applying a sum for the benefit of Members”), for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of that sum by way of dividend.

#### **19.2 Applying a sum for the benefit of Members**

The ways in which a sum may be applied for the benefit of Members under bye-law 19.1 (“Capitalisation of reserves and profits”) are:

- (a) in paying up any amounts unpaid on shares and, while Stapling applies, Attached Securities held by Members;
- (b) in paying up in full unissued shares or debentures to be issued to Members as fully paid; or
- (c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

#### **19.3 Effecting the resolution**

The Directors may do all things necessary to give effect to a resolution under bye-law 19.1 and, in particular, to the extent necessary to adjust the rights of the Members among themselves, may:

- (a) make cash payments in cases where shares or debentures become issuable in fractions; and
- (b) authorise any person to make, on behalf of all or any of the Members entitled to any further shares or

debentures on the capitalisation, an agreement with the Company providing for:

- (i) the issue to them, credited as fully paid up, of any further shares or debentures; or
- (ii) the payment by the Company on their behalf of 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 so made is effective and binding on all the Members concerned;

- (c) fix the value of specific assets; and
- (d) vest property in trustees.

#### **19.4 Issue of further shares while Stapling applies**

While Stapling applies, the Directors must not resolve to issue any Ordinary Shares to Members under this bye-law 19 unless, at the same time as the issue, an identical number of Attached Securities are issued to those Members.

#### **19.5 Record Dates**

Notwithstanding any other provisions of these Bye-Laws, the Directors may fix any date as the record date for any dividend, distribution, allotment or issue and for the purpose of identifying the persons entitled to receive notices of general meetings. Any such record date may be on or at any time before or after any date on which such dividend, distribution, allotment or issue is declared, paid or made or such notice is dispatched.

#### **19.6 Accounting Records**

- (a) The Directors shall cause to be kept accounting records sufficient to give a true and fair view of the state of the Company's affairs and to show and explain their transactions, in accordance with the Companies Act and the Listing Rules.
- (b) The records of account shall be kept at the Registered Office or at such other place or places as the Directors think fit and shall at all times be open to inspection by the Directors. If the records of account are kept at some place outside Bermuda, there shall be kept at an office of the Company in Bermuda such records as will enable the Directors to ascertain with reasonable accuracy the final position of the Company at the end of each three month period.

- (c) A copy of every balance sheet and statement of income and expenditure, including every document required by law to be annexed thereto, which is to be laid before the Company in general meeting, together with a copy of the Auditors' report, shall be sent to each person entitled thereto in accordance with the requirements of the Companies Act.

### **19.7 Audit**

Save and to the extent that an audit is waived in the manner permitted by the Companies Act, Auditors shall be appointed and their duties regulated in accordance with the Companies Act, these Bye-laws, any other applicable law and such requirements not inconsistent with the Companies Act as the Directors may from time to time determine.

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## **20 Service of documents**

### **20.1 Document includes notice**

In this bye-law 20, a reference to a document includes a notice.

### **20.2 Methods of service**

The Company may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or
- (c) by sending it to a fax number or electronic address nominated by the Member.

### **20.3 Post**

A document sent by post:

- (a) if sent to an address in Bermuda, may be sent by ordinary post; and
- (b) if sent to an address outside Bermuda, must be sent by airmail,

and in either case is taken to have been received on the day after the date of its posting.

### **20.4 Fax or electronic transmission**

If a document (other than a notice of meeting of Members) is sent by fax or electronic transmission, delivery of the document is taken:

- (a) to be effected by properly addressing and transmitting the fax or electronic transmission; and
- (b) to have occurred 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine or computer to which the message was transmitted.

#### **20.5 Evidence of service**

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

#### **20.6 Joint holders**

A document may be given by the Company to the joint holders of a share by giving it to the joint holder first named in the Register in respect of the share.

#### **20.7 Persons entitled to shares**

A person who by operation of law, transfer or other means whatsoever becomes entitled to any share is absolutely bound by every document given in accordance with this bye-law to the person from whom that person derives title prior to registration of that person's title in the Register.

#### **20.8 Service on the Company**

A document required under these Bye-laws or the Companies Act to be given to the Company must be given in writing (which includes a fax), or in such other manner as the Directors determine. The Document must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member unless the Directors dispense with this requirement. Service is only effective at the time of receipt.

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## **21 Winding up**

### **21.1 Distribution of assets**

If the Company is wound up, the liquidator may, with the sanction of a Resolution of the Company, divide among the Members in kind the whole or any part of the property of the Company and may for that purpose set such value as the liquidator considers fair on any property to be so divided and may determine how the division is to be carried out as between the Members or different classes of Members.

### **21.2 Powers of liquidator to vest property**

The liquidator may, with the sanction of a Resolution of the Company, vest the whole or any part of any such property in

trustees on such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Member is compelled to accept any shares or other securities in respect of which there is any liability on the part of the holder.

### **21.3 Notice to other Stapled Entities**

On or before commencement of a winding up of the Company in accordance with this bye-law 21, the liquidator must give the Stapled Trust Manager and any other Stapled Entity written notice that the Company is to be wound up.

Notwithstanding any other terms of these Bye-laws, should the Stapled Trust be terminated or wound up under the provisions of the Stapled Trust Constitution or by force of law, the Stapling Provisions will cease to apply.

### **21.4 Shares issued on special terms**

Bye-laws 21.1 (“Distribution of assets”), 21.2 (“Powers of liquidator to vest property”) and 21.3 (“Notice to Stapled Trust Manager”) do not prejudice or affect the rights of a Member holding shares issued on special terms and conditions.

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## **22 Miscellaneous**

### **22.1 Certificates**

The Directors may determine to issue certificates for shares or other securities of the Company, to cancel any certificates on issue and to replace lost, destroyed or defaced certificates on issue on the basis and in the form they think fit from time to time.

### **22.2 Amalgamation**

Any resolution proposed for consideration at any general meeting to approve the amalgamation of the Company with any other company, wherever incorporated, shall require the approval of a simple majority of votes cast at such meeting and the quorum for such meeting shall be that required in bye-law 11.4 and a poll may be demanded in respect of such resolution in accordance with the provisions of bye-law 11.11.

### **22.3 Alteration of the Bye-laws**

No bye-law may be amended, rescinded or altered and no new bye-law may be made other than by a Special Resolution.

### **22.4 Transfer by way of Continuation**

If the Company is permitted in accordance with the provisions of the Companies Act, the Company shall, subject to the provisions thereof, have the power to register by way of continuation as a body corporate under the laws of any

jurisdiction outside Bermuda and to be discontinued in Bermuda.

## **22.5 Register of Members**

- (a) The Secretary shall enter or procure the entry in the Register of the particulars required by the Companies Act and the Register shall be kept in such manner as to show at all times the Members of the Company for the time being and the shares respectively held by them.
- (b) Subject to the provisions of the Companies Act, if the Directors consider it necessary or appropriate, the Company may establish and maintain a branch register at such location outside Bermuda as the Directors think fit and while the issued share capital of the Company is, with the consent of the Directors, listed on the ASX, the Company shall keep a branch register in Australia accordingly.
- (c) The Register and the Branch Register shall be open to the public on all weekdays except those days designated as public holidays in the relevant territory where the Register or Branch Register is held and in the case of the Branch Register on any other day on which the ASX shall declare and publish as not being a business day for the purposes of the Listing Rules.

## **22.6 Register of Directors and Officers**

The Secretary or, if appointed, the Registrar, shall establish and maintain at the Registered Office or elsewhere in Bermuda a register of the Directors and Officers of the Company as required by the Companies Act.

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# **23 Indemnity and insurance**

## **23.1 Indemnity**

Every person who is or has been:

- (a) a director of the Company or executive officer of the Company; or
- (b) a secretary of the Company or executive officer of the Company,

is entitled to be indemnified out of the property of the Company against:

- (c) every liability incurred by the person in that capacity (except a liability for legal costs); and

- (d) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

unless:

- (e) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- (f) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

### **23.2 Insurance**

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a director, secretary or executive officer of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

### **23.3 Contract**

The Company may enter into an agreement with a person referred to in bye-laws 23.1 and 23.2 with respect to the matters covered by these bye-laws. An agreement entered into pursuant to this bye-law may include provisions relating to rights of access to the books of the Company conferred by the Companies Act or otherwise by law.

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## **24 Restricted Securities**

### **24.1 Disposal during Escrow Period**

Restricted Securities cannot be disposed of during the Escrow Period except as permitted by the Listing Rules or ASX.

The Company must not acknowledge a disposal (including by registering a transfer) of Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.

### **24.2 Breach of Restriction Agreement or Listing Rules**

During a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement, the holder



of the Restricted Securities is not entitled to any dividend or distribution, or voting rights, in respect of the Restricted Securities.

### **24.3 Interpretation - Restricted Securities**

In this bye-law, the expressions “disposed of”, “disposed”, “Escrow Period” and “Restricted Securities” have the same meaning as in the Listing Rules.

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## **25 Small Holdings**

### **25.1 Application of this Bye-law**

This bye-law 25 applies while the Shares or IFN Stapled Securities are Officially Quoted.

### **25.2 Divestment Notice**

If the Directors determine that a Member is a Small Holder or a New Small Holder the Company may give the Member a Divestment Notice to notify the Member:

- (a) that the Member is a Small Holder or a New Small Holder, the number of Shares making up and the Market Value of the Small Holding or New Small Holding and the date on which the Market Value was determined;
- (b) that the Company intends to sell the Relevant Shares in accordance with this bye-law after the end of the Relevant Period specified in the Divestment Notice;
- (c) if the Member is a Small Holder, that the Member may at any time before the end of the Relevant Period notify the Company in writing that the Member desires to retain the Relevant Shares and that if the Member does so the Company will not be entitled to sell the Relevant Shares under that Divestment Notice; and
- (d) after the end of the Relevant Period the Company may for the purpose of selling the Relevant Shares that are in a CS Facility holding initiate a holding adjustment to move those Shares from that CS Facility holding to an Issuer Sponsored Holding or certificated holding.

If the Operating Rules of a CS Facility apply to the Relevant Shares, the Divestment Notice must comply with those Operating Rules.

### **25.3 Relevant Period**

For a Divestment Notice given to a Small Holder, the Relevant Period must be at least six weeks from the date the Divestment

Notice was given. For a Divestment Notice given to a New Small Holder, the Relevant Period must be at least seven days from the date the Divestment Notice was given.

#### **25.4 Company can sell Relevant Shares**

At the end of the Relevant Period the Company is entitled to sell on-market or in any other way determined by the Directors:

- (a) the Relevant Shares of a Member who is a Small Holder, unless that Member has notified the Company in writing before the end of the Relevant Period that the Member desires to retain the Relevant Shares, in which event the Company must not sell those Relevant Shares under that Divestment Notice; and
- (b) the Relevant Shares of a Member who is a New Small Holder.

#### **25.5 No obligation to sell**

The Company is not bound to sell any Relevant Shares which it is entitled to sell under this bye-law 25 but unless the Relevant Shares are sold within 10 weeks after the end of the Relevant Period the Company's right to sell the Relevant Shares under the Divestment Notice relating to those Shares lapses and it must notify the Member to whom the Divestment Notice was given accordingly.

#### **25.6 Company as Member's attorney**

To effect the sale and transfer by the Company of Relevant Shares of a Member, the Member appoints the Company and each Director and Secretary jointly and severally as the Member's attorney in the Member's name and on the Member's behalf to do all acts and things which the Company considers necessary or appropriate to effect the sale or transfer of the Relevant Shares and, in particular:

- (a) to initiate a holding adjustment to move the Relevant Shares from a CS Facility holding to an Issuer Sponsored Holding or a certificated holding; and
- (b) to execute on behalf of the Member all deeds instruments or other documents necessary to transfer the Relevant Shares and to deliver any such deeds, instruments or other documents to the purchaser.

#### **25.7 Conclusive evidence**

A statement in writing by or on behalf of the Company under this bye-law 25 is (in the absence of manifest error) binding on and conclusive against a Member. In particular, a statement

that the Relevant Shares specified in the statement have been sold in accordance with this bye-law is conclusive against all persons claiming to be entitled to the Relevant Shares and discharges the purchaser from all liability in respect of the Relevant Shares.

#### **25.8 Registering the purchaser**

The Company must register the purchaser of Relevant Shares as the holder of the Relevant Shares transferred to the purchaser under this bye-law. The purchaser is not bound to see to the application of any money paid as consideration. The title of the purchaser to the Relevant Shares transferred to the purchaser is not affected by any irregularity or invalidity in connection with the actions of the Company under this bye-law.

#### **25.9 Payment of proceeds**

Subject to bye-law 25.10 (“Costs”), where:

- (a) Relevant Shares of a Member are sold by the Company on behalf of the Member under this bye-law; and
- (b) the certificate for the Relevant Shares (unless the Company is satisfied that the certificate has been lost or destroyed or the Relevant Shares are Uncertificated Securities) has been received by the Company,

the Company must, within 60 days of the completion of the sale, send the proceeds of sale to the Member entitled to those proceeds by sending a cheque payable to the Member through the post to the address of the Member shown in the Register, or in the case of joint holders, to the address shown in the Register as the address of the Member whose name first appears in the Register. Payment of any money under this bye-law is at the risk of the Member to whom it is sent.

#### **25.10 Costs**

In the case of a sale of the Relevant Shares of a New Small Holder in accordance with this bye-law, the Company is entitled to deduct and retain from the proceeds of sale, the costs of the sale as determined by the Company. In any other case, the Company or a purchaser must bear the costs of sale of the Relevant Shares. The costs of sale include all stamp duty, brokerage and government taxes and charges (except for tax on income or capital gains of the Member) payable by the Company in connection with the sale and transfer of the Relevant Shares.

### **25.11 Remedy limited to damages**

The remedy of a Member to whom this bye-law applies, in respect of the sale of the Relevant Shares of that Member is expressly limited to a right of action in damages against the Company to the exclusion of any other right, remedy or relief against any other person.

### **25.12 Dividends and voting suspended**

Unless the Directors determine otherwise, where a Divestment Notice is given to a New Small Holder in accordance with this bye-law, then despite any other provision in these Bye-laws, the rights to receive payment of dividends and to vote attached to the Relevant Shares of that Member are suspended until the Relevant Shares are transferred to a new holder or that Member ceases to be a New Small Holder. Any dividends that would, but for this bye-law 25.12, have been paid to that Member must be held by the Company and paid to that Member within 60 days after the earlier of:

- (a) the date the Relevant Shares of that Member are transferred; and
- (b) the date that the Relevant Shares of that Member cease to be subject to a Divestment Notice.

### **25.13 Twelve month limit**

If it is a requirement of the Listing Rules, the Company must not give a Small Holder more than one Divestment Notice in any 12 month period (except as contemplated by bye-law 25.14).

### **25.14 Effect of takeover bid**

From the date of the announcement of a takeover bid for the Shares until the close of the offers made under the takeover bid, the Company's powers under this bye-law to sell Relevant Shares of a Member cease. After the close of the offers under the takeover bid, the Company may give a Divestment Notice to a Member who is a Small Holder or a New Small Holder, despite bye-law 25.13 and the fact that it may be less than 12 months since the Company gave a Divestment Notice to that Member.

### **25.15 While Stapling applies**

While Stapling applies:

- (a) the references to Shares and Relevant Shares in this bye-law 25 will apply to Stapled Securities held by the Member; and

- (b) no sale under this bye-law 25 may occur unless, at the same time as Ordinary Shares are sold, an identical number of each category of Attached Securities are also sold.

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## 26 Definitions and Interpretation and Stapling generally

### 26.1 Definitions

In these Bye-laws unless the contrary intention appears:

**Admission Date** means the date on which Stapled Securities are first Officially Quoted.

**Alternate Director** means a person appointed as an alternate director under bye-Law 14.23 (“Appointment of Alternate Director”).

**associate** has the meaning given in the Corporations Act, and **associated** and **associated company** have a corresponding meaning.

**ASIC** means the Australian Securities and Investment Commission.

**ASX means** Australian Stock Exchange Limited or the market operated by it as the context requires.

**Attached Securities** means a Stapled Trust Unit and any other security or securities (including a share in the Australian Company) which are from time to time Stapled or to be Stapled to an Ordinary Share.

**Auditors** means any person or persons for the time being appointed as such by the Members.

**Australian Company** means Infigen Energy Limited (ACN 105 051 616).

**BBSW** for a period:

- (a) the rate determined by the Directors to be the arithmetic mean (rounded up, if necessary, to the nearest 0.01%) of the bid rates displayed at or about 10.30am Sydney time on the first day of that period on the Reuters screen BBSW page for a term of one month after eliminating one of the highest and one of the lowest of those rates; or
- (b) if for any reason there are no rates displayed for a term then BBSW will be the rate determined by the Directors to be the average of the buying rates quoted

to the Directors by 3 Australian banks selected by the Directors at or about that time on that day. The buying rates must be for bills of exchange which are accepted by an Australian bank and which have a term equivalent to one month.

**Branch Register** means a local or branch register of Members established and maintained in accordance with bye-law 22.5(b).

**Bye-Laws** means these Bye-laws, as amended from time to time, and a reference to a bye-law is a reference to a bye-law of these Bye-laws.

**Company** means Infigen Energy (Bermuda) Limited.

**Companies Act** means the Companies Act 1981 of Bermuda.

**Corporations Act** means the Corporations Act 2001 (Cwlth) of Australia.

**CS Facility** has the same meaning as prescribed CS facility in the Corporations Act.

**CS Facility Operator** means the operator of a CS Facility.

**Director** means a person holding office as a director of the Company and where appropriate includes an Alternate Director.

**Directors** means all or some of the Directors acting as a board.

**Divestment Notice** means a notice given under bye-law 25.2 to a Small Holder or a New Small Holder.

**Executive Director** means a person appointed as an executive director under Bye-law 14.18 (“Appointment of Managing and Executive Directors”).

**IFN Stapled Security** means one Ordinary Share and one Stapled Trust Unit, and, if applicable, one security in each other Stapled Entity, Stapled together.

**IFN Stapled Security Register** means the register of Stapled Securities to be established and maintained in accordance with bye-law 3.7.

**Infigen Energy** means the group formed by the Company and the Stapled Entities once Stapling has commenced.

**Issuer Sponsored Holding** means a holding on an electronic sub-register maintained by the Company in accordance with the Listing Rules.

**Listed** means entered in the Official List of ASX.

**Listing Rules** means the listing rules of the ASX which are applicable while the Company is admitted to the official list of the ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by the ASX.

**Managing Director** means a person appointed as a managing director under bye-law 14.18(a)

**Market Value** in relation to a Share means the closing price of the Share on ASX.

**Member** means a person entered in the Register as the holder of shares in the capital of the Company.

**Memorandum** means the Memorandum of Association of the Company as amended from time to time.

**New Small Holder** is a Member who is the holder or a joint holder of a New Small Holding.

**New Small Holding** means a holding of Shares created after the date on which bye-law 25 came into effect by the transfer of a parcel of Shares the aggregate Market Value of which at the time a proper transfer was initiated or a paper based transfer was lodged, was less than a marketable parcel of Shares as provided under the Listing Rules.

**Operating Rules** means the operating rules of a CS Facility regulating the settlement, clearing and registration of uncertificated shares as amended, varied or waived (whether in respect of the Company or generally) from time to time.

**Official List** means, in relation to ASX, the official list of entities that ASX has admitted and not removed.

**Ordinary Shares** means ordinary, voting shares of a par value AS\$0.000001 in the capital of the Company issuable by the Directors pursuant to Bye-law 5 in such classes as the Directors may from time to time determine and having the rights, and being subject to the restrictions, specified in these Bye-laws or by the Directors. **Ordinary Share** has a corresponding meaning.

**Officially Quoted** means quotation in the official list of ASX, including when quotation is suspended for a continuous period of not more than 60 days.

**Prescribed Interest Rate** means the rate determined by the Directors for the purpose of these Bye-laws, being a rate not exceeding BBSW plus 3% per annum, and in the absence of a determination means BBSW plus 3% per annum.

**Register** means the register of Members of the Company.

**Registered Office** means the registered office for the time being of the Company.

**Registrar** means the registrar and transfer agent and/or fund administrator appointed by the Directors and includes any temporary or assistant registrar so appointed.

**related body corporate** has the meaning given to that term in the Corporations Act.

**Relevant Period** means the period specified in a Divestment Notice under bye-law 25.2.

**Relevant Shares** are the Shares specified in a Divestment Notice.

**Resolution** means a simple resolution of the Members or, where required, a separate class or separate classes of Members, adopted either in general meeting or by resolution in writing in accordance with the provisions of these Bye-Laws.

**Restriction Agreement** means a restriction agreement within the meaning and for the purposes of the Listing Rules.

**Seal** means the common seal of the Company and includes any duplicate thereof.

**Secretary** means a person appointed under bye-law 15.1 (“Appointment of Secretary”) as a secretary of the Company and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

**share** means a share in the capital of the Company, and for the purposes of bye-law 25 shares in the Company all of the same class (unless the context otherwise requires).

**Small Holder** is a Member who is the holder or a joint holder of a Small Holding.

**Small Holding** means a holding of Shares the aggregate Market Value of which at the relevant date is less than a marketable parcel of Shares as provided under the Listing Rules.

**Special Resolution** means a resolution that has been passed by at least 75% of the votes cast by Members or, as the case may be, Stapled Trust Unitholders entitled to vote on the resolution.

**Stapled Entity** means the Stapled Trust and any other trust, body corporate or managed investment scheme whose securities are Stapled to the Ordinary Shares.



**Stapled Trust** means the trust currently known as Infigen Energy Trust and registered with ASIC as a managed investment scheme (ARSN 116 244 118).

**Stapled Trust Constitution** means the constitution dated 16 June 2003 in relation to the Stapled Trust, as amended, which binds the Stapled Trust Manager as responsible entity of the Stapled Trust.

**Stapled Trust Manager** means, while the Stapled Trust is not a registered managed investment scheme, the trustee of the Stapled Trust from time to time and, while the Stapled Trust is a registered managed investment scheme, Infigen Energy RE Limited (ACN 113 813 997) in its capacity as responsible entity of the Stapled Trust or its successor as the responsible entity of the Stapled Trust.

**Stapled Trust Unitholder** means a person shown on the register of Stapled Trust members as the holder of a Stapled Trust Unit.

**Stapled Trust Unit** means an ordinary unit in the Stapled Trust.

**Stapling** means the linking together of Ordinary Shares and Attached Securities so that one may not be transferred, or otherwise dealt with, without the other or others and which may, if the Directors so resolve, be quoted on the ASX jointly as a “Stapled Security” or such other term as the ASX permits. **Stapled** has a corresponding meaning.

**Stapling Commencement Date** means the first date upon which Stapling of Shares to Stapled Trust Units is to commence as determined by the Stapled Trust Manager and approved by the Directors.

**Stapling Provisions** means the provisions of these Bye-laws relating to, referring to or connected with Stapling and, for avoidance of doubt, includes those provisions relating to, referring to or connected with Stapling contained in bye-laws, 3, 6.10, 7.6, 9.2, 9.5(b), 9.9(a), 9.15, 10.2(b), 10.13, 11.24, 11.26, 12.13(c), 13.1, 18.12, 18.13, 19.2(a), 19.4, 21.3, 25.15, 26.1 and 26.7 to 26.11 (inclusive) and **Stapling Provision** has a corresponding meaning.

## 26.2 Interpretation

In these Bye-laws unless the contrary intention appears:

- (a) **(gender)** words importing any gender include all other genders;

- (b) **(person)** the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (c) **(singular includes plural)** the singular includes the plural and vice versa;
- (d) **(regulations)** a reference to a law includes regulations and instruments made under the law;
- (e) **(amendments to statutes)** a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision;
- (f) **(from time to time)** a power, an authority or a discretion reposed in a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
- (g) **(amount paid)** a reference to an amount paid on a share includes an amount credited as paid on that share;
- (h) **(signed)** where, by a provision of these Bye-laws, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or in any other manner approved by the directors; and
- (i) **(writing)** “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise.

### **26.3 Companies Act**

In these Bye-laws unless the contrary intention appears:

- (a) an expression has, in a provision of these Bye-laws that deals with a matter dealt with by a particular provision of the Companies Act, the same meaning as in that provision of the Companies Act; and
- (b) “section” means a section of the Companies Act.

### **26.4 Headings and footnotes**

Headings and footnotes are inserted for convenience and are not to affect the interpretation of these Bye-laws.

## **26.5 Currency**

The Directors may:

- (a) differentiate between Members as to the currency in which any amount payable to a Member is paid (whether by way of or on account of dividends, repayment of capital, participation in surplus property of the Company or otherwise);
- (b) determine to pay a distribution in a currency other than Australian dollars and the amount payable will be converted from Australian currency in any manner, at any time and at any exchange rate as the Directors think fit; and
- (c) in deciding the currency in which a payment is to be made to a Member, have regard to the registered address of the Member, the register on which a Member's Shares are registered and any other matters as the Directors consider appropriate.

## **26.6 Application of Listing Rules**

While the Company is Officially Quoted:

- (a) despite anything contained in these Bye-laws, if the Listing Rules prohibit an act being done, the act must not be done;
- (b) nothing contained in these Bye-laws prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require these Bye-laws to contain a provision and it does not contain such a provision, these Bye-laws is deemed to contain that provision;
- (e) if the Listing Rules require these Bye-laws not to contain a provision and it contains such a provision, these Bye-laws is deemed not to contain that provision; and
- (f) if any provision of these Bye-laws is or becomes inconsistent with the Listing Rules, these Bye-laws is deemed not to contain that provision to the extent of the inconsistency.

## **26.7 Application of Stapling Provisions**

If there is an inconsistency between any Stapling Provision and any other provision of these Bye-laws, then the Stapling

Provision prevails to the extent of the inconsistency, except where this would result in a breach of the Listing Rules, the Operating Rules, the Companies Act or any other law. The Stapling Provision prevails in this way, even if the other provisions are expressed to apply notwithstanding any other provisions in these Bye-laws.

#### **26.8 Effective time for Stapling**

The Stapling Provisions only apply and come into effect in accordance with this bye-law 26.9. Each Ordinary Share will be Stapled to a Stapled Trust Unit on the Stapling Commencement Date and the Stapling Provisions will, subject to bye-law 26.12, apply from that time. The Directors may, subject to the Companies Act and, while the Ordinary Shares are Officially Quoted, the Listing Rules, cause the Stapling of any other security or securities (including a share in the Australian Company) to the Ordinary Shares at the same time as Stapling commences or resumes under bye-law 26.12, or at any other time.

#### **26.9 Listing and consistency with Stapled Trust Constitution**

On and from the Admission Date and subject to bye-law 26.12, the Directors must use every reasonable endeavour to procure that IFN Stapled Securities are and continue to be Listed as one joint security and that the IFN Stapled Securities are dealt with under these Bye-laws in a manner consistent with the provisions as to stapling relating to the IFN Stapled Securities in the Stapled Trust Constitution and the constitution of any other Stapled Entity.

#### **26.10 Intentions concerning issue and transfer of IFN Stapled Securities**

The Ordinary Shares are intended to be Stapled to Stapled Trust Units and any other Attached Securities in the ratio of one Ordinary Share to one Stapled Trust Unit and one of each other category of Attached Securities (if any). It is the intention of the Company (as more specifically set out in these Bye-laws) that:

- (a) the Members holding Ordinary Shares shall be identical to the Stapled Trust Unitholders and the holders of other Attached Securities (if any);
- (b) as far as the law permits, an Ordinary Share and one of each of the Attached Securities which are Stapled together shall be treated as one security;
- (c) no transfer of an Ordinary Share is to occur without one of each of the Attached Securities being transferred at the same time from the same transferor to the same transferee; and

- (d) no Ordinary Share is to be issued unless one of each of the Attached Securities is issued at the same time to the same person.

#### **26.11 Stapling - cessation, suspension or change**

Subject to the Companies Act, the Listing Rules, approval by Special Resolution at a meeting of Members, and approval by a Special Resolution of Stapled Trust Unitholders and of any other Stapled Entity, the Directors may determine that:

- (a) the Stapling Provisions will cease to apply, or be suspended for a specified time or until a specified event occurs and will resume at that time or upon occurrence of that event, provided that at the same time each Stapled Entity also causes the provisions relating to Stapling contained in the constitutions of the Stapled Entities to cease to apply, or be suspended and resume, in accordance with those provisions; or
- (b) a Stapled Entity other than the Stapled Trust will cease to have its securities stapled to shares in the Company, and the Stapling Provisions will cease to apply to its securities.

The date on which Stapling ceases to apply or is suspended or resumes or is changed will be as determined by the Directors in co-operation with the other Stapled Entities. On and from the date on which Stapling ceases, the Directors must do all things reasonably necessary to procure that each Share ceases to be Stapled.

A determination by the Directors under this bye-law 26.12 that the Stapling Provisions will cease to apply or that Stapling will be suspended does not prevent the Directors from subsequently determining that the Stapling Provisions should recommence or resume, as the case requires.

# Constitution of Infigen Energy Trust

Dated 29 April 2009

Infigen Energy RE Limited ("Manager")  
(ABN 61 113 813 997, AFSL 290 710 )

**NOTE:**

This document is a consolidated copy of the trust deed dated 16 June 2003 for Infigen Energy Trust ("**Original Constitution**") as amended by the supplemental deeds dated 26 November 2003, 9 September 2005, 14 June 2006, 17 August 2007 and 29 April 2009.

This is not a legally binding document. Reference should be made to the Original Constitution and the supplemental deeds for the operative provisions.

**Mallesons Stephen Jaques**

Level 61  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
T +61 2 9296 2000  
F +61 2 9296 3999  
DX 113 Sydney  
Ref: GH/BMcW

# Infigen Energy Trust

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# Constitution of Infigen Energy Trust

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## 1 Name of Trust

### 1.1 Name

The Trust is called the Infigen Energy Trust or by such other name as the Manager determines from time to time<sup>1</sup>.

### 1.2 If Manager retires

If a Manager retires or is removed, its successor as Manager must, unless otherwise approved by the former Manager, change the name of the Trust to a name that does not imply an association with the former Manager or its business.

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## 2 Assets held on trust

### 2.1 Assets held on trust

The Manager must hold the Assets on trust for Members<sup>2</sup>.

### 2.2 Assets vest in Manager

The Assets vest in the Manager, but must be clearly identified as property of the Trust and held separately from the assets of the Manager and any other managed investment scheme if and to the extent that the Corporations Act so requires<sup>3</sup>.

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## 3 Units and Options

### 3.1 Beneficial interest divided into Units

The beneficial interest in the Trust is divided into Units.

### 3.2 Units confer equal undivided interest

Each Fully Paid Unit confers an equal undivided interest and, unless this constitution states otherwise, a Partly Paid Unit confers an interest of the same nature which is proportionate according to the amount paid up on the Unit.

### 3.3 Interest in Assets

(a) Subject to paragraph (b), a Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset.

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<sup>1</sup> See Corporations Regulation 5C.1.02

<sup>2</sup> See section 601FC(2) of the Corporations Act

<sup>3</sup> See section 601FC(1)(i)

- (b) Where Units are taken to be issued under clause 7.7 and the issue has not yet been recorded in the Register, the person to whom the Units are taken to have been issued has an interest of the kind referred to in paragraph (a) based on the net amount of application money that person has contributed to acquire the Units, divided by the relevant Application Price, whether or not the Application Price has been ascertained at that time.

### **3.4 Stapling provisions**

The provisions of this constitution relating to Stapling take effect on and from the Stapling Commencement Date and apply subject to all other provisions of this constitution which may suspend, abrogate or terminate Stapling.

### **3.5 Creation of Options**

The Manager may create and issue Options on such terms and conditions as the Manager determines. Options may be issued with Units or separately.

### **3.6 Issue of Options**

Subject to this constitution, the Corporations Act (and the conditions of any applicable ASIC Relief from it) and, if relevant, the Listing Rules, the Manager may determine that Options will be issued:

- (a) for consideration or no consideration;
- (b) on the basis that the exercise price for a Unit to be issued on exercise of the Option is one of the following (as specified in the terms of issue of the Option):
  - (i) a price determined by the Manager, provided that the exercise price is less than the price that would otherwise apply under this constitution by a percentage not exceeding 50%;
  - (ii) where Stapling does not apply, the Market Price for Units on or about the date of offer of the Option; or
  - (iii) where Stapling applies, the Market Price for Stapled Securities on or about the date of offer of the Option minus the application price of the Attached Securities; and
- (c) conferring on the holder of the Option such other entitlements under this constitution as the Manager determines,

and otherwise on terms and conditions and with such entitlements as determined by the Manager. The terms of issue of the Option may allow the Manager to buy back the Options. A person becomes an Option Holder when their holding of Options is entered in the Register of Option Holders.

### **3.7 Offers of Options**

Subject to the Listing Rules and the Corporations Act (and the conditions of any applicable ASIC Relief from it), if the Manager is making an offer of Options to Members which is otherwise in proportion to their existing

holdings of Units, the Manager is not required to offer Options under this clause to persons whose address on the Register is in a place other than Australia.

### **3.8 Exercise of Options**

- (a) On exercise of an Option, the holder of the Option is entitled to subscribe for and be allotted such number of Units as the terms and conditions of issue of the Option contemplate.
- (b) While Stapling applies, an Option may only be exercised if, at the same time as Units are acquired pursuant to the Option, the same person acquires an identical number of Attached Securities, which are then Stapled to the Units.

### **3.9 Rights attaching to Units and Options**

A Member holds a Unit subject to the rights, restrictions and obligations attaching to that Unit. The holder of an Option holds the Option subject to the terms and conditions attaching to that Option.

### **3.10 No fractions of Units**

Fractions of a Unit may not be issued by the Manager.

### **3.11 Rounding of fractions**

Where any calculation performed under this constitution or the terms of a withdrawal offer would otherwise result in the issue or redemption of a fraction of one Unit, the number of Units to be issued or redeemed is, subject to this constitution, to be rounded down to the nearest whole Unit.

### **3.12 Rounding**

Any excess application or other money or property which results from rounding under any provision of this constitution becomes an Asset of the Trust.

### **3.13 Consolidation and division of Units and Options**

Subject to the Listing Rules and the Corporations Act, Units and Options may be consolidated or divided as determined by the Manager<sup>4</sup>.

### **3.14 Consolidation and division while Stapling applies**

While Stapling applies, Units may only be consolidated or divided if the related Attached Securities are also consolidated or divided at the same time and to the same extent.

### **3.15 Transfer of Units and Options if Officially Quoted**

If the Units and/or Options are Officially Quoted, Units and/or Options may be transferred in any manner permitted by the Operating Rules of a CS

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<sup>4</sup> If applicable, refer Listing Rules, Chapter 7 - reorganisations of capital.

Facility. The Manager may require before registration of any such transfer that there be provided to the Manager any documents which the rules of the uncertificated system require or permit the Manager to require be provided to it to authorise registration. This clause 3.15 prevails over any other provision of this constitution that may be inconsistent with it but it does not permit the Manager to refuse to register a proper transfer in accordance with the Operating Rules of a CS Facility.

### **3.16 Form of transfer**

Subject to this constitution, a Unit or Option may be transferred in any form approved by the Manager, accompanied by any evidence reasonably required by the Manager to show the right of the transferor to make the transfer and (if the Manager requires) be presented for Registration duly stamped.

### **3.17 Registration**

A transfer is not effective until Registered.

### **3.18 Manager may request holding lock or refuse to register transfer**

If Units or Options are Officially Quoted, and if permitted to do so by the Listing Rules, the Manager may:

- (a) request the CS Facility Operator to apply a holding lock to prevent a transfer of Units registered on the CS Facility's sub register; or
- (b) refuse to register a transfer of Units to which paragraph (a) does not apply.

### **3.19 Manager must request holding lock or refuse to register transfer**

The Manager must:

- (a) request the CS Facility Operator to apply a holding lock to prevent a transfer of Units registered on the CS Facility's sub register; or
- (b) refuse to register any transfer of Units to which paragraph (a) does not apply;

if:

- (c) the Listing Rules require the Trust to do so;
- (d) clause 3.25(a) requires the Manager not to register the transfer; or
- (e) the transfer is in breach of clause 3.24(a).

### **3.20 Notice of holding locks and refusal to register transfer**

If in the exercise of its rights under clause 3.18 and 3.19 the Manager requests application of a holding lock to prevent a transfer of Units on the CS Facility's sub register or refuses to register a transfer of a security they must give written notice of the request to the holder of the Units, to the transferee



and the broker lodging the transfer, if any. Failure to give such notice does not invalidate the decision of the Manager.

### **3.21 Manager must retain instruments of transfer**

The Trust must retain every instrument of transfer which is registered for such period as the Manager determines.

### **3.22 Return of refused transfers**

If the Manager refuses to register a transfer, the transfer must be returned to the person who deposited it if demand is made within 12 months of the giving of notice of refusal to register unless there has been an allegation of fraud concerning the transfer or the transaction to which it relates.

### **3.23 Refusal to register while not Officially Quoted**

If Units or Options are not Officially Quoted, the Manager may refuse to record any transfer in the Register without giving any reason for the refusal.

### **3.24 Restricted Securities**

- (a) While Units or Options are Officially Quoted and the Listing Rules so require, a Member may not transfer Restricted Securities during the applicable escrow period.
- (b) During a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement, the holder of the Restricted Securities is not entitled to any distribution or voting rights in respect of the Restricted Securities.

### **3.25 Single instrument of transfer for Stapled Securities**

While Stapling applies and subject to the Corporations Act and the Listing Rules if the Listing Rules apply:

- (a) the Manager must not register any transfer of Units unless it is a single instrument of transfer of Stapled Securities and any provision of clauses 3.15 to 3.19 of this constitution inclusive referring to a transfer of Units will be deemed to be a reference to such a transfer; and
- (b) a reference in clauses 3.15 to 3.19 inclusive and clause 3.23 to a Unit will be deemed to be a reference to a Stapled Security.

### **3.26 Joint tenancy**

Persons Registered jointly as the holder of a Unit or Option hold as joint tenants and not as tenants in common unless the Manager otherwise agrees.

### **3.27 Death, legal disability of Member**

If a Member dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (where the deceased was a joint holder) or the

legal personal representative (in any other case) will be recognised as having any claim to Units or Options Registered in the Member's name.

### **3.28 Number of Units**

While Stapling applies, the number of issued Units at any time must equal the number of issued Attached Securities of each category.

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## **4 Partly Paid Units**

### **4.1 Payment of Application Price by instalments**

The Application Price of Units may be payable by instalments as set out in this clause 4.

### **4.2 Must also issue partly paid Attached Securities**

While Stapling applies, Units may not be issued on the basis that they are Partly Paid Units unless there is a contemporaneous and corresponding issue of Attached Securities which are to be partly paid. While Stapling applies any issue of Partly Paid Units shall be upon the basis that a call will not be regarded as having been validly paid unless any amount payable at the same time in relation to the partly paid Attached Securities is also paid.

### **4.3 Determination of amount and timing of instalments**

The Manager may determine at any time that Units to be offered for sale or subscription are to be offered on terms that the Application Price is payable by instalments of such amounts and at such times as the Manager determines or, if the Manager so determines, by a single instalment payable at such time as the Manager determines.

### **4.4 Variation or waiver of terms and conditions**

Subject to any applicable statutory duty requiring the Manager to treat Members of the same class equally and those of different classes fairly, where Units are offered for sale or subscription on terms and conditions determined and set out in accordance with clause 4.3, those terms and conditions may be varied or compliance therewith waived only with the consent of the Manager. The variation or waiver must not take effect during the currency of the offering document pursuant to which the Units were offered for sale or subscription.

### **4.5 Notice of instalments**

The Manager must give Members:

- (a) if the Trust is not Listed, at least 3 Business Day's notice; or
- (b) if the Trust is Listed, at least 30 Business Days' notice (but not more than 40 Business Days' notice),

of the time and date each instalment is due to be paid (the First Notice).

If the Trust is Listed:

- (c) the notice must contain such other information as is required by the Listing Rules (or ASX under the Listing Rules); and
- (d) at least 4 Business Days before the date each instalment is due to be paid, the Manager must send a second notice to all new Members and those Members whose holding has changed since the First Notice which must include any changes that have occurred in the information given in the First Notice because of a change in the holding.

#### **4.6 Interest on instalments**

If a Member does not pay an instalment by the due time and date then interest is payable on the sum due from the date payment was due to the time of payment at such rate as the Manager determines not exceeding BBSW plus 3% per annum. Interest is calculated daily and payable monthly in arrears. The Manager may waive payment of that interest in whole or part.

- (a) The Manager may revoke or postpone the payment of an instalment.
- (b) Subject to the Listing Rules, an instalment will be deemed to be due on the date determined by the Manager.
- (c) Subject to the Listing Rules, the non-receipt of a notice that an instalment is due by, or the accidental omission to give a notice that an instalment is due to, a Member, will not invalidate the instalment being due.
- (d) Subject to the Corporations Act and the Listing Rules, the Manager may extinguish in full or in part any liability of Members in respect of any moneys unpaid on Members' Units and such extinguishment will extend to any moneys unpaid on Attached Securities.
- (e) Subject to the Listing Rules, any instalment which, by the terms of issue of the Unit, becomes payable on issue of the Unit or at any date fixed by or in accordance with such terms of issue shall be deemed to be an instalment which the Manager has given Members notice of in accordance with clause 4.5. In the case of non-payment, all the provisions of this constitution as to payment of interest, forfeiture or otherwise shall apply as if such notice had been given.

#### **4.7 Failure to pay instalments**

If a Member fails to pay in full any instalment due on any Partly Paid Unit or Units on or by the day specified for payment, the Manager may, during such time as the instalment or any part of the instalment remains unpaid, serve a notice on that Member requiring payment of so much of the instalment as is unpaid, any interest owing and all reasonable expenses incurred by the Manager as a result of the non-payment. The notice must specify a further time and day (not earlier than 10 days from the date of the notice) on or by which the payment as required by the notice is to be made. The notice must also state that in the event of non payment on or by that specified time and day, the Partly Paid Units in respect of which the instalment or part instalment remains unpaid will be liable to be forfeited and an equal number

of Attached Securities will also be liable to be forfeited. If Units are Officially Quoted, the notice must contain such other information as is required by the Listing Rules (or by ASX under the Listing Rules).

#### **4.8 If requirements of any notice not complied with**

If the requirements of any notice issued under clause 4.7 are not complied with:

- (a) any Partly Paid Unit in respect of which the notice has been given (together with the Attached Securities) may at any time after the date specified in the notice for payment of the amount required by the notice (and before payment of the instalment and any interest and expenses owing), be forfeited on the Manager so determining; and
- (b) subject to the Listing Rules, the Corporations Act and this constitution, all voting rights, entitlements to the distribution of income and other rights in connection with any Partly Paid Unit and the Attached Securities in respect of which the notice has been given are suspended until reinstated by the Manager.

#### **4.9 Disposal of forfeited Units**

Subject to the Listing Rules if Units are Officially Quoted, a forfeited Unit (together with the Attached Securities) may be sold or otherwise disposed of as a Fully Paid Unit or a Partly Paid Unit (together with the Attached Securities), either:

- (a) subject to any necessary ASIC Relief, at a price equal to that received from the sale of the Stapled Security in the normal course of business on ASX less the sum of 2 cents or the fair value as determined by the Manager for the Attached Securities; or
- (b) by private treaty or public auction, if ASIC has given any necessary relief from the provisions of the Corporations Act and if the Manager complies with the conditions of that relief.

At any time before a sale or disposition the forfeiture may be cancelled upon such terms as the Manager thinks fit.

#### **4.10 Holder of forfeited Units**

The holders of Partly Paid Units and Attached Securities which have been forfeited cease to be a Member in respect of the forfeited Units and ceases to be a member of each Stapled Entity in respect of the Attached Securities (and has no claims or demands against the Manager or the Trust in respect of the forfeited Units and the forfeited Attached Securities) but remains liable to pay to the Manager all moneys which at the date of forfeiture were payable by the former Member to the Manager in respect of the forfeited Units (including interest owing under 4.6 and expenses) but the former Member's liability ceases if and when the Manager receives payment in full of all such money and, if applicable, interest in respect of the forfeited Units.

#### **4.11 Evidence of forfeiture**

A statement signed by a duly authorised officer of the Manager that a Partly Paid Unit and the Attached Securities have been duly forfeited on a date stated therein is conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the forfeited Units and the Attached Securities.

#### **4.12 Consideration for forfeited Units**

Where a Partly Paid Unit and relevant Attached Securities are forfeited pursuant to this clause 4 the Manager may receive the consideration, if any, given for a forfeited Unit and forfeited relevant Attached Securities on the sale or disposal, and the Manager may execute a transfer of such Unit and relevant Attached Securities in favour of the persons to whom the Unit and relevant Attached Securities are sold or disposed of and those persons must then be registered as the holders of the Units and relevant Attached Securities and are not obliged to ensure that any part of the money which the persons have paid for the Units and relevant Attached Securities is paid to the former holder of the Units nor shall the person's title to the Units or the Attached Securities be affected by any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of that Unit or the relevant Attached Securities.

#### **4.13 Deductions from consideration for forfeited Units**

Where forfeited Units are sold or disposed of for cash, the Manager must deduct from the amount of the consideration the amount of the instalment owing at the date of forfeiture together with interest (if any) payable thereon and a sum representing an amount which has been or will be incurred for commissions, stamp duties, transfer fees and other usual charges, if any, on the sale or disposal of the Unit and any expenses associated with the forfeiture or any proceedings brought against the Member to recover the instalment or part thereof owing. The Manager may retain the amounts so deducted, but the balance remaining must be paid to the Member whose Units were forfeited.

#### **4.14 Joint holders**

Joint holders of Partly Paid Units are jointly and severally liable to pay all amounts due and payable on the Partly Paid Units held by them.

#### **4.15 Rights and obligations attaching to a Partly Paid Unit are proportionate**

Subject to the Corporations Act and the provisions of this constitution, the rights and obligations attaching to a Partly Paid Unit will be in proportion to the extent to which that Unit is paid up.

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## **5 Classes of Units**

Subject to the Corporations Act, the Manager may from time to time without amending this constitution, issue Units in different Classes with different rights, obligations and restrictions attaching to them. The Manager may from

time to time prescribe other rights, obligations and restrictions pertaining to those Classes which are not inconsistent with the provisions of this constitution or contrary to the Corporations Act.

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## **6 Application Price for Units<sup>5</sup>**

### **6.1 Initial Units and Units issued during initial public offer**

- (a) The first 10 Units (“**Initial Units**”) to be issued on the initial settlement of the Trust<sup>6</sup> in accordance with clause 22.1 will be issued at an Application Price of \$0.99 per Unit.
- (b) Unless clause 6.6 applies, all Units to be issued between the date the Trust becomes a Registered Scheme and the First Closing Date (the “**Initial Public Offer Period**”) will be issued at an Application Price of \$1.38.

### **6.2 While Units are not Officially Quoted**

Subject to Clause 6.1, while Units are not Officially Quoted the Application Price for a Unit must be calculated as:

$$\frac{A + B}{C + D}$$

where

A = Net Asset Value

B = Transaction Costs

C = number of Fully Paid Units in issue

D = Paid-up Proportion

and the application price may be payable either in full on application or by such instalments as the Manager determines in accordance with clause 4.

### **6.3 Determination of variables in clause 6.2**

Each of the variables in clause 6.2 must be determined as at the next Valuation Time after:

- (a) the Manager receives the application for Units; or
- (b) the Manager receives the application money (even if paid or to be paid into the Applications Account) or the property against which Units are to be issued or vested in the Manager,

whichever happens later.

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<sup>5</sup> Required to be included by Section 601GA(1)(a)

<sup>6</sup> See “Duration of the Trust”

## 6.4 While Units are Officially Quoted

- (a) Subject to clause 6.1(b) and paragraph (b) of this clause 6.4, while Units are Officially Quoted, the application price for any Unit will be equal to the Market Price for the Units or, where Stapling applies, the Market Price of Stapled Securities minus the application price of the Attached Securities.
- (b) The Manager may determine a different Application Price to that which would apply under paragraph (a) of this clause 6.4 in relation to the issue of any Units to the extent permitted by and in accordance with the Listing Rules and the conditions of any applicable ASIC Relief, in the case of:
  - (i) offers made at substantially the same time to those persons who were Members on a date determined by the Manager not being more than 30 days immediately prior to the offer, where:
    - (A) all Members are offered Units at the same Application Price on a pro rata basis (whether or not the right of entitlement is renounceable); and
    - (B) the Application Price is not less than 50% of the Market Price for the Units or, where Stapling applies, the Market Price of Stapled Securities minus the application price of Attached Securities, as at the date not more than 5 Business Days prior to the date of the offer document under which the offer is made;but, subject to the Listing Rules and any applicable ASIC Relief, the Manager is not required to offer Units under this clause to persons whose address on the Register is in a place other than Australia, and such other jurisdiction (if any) as the Manager may determine;
  - (ii) a distribution reinvestment, where the Application Price is determined in accordance with clause 11.15;
  - (iii) Units issued upon the exercise of an Option, where the Application Price is determined in accordance with clause 3.6(b); or
  - (iv) a placement of Units, a security purchase plan or any other case where the terms of applicable ASIC Relief allow.

## 6.5 Determination of Application Price where Stapled Securities are issued

Where:

- (a) Stapling applies;
- (b) as a consequence, a Unit is to be issued as part of a Stapled Security; and

- (c) this constitution contains a provision for the calculation or determination of the application price for the Stapled Security but not for the Unit,

the Manager must determine what part of the application price of a Stapled Security is to represent the Application Price of a Unit for the purposes of this constitution.<sup>8</sup>

Unless otherwise agreed between the Manager and the Stapled Entities the application price of a Stapled Security will be allocated between the Application Price of the Unit and the application price of the Attached Securities in the ratio that the net assets (adjusted for the net market value of their investments) of each of the Trust and the Stapled Entities at the end of the relevant period immediately prior to the issue bears to the amount of the aggregate net assets (adjusted for the net market value of their investments) of the Trust and the Stapled Entities at that time.

## **6.6 Initial Public Offer Period**

- (a) This clause 6.6 applies from the later of:
  - (i) the time ASIC Relief is granted that permits Units to be issued in accordance with this clause; and
  - (ii) the time the Manager decides that the Application Price for Units issued during the Initial Public Offer Period will be determined under this clause 6.6 rather than under clause 6.1(b).
- (b) The Manager may at any time issue Units to any person during the Initial Public Offer Period at a price and on terms determined by it, provided that:
  - (i) the Manager complies with any Listing Rules applicable to the issue and any applicable ASIC Relief;
  - (ii) while Stapling applies, the same persons are at the same time offered identical numbers of Attached Securities which will be Stapled to the Units offered;
  - (iii) the price is at least equal to the Initial Public Offer Institutional Price;
- (c) Where Units to be issued under this clause 6.6 are to be quoted as part of a Stapled Security and it is proposed to issue Stapled Securities at an application price less than the aggregate of the NAV Prices of the Unit and the Attached Securities, the aggregate of the relevant Application Price and the application price of the Attached Securities must be not less than 90% of the aggregate NAV Prices of the Unit and the Attached Securities as at a date not more than 5 ASX Business Days prior to the date on which the Offer Document pursuant to which the offer is made is lodged with ASIC.

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<sup>8</sup> NB: This requires ASIC relief



- (d) In all other cases, where Units are to be issued under this clause 6.6 and it is proposed to issue the Units at an Application Price less than the NAV Price of a Unit, the relevant Application Price must be not less than 90% of the NAV Price of a Unit as at a date not more than 5 ASX Business Days prior to the date on which the Offer Document pursuant to which the offer is made is lodged with the ASIC.

While Stapling applies, an offer of Units under this clause 6.6 may only be accepted if at the same time the offeree accepts that offer of Units and the offer of Attached Securities referred to above in this clause 6.6.

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## **7 Application procedure**

### **7.1 Application form**

An applicant for Units must complete a form approved by the Manager if the Manager so requires. The form may be transmitted electronically if approved by the Manager.

### **7.2 Application for identical number of Attached Securities**

While Stapling applies, on making an application for Units, the same person must at the same time make an application for an identical number of Attached Securities.

### **7.3 Payment**

Payment in a form acceptable to the Manager, or a transfer of property of a kind acceptable to the Manager and able to be vested in the Manager or a custodian appointed by it (accompanied by a recent valuation of the property, if the Manager requires), must:

- (a) accompany the application;
- (b) be received by or made available to the Manager or the custodian within such period before or after the Manager receives the application form as the Manager determines from time to time or as the terms of issue of the relevant Partly Paid Unit contemplate; or
- (c) comprise a reinvestment of a distribution in accordance with this constitution<sup>9</sup>.

If the Manager accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property must be paid by the Member either directly or by deducting them from the market value of the property before the number of Units to be issued is calculated, as the Manager decides.

### **7.4 Manager may reject**

The Manager may reject an application in whole or in part without giving any reason for the rejection<sup>10</sup>.

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<sup>9</sup> See "Income and distributions to Members"

## 7.5 Minimum amounts

The Manager may set a minimum application amount and a minimum holding for the Trust and alter or waive those amounts at any time<sup>11</sup>.

## 7.6 Manager must reject application

While Stapling applies, the Manager must reject an application for Units if the applicant does not apply at the same time for an identical number of Attached Securities or if an identical number of Attached Securities will not be issued to the applicant at the same time as the issue of Units to the applicant.

## 7.7 Issue Date

- (a) Except in the case of a reinvestment of distribution in accordance with this constitution, Units are taken to be issued at the time which is the earlier of:
- (i) the time the issue of Units is recorded in the Register; and
  - (ii) the later of the time when:
    - (A) the Manager Accepts the application for Units; and
    - (B) the Manager or its agent receives the application money (even if paid into the Applications Account or received in the form of a cheque) or the property against which Units are to be issued is vested in the Manager.
- (b) Units which are issued on a reinvestment of distribution in accordance with this constitution are taken to be issued on the day the distribution is applied in payment for the Units.
- (c) At the time when Units are taken to be issued under paragraph (a)(ii) or (b):
- (i) the applicant becomes a Member in respect of the Units, which are taken to be issued even though the number of Units may not yet have been ascertained and the issue has not yet been entered in the Register; and
  - (ii) the applicant becomes entitled to be recorded in the Register as the holder of those Units as soon as it is reasonably practicable for the Manager or its agent to make the entry.
- (d) Subject to the Corporations Act<sup>12</sup>, the Manager may hold applications without accepting them for such period as it determines and, in particular, may hold applications received prior to the First Closing Date until the First Closing Date.

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<sup>10</sup> Refer Listing Rule 10.11 if the Trust is Listed - restriction on issue of Units to related parties.

<sup>11</sup> If the Trust is Listed, see "Small holdings".

<sup>12</sup> Section 1017E(4) of the Corporations Act.

## **7.8 Uncleared funds**

Units issued against application money paid other than in cleared funds, or in consideration of a transfer of property, are void if the funds are not subsequently cleared or the property does not vest in the Manager within 1 month of receipt of the application.

## **7.9 Register**

Subject to the Corporations Act, a single register may be kept in which details of the holders of Units and the holders of Attached Securities are recorded.

## **7.10 Holding statements**

Subject to the Corporations Act, while the Trust is admitted to an uncertificated trading system, a joint holding statement may be issued to evidence the holding of Stapled Securities comprising Units and Attached Securities.

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# **8 Redemption Price of Units<sup>13</sup>**

## **8.1 Redemption Price**

A Unit must only be redeemed at a Redemption Price calculated as:

$$\begin{aligned} &A - B \\ &C + D \end{aligned}$$

less in the case of a Partly Paid Unit, the amount of the Application Price which has not been paid, where:

A = Net Asset Value

B = Transaction Costs

C = number of Fully Paid Units in issue

D = Paid-up Proportion.

## **8.2 Determination of variables**

Each of the variables in clause 8.1 must be determined:

- (a) while the Trust is Liquid, as at the close of business on the day before the payment of the Redemption Price; or
- (b) while the Trust is not Liquid, at the time the withdrawal offer closes.

## **8.3 Rounding**

The Redemption Price may be rounded down to the nearest whole cent.

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<sup>13</sup> Required to be included by Section 601GA(4) if the Manager wishes to offer Members a right to withdraw from the scheme.

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## **9 Redemption procedures<sup>14</sup>**

### **9.1 While Officially Quoted**

While Units are Officially Quoted, none of the provisions of this clause 9 apply, except this clause 9.1 and clauses 9.14, 9.15, 9.16 and 9.17.

### **9.2 Request for redemption**

A Member may make a request for the redemption of some or all of their Units in any manner approved by the Manager and, while the Trust is Liquid, the Manager may (but is not required to) give effect to that request at the time and in the manner set out in this clause 9.

### **9.3 While the Trust is Liquid - Manager may redeem**

While the Trust is Liquid, the Manager may decide to satisfy a Redemption Request either in relation to all or some of the Units which are the subject of the request.

### **9.4 While the Trust is liquid - time for payment of Redemption Price**

While the Trust is Liquid, if the Manager decides to satisfy a Redemption Request<sup>15</sup> in respect of a Unit it must pay from the Assets the Redemption Price calculated in accordance with this constitution. The payment must be made within 60 days of the Manager's decision.

### **9.5 Manager not obliged to pay Redemption Price out of own funds**

The Manager is not obliged to pay any part of the Redemption Price out of its own funds.

### **9.6 Aggregate Redemption Price less than Minimum Holding amount**

While the Trust is Liquid, if compliance with a Redemption Request would result in the Member holding Units with an aggregate Redemption Price which is less than the then current Minimum Holding amount, the Manager may treat the Redemption Request as relating to the balance of the Member's holding.

### **9.7 Increase of Minimum Holding amount**

While the Trust is Liquid, if the Manager increases the Minimum Holding amount, the Manager may after giving 30 days' notice to a Member who holds Units with an aggregate Redemption Price less than the then current Minimum Holding amount redeem that Member's holding without the need for a Redemption Request.

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<sup>14</sup> These procedures must be fair to all Members: Section 601GA(4)

<sup>15</sup> There is no legal requirement to offer a right of withdrawal. When setting up a new trust the Manager can choose whether or not to offer such a right. For a registered scheme, if a right is offered, it must be specified in the constitution.

## **9.8 When Trust is not Liquid<sup>16</sup>**

While the Trust is not Liquid<sup>17</sup>, a Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Manager which, if the Trust is a Registered Scheme, is in accordance with the provisions of the Corporations Act<sup>18</sup>. If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust.

## **9.9 Manager not obliged to make a withdrawal offer**

The Manager is not at any time obliged to make a withdrawal offer.

## **9.10 Redemption request received before withdrawal offer**

If the Manager receives a Redemption Request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.

## **9.11 Clauses applicable whether or not the Trust is Liquid**

Clauses 9.12 and 9.13 apply whether or not the Trust is Liquid.

## **9.12 Sums owed to Manager**

The Manager may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer (if applicable) any money due to it by the Member.

## **9.13 Transfer of Assets**

The Manager may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a Redemption Request, pursuant to a withdrawal offer (if applicable) or in payment of a distribution. These Assets with any cash paid must be of equal value to the total amount due to the Member pursuant to the Redemption Request, withdrawal offer or distribution (based on a valuation done within one month before the date of the proposed transfer). The costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

## **9.14 Manager's power of compulsory redemption**

Subject to the Listing Rules, while the Trust is Liquid the Manager may redeem the Units of any Member without the need for a Redemption Request if the Member holds less than the Minimum Holding.

## **9.15 Buy-back of Units<sup>19</sup>**

While the Trust is Listed, the Manager may, subject to and in accordance with the Corporations Act (including the conditions of any applicable ASIC

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<sup>16</sup> Required to be included by Section 601GA(4)(c) if Members are to have right to withdraw

<sup>17</sup> For definition of a liquid scheme see Section 601KA(1)

<sup>18</sup> Refer sections 601KB to 601KE

<sup>19</sup> See Listing Rule 7.36

Relief) and any requirements under the Listing Rules, purchase Units or where Stapling applies, Stapled Securities and cause the Units which in part comprise those Stapled Securities to be cancelled. No Redemption Price is payable upon cancellation of the Units. Where the Units comprise part of Stapled Securities the Manager may only buy back and cancel the Units if the Attached Securities are also the subject of contemporaneous buy-back and cancellation. Where Units are purchased as part of a Stapled Security pursuant to a buy-back arrangement, the Manager must determine what proportion of the price paid for the Stapled Security is to be paid from the Assets of the Trust.

#### **9.16 Redemption while Stapling applies**

While Stapling applies the Manager may not redeem a Unit unless each Stapled Entity also redeems or buys back and cancels the corresponding Attached Securities or the Attached Securities are unstapled from the Unit to be redeemed.

#### **9.17 Discretionary redemption**

Subject to the Corporations Act and the Listing Rules, if the Manager is not obliged to give effect to a Redemption Request, it may redeem some or all of the Units which are the subject of the request.

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## **10 Valuation of Assets**

### **10.1 Manager may value**

The Manager may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act.<sup>20</sup>

### **10.2 Determination of Net Asset Value**

The Manager may determine Net Asset Value at any time, including more than once on each day.

### **10.3 Value of Assets**

- (a) Subject to paragraph 10.3(b), the value of an Asset for the purpose of calculating Net Asset Value will be its Market Value<sup>21</sup>.
- (b) If ASIC grants relief from the requirements of the Corporations Act to allow the Manager to determine in its discretion whether an item should be recognised and the amount attributable to that particular item for the purpose of calculating Net Asset Value, then the Manager may, subject to the conditions of the relief (if any) make those determinations.

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<sup>20</sup> See section 601FC(j) for Scheme Operator's obligations concerning valuation

<sup>21</sup> ASIC Policy Statement 134, paragraph 29: constitution should set out how scheme property will be valued.

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## **11 Income and distributions to Members**

### **11.1 Manager must determine Distributable Income**

The Manager must determine the distributable income of the Trust for each Distribution Period (“**Distributable Income**”). The Manager may do this by way of a standing determination of principles for calculating the Distributable Income, and may change the principles from time to time.

### **11.2 Distributable income**

If no determination is made or to the extent to which no determination is made under clause 11.1 prior to the end of the Distribution Period, Distributable Income for that Distribution Period will be:

- (a) subject to (b), the net income of the Trust calculated in accordance with Accounting Standards; but
- (b) not less than the amount which if distributed would prevent the Manager being liable to tax on the income of the Trust if the Distribution Period were a Financial Year.

### **11.3 Preparation of statutory accounts**

The preparation of the accounts of the Trust in accordance with current Australian accounting standards and generally accepted accounting principles is not to be regarded as a determination of the method for calculating the Distributable Income of the Trust pursuant to clause 11.1.

### **11.4 Classification**

The Manager may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

### **11.5 Distribution account**

The Distributable Income of the Trust in respect of a Distribution Period may be transferred to a special account in the name of the Manager or its agent<sup>22</sup> and designated a distribution account. Any amount in the distribution account does not form part of the Assets but must be held by the Manager, on trust for distribution among the Members entitled to that Distributable Income. Members entitled to that Distributable Income are not entitled to any income earned by the Manager by investing any money standing to the credit of the distribution account pending disbursement. The Manager may invest any moneys standing to the credit of the distribution account pending disbursement and the Manager shall have the same powers and responsibilities in relation to the management of such moneys as it has in relation to the Assets. Income earned from the investment is deemed to be income of the Trust and must be dealt with accordingly.

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<sup>22</sup> The custodian or registrar for the Trust

## 11.6 Present entitlement

A person who at any time during the Financial Year is or has been a Member, is presently entitled as at midnight on the last day of the Financial Year to the Distributable Income of the Trust for the Financial Year, in the proportion that the Income Distributions made (or allocated under the clause next following) to the Member in respect of the Financial Year bear to the sum of the Income Distributions made (or allocated under the clause next following) to all persons who are or have been Members at any time during the Financial Year.

## 11.7 Income Distributions

An Income Distribution in respect of a Member means an amount calculated by the Manager as follows:

- (a) subject to clauses 11.8, 11.10(b) and 28 and the terms of issue of any Units, in respect of a Distribution Period ending on a Distribution Calculation Date other than 30 June in any year, an amount calculated as follows:

$$\frac{A \times C}{B}$$

where

- A is the aggregate of the number of Units held by the Member as at the close of business on the last Business Day of that Distribution Period
- B is the aggregate of the number of Units on issue as at the close of business on that last Business Day of that Distribution Period
- C is an estimate of the Distributable Income for the Distribution Period calculated as if the Distribution Period were a year of income; and

- (b) subject to clauses 11.8 and 28 and the terms of issue of any Units, in respect of a Distribution Period ending on 30 June in any year, an amount calculated as follows:

$$\frac{A \times C}{B}$$

where

- A is the aggregate of the number of Units held by the Member as at the close of business on the last Business Day of that Distribution Period
- B is the aggregate of the total number of Units on issue as at the close of business on that last Business Day of that Distribution Period



- C is the amount (if any) by which the Distributable Income for the Financial Year exceeds the aggregate of the estimates of Distributable Income calculated for the purposes of variable C in paragraph (a) above in respect of the previous Distribution Periods of the Financial Year.

### **11.8 Partly Paid Units**

The rights of a Member to receive distributions of income in respect of Partly Paid Units they hold are as determined by the Manager and provided in the terms of issue of the relevant Units. The Manager may determine that either:

- (a) a Unit which is a Partly Paid Unit participates in the distribution of income as if it were a Fully Paid Unit; or
- (b) a Unit which is a Partly Paid Unit for any part of a Distribution Period participates in the distribution of income for that Distribution Period, subject to the terms of issue of the Unit, according to:
  - (i) the proportion or different proportions of the Application Price paid up on the Unit; and
  - (ii) the length of time during the Distribution Period for which the proportion or different proportions of the Application Price were paid up.

For the purposes of these calculations, if an instalment of the Application Price of a Partly Paid Unit is paid into the Trust, that Unit may be eligible for increased participation in income at a date determined by the Manager but at the latest from the first day of the month immediately following the date set for payment of the instalment; or

- (c) a Unit which is a Partly Paid Unit participates in the distribution of income as the terms of its issue provide;

but if the Manager does not make such a determination, paragraph (a) will apply.

### **11.9 Satisfaction of present entitlement**

The present entitlement of a Member to Distributable Income of the Trust for a Financial Year will be satisfied by the payment of the Income Distributions to the Member in respect of the Financial Year. Income Distributions must be paid to a Member within three months after the Distribution Calculation Date.

### **11.10 Other distributions**

- (a) Subject to paragraph 11.10(b), the Manager may at any time distribute any amount of capital to Members pro rata according to the number of Fully Paid Units held plus the number obtained by multiplying the number of Partly Paid Units held by the proportion to which those units are paid up, as at a time decided by the Manager, or distribute income to Members in accordance with the proportions in

clause 11.7. The distribution may be in cash or by way of additional Units (including Units which are components of Stapled Securities).

- (b) Without limiting paragraph 11.10(a), the Manager may distribute any amount of capital and/or income pro rata to persons who are Members as at a date determined by the Manager which is before the First Closing Date. The Manager must pay this distribution (if any) to each Member entitled to participate in the distribution on the latest of:
- (i) the date the Member or persons for whom the Member acts as nominee submit one or more valid application forms under the Offer Document for the number of Stapled Securities which equals the amount of the distribution divided by the applicable Application Price;
  - (ii) the date the Member gives an irrevocable payment direction to the Manager to apply the Member's distribution towards the Application Price for the Stapled Securities; and
  - (iii) the First Closing Date,

but the time for payment of the distribution must be not later than the next following 30 June after the Manager's determination is made.

#### **11.11 Manager may permit or require reinvestment**

The Manager may decide whether to permit or require the Members to reinvest some or all of any distribution to acquire Units.

#### **11.12 Notification of reinvestment procedures**

If the Manager decides to permit or require reinvestment, it must notify Members of the procedure for reinvestment and any change in the procedure.

#### **11.13 Deemed application if reinvestment applies**

If reinvestment applies, the Manager is deemed to have received and accepted an application to reinvest the distribution after the deduction of any Tax which the Manager is required to deduct on the date upon which the distribution is to be paid.

#### **11.14 Acquisition of identical number of Attached Securities**

While Stapling applies no reinvestment may occur unless contemporaneously with the reinvestment in additional Units the same person subscribes for or purchases an identical number of Attached Securities which when issued or acquired (respectively) are then Stapled to the additional Units. The Manager may make provision for and make payment of the subscription or purchase price for such Attached Securities out of the distribution or income (as applicable) which is otherwise available for reinvestment.

### **11.15 Application Price while Listed if reinvestment applies**

- (a) If reinvestment applies, while the Units in the Trust are Listed the aggregate of the Application Price for each additional Unit and the application price for the Attached Securities upon reinvestment is the average VWAP for Stapled Securities over the 10 Trading Days ending on the Trading Day which is 3 Trading Days before the allotment date for the Stapled Securities for the relevant Distribution Period (unless the Manager believes that this calculation does not provide a fair reflection of the market price of the Stapled Securities during this period in which event there shall be substituted for the amount so calculated the market price of the Stapled Security as determined by an expert independent of the Manager whose identity and instructions will be determined by the Manager) less such discount, if any, not exceeding 10% as the Manager may determine.
- (b) The allocation of the application price for a Stapled Security between the Application Price for each Unit and the application price for the Attached Securities is to be determined in accordance with clause 6.5. If the amount to be reinvested in additional Stapled Securities results in a fraction of a Stapled Security, the money representing the fraction (rounded down to the nearest cent) will be held for future reinvestment on behalf of the relevant Stapled Security Holder in the Trust and the Stapled Entities at the next time that reinvestment is to occur, in such proportions as the Manager and the Stapled Entities may determine. If Stapling ceases to apply the Application Price for each Unit is to be calculated in the manner above but based on the sale price of the Units.
- (c) If reinvestment applies while the Units are not Listed, the Application Price on reinvestment is the price that would otherwise apply to the issue of a Unit under clause 6.

### **11.16 Money held for future reinvestment**

Whenever under this constitution or by law money is held on behalf of a Member for future reinvestment the money so held may in the discretion of the Manager be aggregated and on each occasion on which the aggregated amount reaches the Application Price of a Unit and the application price of the Attached Securities be applied in the subscription for a new Unit and new Attached Securities for issue to the Stapled Security Holder.

### **11.17 Units issued on reinvestment**

Units issued under clauses 11.11 to 11.17 inclusive are to participate fully for income in respect of the Distribution Period in which they are issued.

### **11.18 Position on transfer of Units**

Income to which a Member is presently entitled when a transfer or transmission of Units is Registered remains credited to the transferor.

### **11.19 Position on transfer of Assets**

The Manager may effect a distribution to Members by transferring Assets to all Members rather than paying in cash or issuing additional Units. If the Manager wishes to do so, it must effect the distribution to all Members in the same way. The Assets transferred to each Member must be of the same type, have the same rights and be fully paid. The Assets transferred may comprise solely a beneficial interest in tangible or intangible property. In each case, where Assets other than cash are to be transferred to Members (or a nominee on behalf of a Member), each Member authorises the Manager:

- (a) to act as their agent to agree to obtain the Assets; and
- (b) where the Assets comprise shares or an interest in shares or interests in a company or managed investment scheme, to agree to become a member of that company or managed investment scheme.

The Assets transferred, together with any cash paid, must be of equal value to the total amount due to the Member pursuant to the distribution (based on a valuation done within one month before the date of the proposed transfer). If the Manager requires, the costs involved in transfer of those Assets must be paid by the Member or deducted from the distribution due to the Member.

### **11.20 Deductions from distributable income**

The Manager may deduct from any distributable income or other distribution payable to a Member any sums of money presently payable by the Member to the Manager on account of an instalment due in respect of Units or otherwise.

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## **12 Payments**

### **12.1 Manner of payment to Members**

Money payable by the Manager to a Member may be paid in any manner the Manager decides.

### **12.2 Unpresented cheques**

Cheques issued by the Manager that are not presented within 6 months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Member, the money is to be held by the Manager for the Member or paid by the Manager in accordance with the legislation relating to unclaimed money unless the Manager in its discretion decides to reinvest the money in Units and Attached Securities in which event the provisions of clauses 11.11 to 11.17 will apply.

### **12.3 Unsuccessful transfers**

Where the Manager attempts to make a payment to a Member by electronic transfer of funds or any other means and the transfer is unsuccessful, the money may be held for the Member as a non-interest bearing deposit until it is claimed or required to be dealt with in accordance with applicable laws relating to unclaimed moneys.

#### **12.4 Only whole cents to be paid**

Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.

#### **12.5 Payment to joint Members**

A payment to any one of joint Members will discharge the Manager in respect of the payment.

#### **12.6 Manager may deduct amounts**

The Manager may deduct from any amount to be paid to a person who is or has been a Member, or received from a person who is or has been a Member:

- (a) any amount of Tax (or an estimate of it); or
- (b) any other amount owed by the Member to the Manager or any other person,

which the Manager is required or authorised to deduct in respect of that payment or receipt by law or by this constitution or which the Manager considers should be deducted.

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### **13 Powers of the Manager**

#### **13.1 General powers**

Subject to this constitution, the Manager has all the powers in respect of the Trust that it is possible under the law to confer on a trustee as though it were the absolute owner of the Assets and acting in its personal capacity.

#### **13.2 Contracting powers<sup>23</sup>**

Without limiting the effect of clause 13.1, the Manager in its capacity as trustee of the Trust has power to:

- (a) incur all types of obligations and liabilities including guarantees; and
- (b) enter into an arrangement with a person to underwrite the subscription or purchase of Units or Options on such terms as the Manager determines. Unless the agreement between the Manager and the underwriter expressly states the contrary, the underwriter will not be an agent or delegate of the Manager.

#### **13.3 Borrowing powers**

Without limiting the effect of clause 13.1 or clause 13.2, the Manager in its capacity as trustee or responsible entity of the Trust has power to borrow and raise money (whether or not on a secured basis and in any manner whatsoever including all forms of financial accommodation and/or debt facilities, hedging arrangements, convertible notes and derivatives), to grant all types of security (whether for obligations of the Manager or another person) and to incur all types of obligations and liabilities, including guarantees and indemnities.

#### **13.4 Investment powers**

Without limiting the effect of clause 13.1, the Manager may in its capacity as trustee or responsible entity of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.<sup>24</sup>

#### **13.5 Power of delegation<sup>25</sup>**

The Manager may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Manager's power, including the power to appoint in turn its own agent or delegate.

#### **13.6 Protection and assistance for those dealing with agents and delegates**

The Manager may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Manager thinks fit.

#### **13.7 Agents and delegates may be associates**

The agent or delegate may be an associate of the Manager.<sup>26</sup>

#### **13.8 Exercise of discretion**

The Manager may in its absolute discretion decide how and when to exercise its powers.

#### **13.9 Registration of the Trust**

Without limiting the effect of clause 13.1, the Manager may in its capacity as trustee of the Trust apply for registration of the Trust as a Registered Scheme and for this purpose the Manager is authorised on its own behalf and on behalf of each Member to do all things necessary to effect registration.

#### **13.10 Listing of the Trust**

The Manager may apply for the Trust to be Listed and Units to be Officially Quoted, including as Stapled Securities, at any time after the First Closing Date and for this purpose the Manager is authorised on its own behalf and on behalf of each Member and holder of Attached Securities to do all things necessary to effect a Listing.

#### **13.11 Power to unstack Units**

If Units comprise part of Stapled Securities, subject to the Corporations Act and, while the Units are Officially Quoted, the Listing Rules and approval by Resolution, the Manager may at any time apply to have the Stapled Securities unstacked and, if the Stapled Securities are Officially Quoted, removed from quotation.

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<sup>24</sup> Subject to Section 601FC(4)

<sup>25</sup> See also Section 601FB

<sup>26</sup> Subject to Part 5C.7

### **13.12 Power to staple additional Securities**

The Manager may, subject to the Corporations Act and, while the Units are Officially Quoted, the Listing Rules, cause the Stapling of any other security or securities to the Units.

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## **14 Retirement of Manager**

### **14.1 Voluntary retirement**

Subject to law, the Manager may on one month's notice to Members, retire as the trustee or responsible entity of the Trust<sup>27</sup>. If permitted by law or by any relief from the Corporations Act granted by the ASIC, the Manager may appoint its successor by deed.

### **14.2 Compulsory retirement**

The Manager must retire as the responsible entity of the Trust when required by law<sup>28</sup>.

### **14.3 Release**

When it retires or is removed, the Manager is released from all obligations in relation to the Trust arising after the time it retires or is removed.<sup>29</sup>

### **14.4 Retirement benefit**

Subject to the Corporations Act<sup>30</sup>, the Manager is entitled to agree with the incoming manager to be remunerated by, or to receive a benefit from, the incoming manager in relation to:

- (a) entering into an agreement to submit a proposal for its retirement to a meeting of Members, and nominating to the Members the incoming manager as its replacement, or
- (b) its retirement as Manager,

and is not required to account to Members for such remuneration or benefit.

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## **15 Notices to Members**

### **15.1 Form of notices**

Subject to the Corporations Act, a notice or other communication required under this constitution to be given to a Member must be given in writing (which includes a fax) or in such other manner as the Manager determines,

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<sup>27</sup> See Section 601FL. The change does not take effect until the ASIC alters its records: Section 601FJ

<sup>28</sup> See Section 601FM and 601FA.

<sup>29</sup> See section 601FR for the Scheme Operator's obligation to transfer records, etc. Section 601FS restricts this release.

<sup>30</sup> See sections 601FC(1)(c) and 601FD(1)(c).

and be delivered or sent to the Member at the Member's physical or electronic address last advised to the Manager for delivery of notices.

### **15.2 Cheques payable to Members**

A cheque payable to a Member may be posted to the Member's physical address or handed to the Member or a person authorised in writing by the Member<sup>31</sup>.

### **15.3 Joint Members**

In the case of joint Members, the physical or electronic address of the Member means the physical or electronic address of the Member first named in the Register.

### **15.4 Receipt of communications**

A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax (except a fax containing a notice of meeting of Members) is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of actual receipt is not required. Subject to the Corporations Act<sup>32</sup>, the Manager may determine<sup>33</sup> the time at which other forms of communication will be taken to be received.

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## **16 Notices to the Manager**

### **16.1 Form of notices**

A notice required under this constitution to be given to the Manager must be given in writing (which includes a fax), or in such other manner as the Manager determines.

### **16.2 When notice effective**

The notice is effective only at the time of receipt.

### **16.3 Signing of notices**

The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member<sup>34</sup> unless the Manager dispenses with this requirement.

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<sup>31</sup> See "Manager may rely" under "Rights and liabilities of Manager"

<sup>32</sup> See Section 601FC(1)(d)

<sup>33</sup> See Section 252G(4)

<sup>34</sup> See "Manager may rely" under "Rights and liabilities of Manager"



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## **17 Meetings of Members**

### **17.1 Convening of meetings**

The Manager may at any time convene a meeting of Members, or of Members of a Class, and must do so if the Corporations Act requires.<sup>35</sup>

### **17.2 Manager may determine**

Subject to the specific provisions of this constitution relating to meetings of Members and to the Corporations Act<sup>36</sup>, the Manager may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted.

### **17.3 Notice of meeting**

- (a) While the Trust is not a Registered Scheme, the Manager may convene a meeting by giving Members 5 Business Days' notice.
- (b) While the Trust is a Registered Scheme, notice of a meeting of Members must be given in accordance with the Corporations Act.

### **17.4 Calculation of period of notice**

In computing the period of notice under clause 17.3, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

### **17.5 Quorum**

The quorum for a meeting of Members is at least 2 Members present in person or by representative or proxy holding or representing the holders of at least 10% of the Units on issue unless the Trust has only one Member who may vote on a Resolution, in which case that one Member constitutes a quorum.

### **17.6 No quorum**

If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:

- (a) if convened on the requisition of Members - dissolved; or
- (b) otherwise - adjourned to the same day in the next week and same time and place, or to such other day, time and place as the Manager decides by notice to the Members and others entitled to notice of the meeting.

At any adjourned meeting, those Members present in person or by proxy constitute a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

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<sup>35</sup> Refer Part 2G.4

<sup>36</sup> Refer Part 2G.4

### **17.7 Chairman**

Subject to the Corporations Act<sup>37</sup> the Manager may appoint a person to chair a meeting of Members.

### **17.8 Role of chairman**

The chairman of a meeting of Members:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting; and
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting.

and a decision by the chairman under this clause 17.8 is final.

### **17.9 Postponement or cancellation**

The chairman has power to cancel a meeting or postpone a meeting for any reason to such place and time as the chairman thinks fit.

### **17.10 Notice of Cancellation or postponement of meeting**

Notice of cancellation or postponement of a meeting of Members must state the reason for cancellation or postponement and be given:

- (a) to each Member individually; and
- (b) to each other person entitled to be given notice of a meeting of Members under the Corporations Act.

### **17.11 Contents of notice or postponement of meeting**

A notice of postponement of a meeting of Members must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

### **17.12 Number of clear days for postponement of meeting**

The number of clear days from the giving of a notice postponing the holding of a meeting of Members to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days notice of the general meeting required to be given by this constitution or the Corporations Act.

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<sup>37</sup> Refer Part 2G.4 and Section 601FC(1)

### **17.13 Business at postponed meeting**

The only business that may be transacted at a meeting of Members the holding of which is postponed is the business specified in the notice convening the meeting.

### **17.14 Proxy, attorney or representative at postponed meeting**

Where:

- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a representative, a proxy or an attorney or a representative is authorised to attend and vote at a meeting of Members to be held on a specified date or at a meeting of Members to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of representative,

then, by force of this clause, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of a representative unless the Member appointing the proxy, attorney or representative gives to the Manager notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

### **17.15 Proxies and voting**

The provisions of the Corporations Act governing proxies and voting for meetings of members of registered schemes apply to the Trust.

### **17.16 Proxies containing some of the required information**

The Manager may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

### **17.17 Adjournment of meeting**

The chairman of a meeting of Members may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.

In exercising this discretion, the chairman may, but need not, seek the approval of the Members present. Unless required by the chairman, no vote may be taken or demanded by the Members present in respect of any adjournment.

Only unfinished business is to be transacted at a meeting resumed after an adjournment.

### **17.18 Notice of adjourned meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

### **17.19 Demand for a poll**

A poll may be demanded by at least 5 Members entitled to vote on the resolution, Members with at least 5% of the votes that may be cast on the resolution on a poll or by the chairman. A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

### **17.20 Declaration of poll**

Unless a poll is properly demanded and the demand is not withdrawn, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Trust, is conclusive evidence of the fact. Neither the chairman nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

### **17.21 Questions decided by majority**

Subject to the requirements of the Corporations Act and the Listing Rules (if the Listing Rules apply), a resolution is taken to be carried if a simple majority of the votes cast on the resolution by Members entitled to vote on the resolution are in favour of it.

### **17.22 Poll**

If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is the resolution of the meeting at which the poll was demanded.

A poll demanded on the election of a chairman or on a question of adjournment must be taken immediately.

A demand for a poll may be withdrawn.

### **17.23 Equality of votes - no casting vote for chairman**

If there is an equality of votes, either on a show of hands or on a poll, subject to the Corporations Act, the proposed resolution is to be taken as having been lost. The chairman of the meeting is not entitled to a casting vote in addition to any votes to which the chairman is entitled as a Member or proxy or attorney or representative.

### **17.24 Entitlement to vote**

Subject to any rights or restrictions for the time being attached to any Class or Classes of Units and to this constitution:

- (a) on a show of hands, each Member present in person and each other person present as a proxy, attorney or representative of a Member has one vote; and
- (b) on a poll, each Member present in person has one vote for each one dollar of the value of the Units held by the Member and each person present as proxy, attorney or representative of a Member has one vote for each one dollar of the value of the Units held by the Member that the person represents.

A Member is not entitled to vote at a general meeting in respect of Units which are the subject of a current Restriction Agreement for so long as any breach of that agreement subsists.

#### **17.25 Voting on a poll for Partly Paid Units**

If a Member holds Partly Paid Units, the number of votes the Member has in respect of those Units on a poll is one vote for every dollar of the value of the Partly Paid Units.

#### **17.26 Joint Unitholders' vote**

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

#### **17.27 Vote of shareholder of unsound mind**

If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, then the Member's committee or trustee or any other person who properly has the management of the Member's estate may exercise any rights of the Member in relation to a meeting of Members as if the committee, trustee or other person were the Member.

#### **17.28 Objection to voting qualification**

An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the chairman of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

#### **17.29 Validity of vote in certain circumstances**

A vote cast by a person as a proxy, attorney or representative is valid even if:

- (a) the previous revocation of that person's authority by the death of the holder of the Units in respect of which the vote is cast or otherwise;  
or

(b) the execution of a transfer of those Units by that holder,

unless a notice in writing of the revocation or transfer has been received by the Manager or by the chairman of the meeting before the vote is cast.

### **17.30 Proxy form while Stapling applies**

While Stapling applies, subject to the Corporations Act, the form of proxy used may be the same form as the Stapled Security Holder uses to appoint a proxy to vote on their behalf in respect of the Attached Securities which they hold.

### **17.31 Meetings by technology**

A meeting of Members or any class of Members may be held by means of such telephone, electronic or other communication facilities as permit all persons in the meeting to communicate with each other simultaneously and instantaneously and participation in such a meeting shall constitute presence in person at such meeting.

### **17.32 Other attendees**

While Stapling applies, the Manager, the auditor of the Trust and the representatives of each Stapled Entity may attend and speak at any meeting, or invite any other person to attend and speak.

### **17.33 Joint meetings**

While Stapling applies, meetings of Members may be held in conjunction with meetings of the holders of Attached Securities and, subject to the Corporations Act, the Manager may make such rules for the conduct of such meetings as the Manager determines.

### **17.34 Meetings of Option holders or Members of a Class**

If any meeting of Option holders or Members holding a Class of Units is required to be held the foregoing provisions of this clause 17 will apply with any necessary amendments.

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## **18 Rights and liabilities of Manager**

### **18.1 Holding Units**

The Manager and its associates may hold Units in the Trust, or hold interests or co-invest with the Trust in any related trust, partnership, company or other entity, in any capacity<sup>38</sup>.

### **18.2 Other capacities**

Subject to the Corporations Act<sup>39</sup>, the Manager (or its associates) may:

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<sup>38</sup> See Section 601FG, Section 253E and Part 5C.7

<sup>39</sup> Refer Part 5C.7

- (a) deal with itself (as trustee of the Trust or in another capacity), the Stapled Company and any other Stapled Entity, an associate or with any Member, including to redeem Units it has acquired as a result of forfeiture under clause 4.8;
- (b) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), the Stapled Company or any other Stapled Entity, an associate or with any Member or (when acting in a capacity other than as trustee of the Trust) retain for its own benefit any profits or benefits derived from any such contract or transaction; or
- (c) act in the same or a similar capacity in relation to any other managed investment scheme.

### **18.3 Manager may rely**

The Manager may take and may act upon:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Manager, in relation to the interpretation of this constitution or any other document (whether statutory or otherwise) or generally in connection with the Trust;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Manager who are in each case believed by the Manager in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the Manager believes in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Trust; and
- (d) any other document provided to the Manager in connection with the Trust upon which it is reasonable for the Manager to rely;

and the Manager will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or document.

### **18.4 Reference to exercising power or discretion**

The reference to exercising any power or discretion includes carrying out the Manager's functions and duties and identifying Members' rights and interests.

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## **19 Limitation of liability and indemnity in favour of Manager**

### **19.1 Manager not liable except to the extent Corporations Act imposes liability**

The Manager is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Trust except to the extent that the Corporations Act imposes such liability.

### **19.2 Limitation on Manager's liability**

Subject to the Corporations Act, the liability of the Manager to any person other than a Member in respect of the Trust (including in respect of any contracts entered into as trustee of the Trust or in relation to any Assets) is limited to the Manager's ability to be actually indemnified from the Assets for that liability.

### **19.3 Indemnity in favour of Manager**

The Manager is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust<sup>40</sup>.

### **19.4 Indemnity includes acts and omissions of an agent or delegate**

To the extent permitted by the Corporations Act<sup>41</sup>, the indemnity under clause 19.3 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Manager.

### **19.5 Indemnity in addition to indemnity allowed by law**

This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Manager retires or is removed from the office it holds in relation to the Trust.

### **19.6 Indemnity unaffected by unrelated breach of trust**

The Manager may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy a liability to any creditor of the Manager (as trustee of the Trust) notwithstanding that the Trust may have suffered a loss or may have diminished in value as a consequence of any unrelated act, omission or breach of trust by the Manager or by any delegate or agent appointed by the Manager.

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<sup>40</sup> See Section 601GA(2)

<sup>41</sup> See Sections 601FB(2) and 601GA(2)



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## **20 Liability of Members**

### **20.1 Liability limited**

Subject to clauses 20.2 and 20.3, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.

### **20.2 Recourse limited to the Assets**

In the absence of separate agreement with a Member, the recourse of the Manager and any creditor is limited to the Assets.

### **20.3 Tax and User Pays Fees**

The Manager is entitled to be indemnified by a Member or former Member to the extent that the Manager incurs any liability for Tax or User Pays Fees as a result of the Member's action or inaction, or as a result of an act or omission requested by the Member or former Member. The Manager may redeem some or all of the Units held by a Member to satisfy any amount of money due to it by the Member.

### **20.4 Joint Members**

Joint Members and former joint Members are jointly and severally immediately liable in respect of all payments including payments of Tax to which clause 20.3 applies, and User Pays Fees.

### **20.5 Deficiency in the Assets**

A Member need not indemnify the Manager if there is a deficiency in the Assets or meet the claim of any creditor of the Manager in respect of the Trust.

### **20.6 Restrictions on Members**

Except as otherwise set out in this constitution, a Member:

- (a) must not interfere with any rights or powers of the Manager under this constitution;
- (b) must not exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; or
- (c) may not require an Asset to be transferred to the Member.

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## **21 Remuneration and expenses of the Manager**

### **21.1 Management fee**

Subject to the Corporations Act, the Manager is entitled to be paid out of the Assets a management fee of 2% per annum of the value of the Group Assets calculated daily and payable in arrears in respect of each Quarter or part

thereof, from the date the Trust commences to the date of final distribution in accordance with clause 23.3.

## **21.2 Waiver of fees**

The Manager may accept lower fees than it is entitled to receive under this constitution, or may defer payment for any period. Where payment is deferred, the fee accrues daily until paid.

## **21.3 Expenses**

All expenses incurred by the Manager in relation to the proper performance of its duties in respect of the Trust<sup>42</sup> are payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act. This includes expenses connected with:

- (a) this constitution and the formation of the Trust and registration of the Trust as a Registered Scheme;
- (b) the preparation, review, distribution and promotion of any prospectus, PDS or offering memorandum in respect of Units and/or Stapled Securities and other promotion of the Trust or the Stapled Entities;
- (c) the acquisition, disposal, insurance, custody and any other dealing with Assets;
- (d) any proposed acquisition, disposal or other dealing with an investment;
- (e) the investigation, negotiation, acquisition (including any costs associated with the establishment of an entity to hold property), development, registration, custody, holding, management, supervision, repair, maintenance, insurance, valuation, sale of or other dealing with property in which the Trust has a direct or indirect interest (or attempting or proposing to do so) and the receipt, collection or distribution of income or other Assets;
- (f) the services of asset managers, property managers, project managers, leasing agents, sales agents and collection agents appointed in respect of any property in which the Trust has a direct or indirect interest, which may include an associate of the Manager;
- (g) the administration or management of the Trust or its Assets and Liabilities including expenses in connection with the Register or the valuation of any Asset or the Trust as a whole;
- (h) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
- (i) underwriting of any subscription or purchase of Units and/or Stapled Securities including underwriting fees, handling fees, costs and expenses (including marketing and roadshow costs, travel and accommodation expenses and legal fees), amounts payable under

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<sup>42</sup> Refer Section 601GA(2)(b)

indemnity or reimbursement provisions in the underwriting agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Manager of its obligations, representations or warranties under any such underwriting agreement;

- (j) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members and attending any meeting of the Stapled Entities;
- (k) Tax, including any amount charged by a supplier of goods or services, or both, to the Manager by way of or as a reimbursement for GST;
- (l) financial institution fees;
- (m) the engagement of agents (including real estate agents and managing agents), valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Manager;
- (n) accounting and preparation and audit of the taxation returns, accounting records and accounts of the Trust;
- (o) termination of the Trust and the retirement or removal of the Manager and the appointment of a replacement;
- (p) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Manager, except to the extent that the Manager is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this paragraph (p) must be repaid;
- (q) all damages, expenses, payments, legal and other costs and disbursements incurred by the Manager in relation to or in connection with any claim, dispute or litigation (Claim) arising as a result of or in connection with any untrue representation or warranty contained in any document relating to any investment by the Trust including any project document in connection with the investment and any offering document or borrowing document in connection with the Trust except where the Claim arises out of the fraud or wilful default of the Manager;
- (r) the compliance committee established by the Manager in connection with the Trust (if any), including any fees paid to, or insurance premiums<sup>43</sup> in respect of, compliance committee members;
- (s) while there is no compliance committee, any costs and expenses associated with the board of directors of the Manager carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in

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<sup>43</sup> See Section 601JG

respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;

- (t) the preparation, implementation, amendment and audit of the compliance plan;
- (u) the appointment of any compliance officer to undertake compliance work for the Trust;
- (v) the preparation of reports including compliance reports;
- (w) fees payable to any audit committee for the Trust appointed in accordance with any corporate governance guidelines adopted from time to time;
- (x) the promotion of the Trust generally;
- (y) recording, responding to and dealing with any complaints from Members in connection with the Trust, and membership of an external dispute resolution facility;
- (z) complying with any law, and any request or requirement of the ASIC; and
- (aa) the admission of the Trust to any stock exchange, the Official Quotation of Units or Stapled Securities and compliance with the rules of such an exchange.

#### **21.4 GST**

The User Pays Fees and the fees payable out of the Assets to the Manager under this constitution do not include any amount referable to GST. If the Manager is or becomes liable to pay GST in respect of any supply under or in connection with this constitution (including, without limitation, the supply of any goods, services, rights, benefits or things), then, in addition to any fee or other amount or consideration payable to the Manager in respect of the supply, the Manager is entitled to be paid out of the Assets an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and (other than where the consideration for the supply is User Pays Fees) the Manager shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.

#### **21.5 Input tax credits**

In the event that the Manager is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Manager by any person, or payable by the Manager by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this constitution, the Manager is entitled to recover from the Trust by way of reimbursement an additional amount equivalent to the amount of such input tax, and the recovery of such additional amount shall comprise part of the consideration for a supply by the Manager to the Trust treated as separate entities in accordance with Division 184 of the GST Act and for the purposes

of the GST Act. This does not affect the character of the payment as an exercise of the Manager's right of indemnity from the Assets for other purposes of this constitution and the Corporations Act.

## **21.6 GST and expenses**

Where an expense covered by clause 21.3 is paid from the Assets to the Manager, the payment shall comprise part of the consideration for a supply by the Manager to the Trust treated as separate entities in accordance with Division 184 of the GST Act and for the purposes of the GST Act. This does not affect the character of the payment as an exercise of the Manager's right of indemnity from the Assets for other purposes of this constitution and the Corporations Act.

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## **22 Duration of the Trust**

### **22.1 Initial settlement**

The Trust commences when the Manager's nominee subscribes \$9.90 for Units in the Trust. The Manager's nominee must be issued with 10 fully paid Units in return for that payment.

### **22.2 Termination**

The Trust terminates on the earliest of:

- (a) the date specified by the Manager as the date of termination of the Trust in a notice given to Members; and
- (b) the date on which the Trust terminates in accordance with another provision of this constitution or by law<sup>44</sup>.

### **22.3 Perpetuity period and restriction on issue and redemption of Units**

The perpetuity period for the purposes of section 5 of the Perpetuities and Accumulations Act 1968 (Vic) is the period of 80 years from the day prior to the commencement of the Trust. Despite any other provision in this constitution, no Units may be issued or redeemed after the 80th anniversary of the day before the Trust commenced, unless that issue or redemption would not offend the rule against perpetuities or any other rule of law or equity. The specification of a perpetuity period in this clause 22.3 does not require that the Trust terminate on the expiration of that period.

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## **23 Procedure on termination**

### **23.1 Realisation of Assets**

Following termination, the Manager must realise the Assets. This must be completed in 180 days if practical and in any event as soon as possible after that.

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<sup>44</sup> See Part 5C.9 on winding up

### 23.2 Audit of winding up

If and to the extent that ASIC policy so requires, the Manager must arrange for independent review or audit of the final accounts of the Trust by a registered company auditor.

### 23.3 Distribution following termination

The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, must be distributed to Members in accordance with the following formula:

$$\frac{(A + X) \times B}{C} - Y$$

Where:

- A = the amount remaining in the Trust after deduction of the Liabilities and expenses referred to in this clause 23.3;
- B = the aggregate of the number of Units held by the Member as at termination, including both Fully Paid Units and Partly Paid Units; and
- C = the aggregate of the total number of Units in issue as at termination, including both Fully Paid Units and Partly Paid Units;
- X = the aggregate of the amounts remaining unpaid on all Partly Paid Units in issue (if any) ; and
- Y = the aggregate of the amounts remaining unpaid on all Partly Paid Units held by the Member (if any) as at termination.

If the calculation of the entitlement to distribution of capital in respect of a particular Member in accordance with the formula in this clause 23.3 results in a negative dollar amount, then that Member must pay to the Manager within 30 days of the date of a written request to do so that dollar amount, and the amount so required to be paid will become an Asset available for distribution on the winding up of the Trust.

The Manager may distribute proceeds of realisation in instalments.

### 23.4 Constitution applies until date of final distribution

Subject to the Corporations Act, the provisions of this constitution continue to apply from the date of termination until the date of final distribution under clause 23.3, but during that period the Manager may not accept any applications for Units from a person who is not an existing Member.

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## **24 Amendments to this constitution**

### **24.1 Manager may amend**

If the Corporations Act allows<sup>45</sup>, this constitution may be amended:

- (a) by Resolution<sup>46</sup>; or
- (b) by deed executed by the Manager.

If the constitution is amended by Resolution, the Manager may give effect to the amendments by executing a supplemental deed.

### **24.2 Statutory requirements**

If the Corporations Act or any ASIC Relief requires that this constitution contain certain provisions, then those provisions are deemed to be incorporated into this constitution at all times at which they are required to be included and prevail over any other provisions of this constitution to the extent of any inconsistency. Clause 24.1 does not apply to provisions deemed by this clause 24.2 to be incorporated in the constitution.

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## **25 Compliance committee**

If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act<sup>47</sup>.

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## **26 Complaints**

While the Trust is a Registered Scheme, if a Member submits to the Manager a complaint alleging that the Member has been adversely affected by the Manager's conduct in its management or administration of the Trust, the Manager:

- (a) must, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) must ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Manager as appropriate to handle complaints;
- (c) must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;

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<sup>45</sup> See Section 601GC for power to amend the constitution. While the Trust is registered, the amendment cannot take effect until a copy of the modification is lodged with the ASIC

<sup>46</sup> The required majority for such a Resolution under section 601GC(1)(a) is 75%.

<sup>47</sup> See section 601JF

- (d) may in its discretion give any of the following remedies to the complainant:
  - (i) information and explanation regarding the circumstances giving rise to the complaint;
  - (ii) an apology; or
  - (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and
- (e) must communicate to the complainant in relation to the complaint as soon as practicable and in any event not more than 45 days after receipt by the Manager of the complaint:
  - (iv) the determination in relation to the complaint;
  - (v) the remedies (if any) available to the Member; and
  - (vi) information regarding any further avenue for complaint.

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## **27 Listing Rules**

### **27.1 While Units Officially Quoted**

While the Units are Officially Quoted, the following applies.

- (a) Notwithstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act shall not be done.
- (b) Nothing contained in this constitution prevents an act being done that the Listing Rules require to be done.
- (c) If the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
- (d) If the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision.
- (e) If the Listing Rules require this constitution not to contain a provision and it contains such a provision, this constitution is deemed not to contain that provision.
- (f) If any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is deemed not to contain that provision to the extent of the inconsistency.

### **27.2 Change in the text of the Constitution due to clause 27.1**

In accordance with ASIC Class Order 98/1808 or its equivalent and for so long as it applies to the Trust, a change in the text of this constitution because of the operation of clause 27.1 is not a modification of, or the repeal or



replacement of the constitution for the purposes of subsection 601GC(1) and (2) of the Corporations Act. Clause 24.1 does not apply to changes in the text of the constitution because of the operation of clause 27.1.

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## **28 Restricted Securities**

### **28.1 Application of this clause**

Clause 28.2 only operates:

- (a) while Units are Officially Quoted and the Listing Rules require this constitution to contain a provision to the effect of clause 28.2; and
- (b) to the extent that it is not inconsistent with the Corporations Act.

### **28.2 Restriction on distributions and voting rights**

During a breach of the Listing Rules or of a restriction agreement relating to Units which are Restricted Securities, the Member who holds the Units which are Restricted Securities is not entitled to any distribution from the Trust, nor any voting rights, in respect of those Units.

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## **29 Small Holdings**

### **29.1 Manager may sell or redeem holdings less than a marketable parcel**

Subject to the provisions of this clause 29, while the Trust is Listed, the Manager may, without request by the Member, sell or redeem any Units where the Units held by that Member comprise less than a marketable parcel as provided in the Listing Rules.

### **29.2 Limitations on clause 29.1**

The Manager may only sell or redeem Units pursuant to this clause 29 on one occasion in any 12 month period. The Manager must notify the Member of its intention to sell or redeem Units under this clause 29.

### **29.3 Notice period**

The Manager will not sell or redeem the relevant Units:

- (a) before the expiry of 6 weeks from the date of the notice given under this clause 29; or
- (b) if, within the 6 weeks allowed under clause 29.3(a):
  - (i) the Member advises the Manager that the Member wishes to retain the Units; or
  - (ii) the market value of the Units or Stapled Securities held by the Member increases to at least a marketable parcel as provided in the Listing Rules.

#### **29.4 Power lapses on announcement of full takeover**

The Manager's power to sell or redeem the Units lapses following the announcement of a takeover but the procedure may be started again after the close of the offers made under the takeover.

#### **29.5 Costs of the sale**

The Manager or the purchaser of the Units must pay the costs of the sale as the Manager decides. The proceeds of the sale or redemption will not be sent until the Manager has received the certificate (if any) relating to the Units, or is satisfied that it has been lost or destroyed.

#### **29.6 Execution of transfer**

The Manager is entitled to execute on behalf of a Member any transfer of Units under this clause 29.

#### **29.7 While Stapling applies**

While Stapling applies:

- (a) the references to Units in this clause 29 apply to Stapled Securities held by the Member; and
- (b) no redemption or sale under this clause 29 may occur unless, at the same time as Units are redeemed or sold, an identical number of Attached Securities are also redeemed or sold.

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### **30 Stapling**

#### **30.1 Paramountcy of Stapling provisions**

Subject to clauses 24.2 and 27.1, the provisions of this constitution relating to Stapling prevail over all other provisions of this constitution including any that are expressed to prevail over others, except where this would result in a breach of the Corporations Act, the Listing Rules (if the Listing Rules apply) or any other law.

#### **30.2 Maintenance of Listing and Consistency with constitutions of the Stapled Entities**

The Manager must use every reasonable endeavour to procure that if the Stapled Securities are and continue to be Listed as one joint security, that the Stapled Securities are dealt with under this constitution in a manner consistent with the provisions relating to the Attached Securities in the constitutions of the Stapled Entities.

#### **30.3 Stapling - general intention**

While Stapling applies, the Units are each intended to be stapled to Attached Securities in the ratio of one Unit to one Attached Security in each Stapled Entity. The intention is that, so far as the law permits, a Unit and Attached Securities which are Stapled together shall be treated as one security. If further Attached Securities are from time to time Stapled to the Units the

intention is that, so far as the law permits, that parcel of Attached Securities shall be treated as one Security.

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## 31 References to Corporations Act and Listing Rules

### 31.1 Corporations Act

Any provision of this constitution which is expressed to apply subject to the Corporations Act shall only be read as subject to the Corporations Act while the Trust is a Registered Scheme.

### 31.2 Listing Rules

Any provision of this constitution which is expressed to apply subject to the Listing Rules shall only be read as subject to the Listing Rules while the Trust is Listed.

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## 32 Interpretation

### 32.1 Definitions

In this constitution these words and phrases have the following meaning unless the contrary intention appears:

**Accept** means, in respect of an application for Units, the doing of any act by the Manager or its agent that constitutes an acceptance of the application or evidence that the application has been accepted, including notifying the applicant or recording a determination that the application is accepted, transferring the application money into an account other than an Applications Account, applying the application money to the purchase of investments for the Trust, or recording in the Register the issue of Units in response to the application, and **Acceptance** has a corresponding meaning.

**Accounting Standards:** Australian accounting standards in force and generally accepted accounting principles applicable as at 31 December 2004.<sup>48</sup>

**Applications Account** means an account in which the Manager or, if permitted, its agent holds money on trust for applicants for Units in accordance with section 1017E of the Corporations Act or otherwise.

**Application Price:** the application price for a Unit calculated in accordance with this constitution<sup>49</sup>.

**Approved Valuer:** any person, independent of the Manager, who is duly qualified to value any Assets of the Trust.

**ASIC:** the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.

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<sup>48</sup> This takes an approach consistent with ASIC's Class Order 04/1575, relating to the implementation of IFRS, issued on 22 December 2004.

<sup>49</sup> See "Application Price for Units"

**ASIC Relief:** a declaration, modification or exemption from the provisions of the Corporations Act granted by ASIC.

**Assets:** all the property, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, proceeds of redemption which have not yet been paid or any amount in the distribution account.

**ASX:** the Australian Stock Exchange Limited or the market operated by it as the context requires.

**ASX Business Days:** has the meaning given to “business days” in the Listing Rules.

**Attached Securities:** means a Stapled Share and any other security or securities (including a Stapled Foreign Share) which are from time to time Stapled to each Unit.

**BBSW:** means for each period of 90 days, the rate set by the Manager in good faith for that period having regard to the extent possible to the rates otherwise bid for bills of 90 days at or around 10.30am on the first day of the period (including any displayed on the “BBSW” page of the Reuters Monitor System).

**Business Day:** a day other than a Saturday or Sunday on which banks are open for general banking business in Sydney and Melbourne but if the Units are Officially Quoted has the meaning given to that term in the Listing Rules.

**Class:** a class of Units.

**Compliance Committee Member:** a member of a compliance committee established by the Manager in connection with the Trust.

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

**CS Facility** has the same meaning as “prescribed CS facility” in the Corporations Act<sup>50</sup>.

**CS Facility Operator:** the operator of a CS Facility.

**Distributable Income:** has the meaning given in clause 11.1

**Distribution Calculation Date:** the last day of each Financial Year and such other days as the Manager designates.

**Distribution Period:**

- (a) for the first distribution period, the period from the establishment of the Trust to the next Distribution Calculation Date;
- (b) for the last distribution period, the period from the day after the preceding Distribution Calculation Date to the date of distribution on winding up of the Trust; and

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<sup>50</sup> See CA 761A, 1074A and reg 7.1.03.

- (c) in all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.

**Financial Year** means:

- (a) for the first financial year, the period from the establishment of the Trust to the next Financial Year Termination Date;
- (b) for the last financial year, the period the day after the preceding Financial Year Termination Date to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the period from the day after the preceding Financial Year Termination Date to the next occurring Financial Year Termination Date.

**Financial Year Termination Date** means:

- (a) 30 June; and
- (b) the day on which the Trust becomes a “subsidiary unit holder” of a “consolidated group” or “consolidatable group” (as defined in the Tax Act); and
- (c) the day on which the Trust ceases to be a “subsidiary unit holder” of a “consolidated group” or “consolidatable group” (as defined in the Tax Act).

**First Closing Date:** means the date of issue of Stapled Securities pursuant to the first offering document which is both a prospectus and a PDS pursuant to which Stapled Securities are offered (and if there is more than one issue date for Stapled Securities under the first offering document, the last such issue date).

**Fully Paid Unit:** a Unit on which the Application Price has been fully paid.

**Group Assets:** the Assets (as that term is defined in this clause 32.1) plus the gross assets of all Stapled Entities.

**GST:** a goods and services tax, value added tax, consumption tax or a similar tax or a tax on services only.

**GST Act:** A New Tax System (Goods and Services Tax) Act 1999 (Cwlth).

**Income Distribution:** in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under clause 11.7.

**Initial Public Offer Institutional Price:** the price at which Stapled Securities are offered to institutional investors under the Offer Document, or where the Offer Document does not set out a fixed price, the price at which institutional bids for Stapled Securities are accepted in respect of the initial public offer made under the Offer Document.

**Initial Public Offer Period:** has the meaning given in clause 6.1(b).

**Liabilities:** all present liabilities of the Trust including any provision taken into account in determining the liabilities of the Trust, but not liabilities:

- (a) to applicants for Units in respect of application money or property in respect of which Units have not yet been issued; or
- (b) to Members, arising by virtue of the right of Members to request redemption of their Units or to participate in the distribution of the Assets on winding up of the Trust.

**Liquid:** has the same meaning as in the Corporations Act<sup>51</sup>.

**Listed:**

- (a) in the case of the Trust, the trust being listed on the ASX; and
- (b) in the case of the Units or the Stapled Securities, those securities being Officially Quoted,

and **Listing** has a corresponding meaning.

**Listing Rules:** the listing rules of the ASX and any other rules of the ASX which are applicable while the Trust is admitted to the official list of the ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by the ASX.

**Manager:**

- (a) while the Trust is not a Registered Scheme, the trustee of the Trust; and
- (b) while the Trust is a Registered Scheme, the company which is registered with the ASIC as the single responsible entity for the Trust under the Corporations Act.

**Market Price:** of a Security on a particular day is:

- (a) subject to paragraphs (b) and (c), the volume weighted average price per Security for sales on the ASX (excluding any special crossings) for the period of 10 Trading Days immediately prior to the relevant day (whether or not a sale was recorded on any particular day); or
- (b) if:
  - (i) Securities have not been Officially Quoted for at least 10 consecutive Trading Days before the relevant day; or
  - (ii) in the Manager's opinion a determination under paragraph (a) of this definition would not provide a fair reflection of the current market value of the Security,

the price per Security that an independent valuer appointed by the Manager determines to be the market price of the Security on the

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<sup>51</sup> Refer Part 5C.6

relevant day. The independent valuer may be an independent investment bank with relevant market experience in determining a market price in circumstances similar to those in which the determination of the market price of the Security is required to be made. The independent investment bank may, in its discretion, determine the price per Security using the method of a bookbuild in accordance with usual market practice in the Australian equity market. Matters to which the independent investment bank may have regard in making its determination include:

- (A) the nature of the proposed offer of Securities for which purpose the market price of a Security is being calculated;
- (B) the circumstances in which the proposed offer of Securities will be made;
- (C) the level and quality of institutional demand at various price points;
- (D) the desire for an orderly aftermarket; and
- (E) prevailing market conditions.

Where paragraph (b)(ii) is applicable, the price per Security determined under paragraph (b) must represent no more than a 12.5% discount to the price which would otherwise be determined under paragraph (a).

**Market Value** of an Asset at a particular time means:

- (a) in the case of an Asset that is cash or a deposit with an Australian ADI, at face value plus any accrued interest;
- (b) in the case of an Asset that is a financial product traded on a financial market, the latest bid price on that market that is readily available to the Manager, unless the Manager reasonably believes that the bid price does not represent the true value of the Asset, in which case paragraph (d) will apply;
- (c) in the case of an Asset that is an interest in a managed investment scheme that is not listed or quoted for dealing on any financial market, the redemption price of the interest as quoted by the manager, trustee or responsible entity of the scheme on such date plus any income entitlements accrued at that date as advised by the manager, trustee or responsible entity or, if information about the redemption price and accumulated income entitlements is not available for that date, the latest earlier date for which that information is available. Where the scheme is operated by the Manager or a related body corporate of the Manager, the redemption price of the interest (excluding any allowance for transaction costs) and the accumulated income entitlements must be determined in accordance with the constitution governing the scheme;
- (d) in the case of any other Asset, the value of the Asset determined in accordance with generally accepted accounting principles or, if the

Manager is of the opinion that such valuation does not truly reflect the value of the Asset, such value as last determined by an Approved Valuer approved by the Manager at the expense of the Trust.

**Member** means a person Registered as the holder of a Unit (including persons jointly Registered) or otherwise stated to be a Member in accordance with clause 7.7 or any other provision of this constitution and, where required by the Corporations Act or the context, includes the holder of an Option.

**Minimum Holding:** means the amount from time to time determined by the Manager pursuant to clause 7.5.

**NAV Price:** in respect of a Unit or an Attached Security, means a price calculated in accordance with clause 6.2, or the equivalent provision in the constitution for a Stapled Entity.

**Net Asset Value:** the value of the Assets calculated in accordance with clause 10 less the Liabilities.

**Offer Document:** the combined PDS and prospectus under which Stapled Securities are offered during the Initial Public Offer Period.

**Officially Quoted:** quoted on the official list of the ASX, including when quotation is suspended for a continuous period of not more than 60 days.

**Operating Rules** means the operating rules of a CS Facility regulating the settlement, clearing and registration of uncertificated securities as amended, varied or waived (whether in respect of the Trust or generally) from time to time.

**Option:** an option granted by the Manager in respect of an unissued Unit.

**Option Holder** means the person Registered in the Register of option holders.

**Paid-up Proportion:** the number obtained by multiplying the number of Partly Paid Units on issue as at the date of calculation by the fraction obtained by dividing the aggregate of all amounts paid or due but unpaid in respect of all Partly Paid Units in issue as at the date of calculation by the total of the Application Prices of those Partly Paid Units.

**Partly Paid Unit:** a Unit on which the Application Price has not been paid in full.

**PDS:** product disclosure statement as defined in the Corporations Act.

**Quarter:** each 3 month period ending on the Quarter End Date or such shorter period of time if the period ends on the date of Termination of this Trust or the date of retirement of the Manager or commences on the date of commencement of the Trust.

**Quarterly:** is to be interpreted accordingly.



**Quarter End Date:** each 31 March, 30 June, 30 September and 31 December and if the effective date of termination of the Trust or retirement of the Manager is another date, that date.

**Redemption Price:** the redemption price of a Unit calculated in accordance with this constitution<sup>52</sup>.

**Redemption Request:** a written request to the Manager to redeem Units and, while Stapling applies, to redeem also the Attached Securities Stapled to the Units to be redeemed.

**Register:** the register of Members and, if relevant, Option Holders kept by the Manager under the Corporations Act.

**Registered Scheme:** a managed investment scheme registered under Section 601EB of the Corporations Act

**Registered:** recorded in the Register.

**Registration:** recording in the Register.

**Resolution:**

- (a) a resolution passed at a meeting of Members in the Trust (or of Members holding Units in a Class):
  - (i) on a show of hands, by the required majority of Members (or Members holding Units in a Class, as the case may be) present in person or by proxy and voting on the show of hands; or
  - (ii) on a poll, by the required majority of votes cast by Members (or Members holding Units in a Class, as the case may be) present in person or by proxy and voting on the poll; or
- (b) where the law allows, a resolution in writing signed by Members:
  - (i) in the case of a resolution by Members of a Class, holding the required majority of the Units in that Class; or
  - (ii) in any other case, holding the required majority of the Units in the Trust.

Except where this constitution or any applicable law provides otherwise, the “required majority” is a simple majority<sup>53</sup>.

**Restriction Agreement:** means a restriction agreement within the meaning and for the purposes of the Listing Rules.

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<sup>52</sup> See “Redemption Price of Units”

<sup>53</sup> Circumstances where a special resolution is required include a vote on amendments to this constitution if necessary (see section 601GC(1)(a)). For voting on winding up by Members and choosing a new responsible entity see sections 601FL and 601NB.

**Restricted Securities:** has the same meaning as in the Listing Rules.

**Security:** means while the Units are Stapled a Stapled Security and while the Units are not Stapled a Unit.

**Stapled Company:** means Infigen Energy Limited (ACN 105 051 616).

**Stapled Entity:** means the Stapled Company, the Stapled Foreign Company and any other trust, body corporate or managed investment scheme whose securities are Stapled to the Units.

**Stapled Foreign Company:** means Infigen Energy (Bermuda) Limited (ARBN 116 360 715).

**Stapled Foreign Share:** means an ordinary share in the Stapled Foreign Company that is Stapled to a Unit.

**Stapled Security:** means a Unit and each Attached Security which are Stapled together and registered in the name of the same person.

**Stapled Security Holder:** means the Member under this constitution and the holder of Attached Securities.

**Stapled Share:** means an ordinary share in the Stapled Company.

**Stapling:** means the linking together of a Unit and Attached Securities, so that one may not be transferred, or otherwise dealt with, without the other or others and which, if quoted on ASX, are quoted on the ASX jointly as a “stapled security” or such other term as the ASX permits. **Stapled** has a corresponding meaning.

**Stapling Commencement Date:** means the date upon which Stapling is to commence as determined by the Manager in cooperation with the Stapled Entities.

**Tax:** means all kinds of taxes, duties, imposts, deductions and charges imposed by a government including GST or any amount recovered from the Manager by way of reimbursement of GST or any amount included either expressly or impliedly in an amount paid or payable by the Manager on account of GST, together with interest and penalties.

**Tax Act:** means the Income Tax Assessment Act 1936 (*1936 Act*), the Income Tax Assessment Act 1997 (*1997 Act*) or both the 1936 Act and the 1997 Act, as appropriate.

**Trading Day:** has the same meaning as in the Listing Rules.

**Transaction Costs:**

- (a) when calculating the Application Price of a Unit, 1% of the total cost of acquiring the Assets; and
- (b) when calculating the Redemption Price of a Unit, 1% of the total cost of selling the Assets.

**Trust:** the trust constituted under or governed by this constitution.

**Unit:** an undivided share in the beneficial interest in the Trust as provided in this constitution.

**User Pays Fees:** any cost incurred in relation to:

- (a) an entitlement to a payment or a payment to or from the Trust in respect of a Member; or
- (b) any act or omission requested by a Member,

which the Manager considers should be borne by that Member.

**Valuation Time:** a time at which the Manager calculates Net Asset Value.

**VWAP:** in respect of a Stapled Security for a Trading Day, the volume weighted average of the Stapled Security prices for that Trading Day for all sales of Stapled Securities recorded on ASX for the day, but excluding sales that occur otherwise than in the ordinary course of trading on ASX, such as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the after hours adjust phase, and any overseas sales or sales pursuant to the exercise of options over Stapled Securities, any overnight crossings and any other sales which the Manager reasonably considers may not be fairly reflective of natural supply and demand; and in respect of a Unit, VWAP has a corresponding meaning.

## 32.2 Interpretation

Unless the contrary intention appears, in this constitution:

- (a) terms defined in the Corporations Act are used with their defined meaning;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) the words “includes” or “including”, “for example” or “such as” when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
- (e) amend includes delete or replace;
- (f) person includes a firm, a body corporate, an unincorporated association or an authority;
- (g) the cover page, contents, headings (except in so far as they are used as a means of cross reference), footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution;

- (h) a reference to a year (other than a Financial Year) or month means a calendar year or calendar month respectively;
- (i) a reference to dollars or \$ is a reference to the currency of Australia.

### **32.3 Other documents**

A document does not become part of this constitution by reason only of that document referring to this constitution or vice versa, or any electronic link between them.

### **32.4 Constitution legally binding<sup>54</sup>**

This constitution binds the Manager and each present and future Member and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this constitution.

### **32.5 Severance**

If all or part of any provision contained in this constitution is void or invalid or would otherwise result in all or part of this constitution being void or invalid for any reason, then such part is to be severed from this constitution without affecting the validity or operation of any other provision of this constitution.

### **32.6 Governing law**

This constitution is governed by the law of Victoria.

### **32.7 Other obligations excluded**

Except as required by the Corporations Act all obligations of the Manager which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any obligation of the Manager in its capacity as trustee of the Trust arising under any statute.

**EXECUTED** as a deed

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<sup>54</sup> Refer Section 601GB

# Constitution of Infigen Energy Trust

## Finding list

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This list is included to assist the ASIC in identifying the provisions in this constitution which satisfy the requirements of the Corporations Act for constitutions of registered managed investment schemes.

Corporations Law	Constitution
601GA	
(1)(a)	6.1 - 6.5
(1)(b)	13.1 - 13.4
(1)(c)	26
(1)(d)	23
(2)	19.3 - 19.6, 21.1 - 21.5
(3)	13.3
(4)(a)	9.2, 9.4, 9.8
(4)(b)	9.3 - 9.7, 8.1 - 8.3
(4)(c)	9.8 - 9.10
601GB	32.4