



OUR GUARD

Our Guard Mutual Ltd

ACN 652 207 808

COMPANY CONSTITUTION

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1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Constitution, unless the contrary intention appears:

Board means the board of the directors of the Company;

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in the place where the Office is located;

Claim means damages, expenses, liabilities or losses incurred by a Member who holds a Schedule of Protection and the subject of a claim for discretionary risk protection by the Member;

Collective Voice Scheme means certain opportunities for Members to make contributions to and express their opinions in relation to the Company's products and activities including claims assessment, product reviews, member referral, and such other activities as determined by the Board;

Company means Our Guard Mutual Limited ACN 652 207 808;

Constitution means those Rules for the operation of the Company set out in this document and in the Schedule, as amended from time to time;

Contributions means any contributions calculated and payable in accordance with the Guidelines;

Direct Vote has the meaning given by Rule 14.8;

Demutualisation means any arrangement which would have the purpose or effect of:

- a. creating or issuing shares in the company; or
- b. the company agreeing to create or issue shares in it; or
- c. varying the rights of members, or a class of members, to:
 - i. the company's reserves; or
 - ii. the company's assets on a winding up; or
- d. transferring, exhausting, surrendering, cancelling or terminating some or all rights of members (including the complete resignation of membership, whether in exchange for value or not),

and includes:

- e. any arrangement that would have the purpose or effect of authorising any of the matters set out in paragraphs a. to d.; and
- f. any proposed modification or repeal of any part of this definition,

but excludes the creation or issuance of, or the agreement to create or issue, or any amendment to this constitution to facilitate the creation or issuance of, MCIs (including MCIs of different classes and with different rights) and the cancellation or variation of any rights attached to MCIs (or a class of MCIs);

Discretionary Risk Activities means the Company offering discretionary risk protection to the Members;

Discretionary Risk Protection Product means the type of discretionary risk protection available to Members;

Eligible Person means any person or other entity (including a body corporate or a partnership of corporate trustees or individuals) that has a Schedule of Protection approved in accordance with the Guidelines or by the Board (or their delegate);

Guidelines means any rules, standards, principles, obligations, criteria or any other type of guideline as set by the Board from time to time in accordance with Rule 18.6;

Independent Representative has the meaning given in Rule 17.4.b;

Law means the *Corporations Act 2001* (Cth);

Manager Representative has the meaning given in Rule 17.4.c;

MCI (short for mutual capital instrument) has the meaning given to the term in section 9 of the Law;

MCI Holder means a person who holds one or more MCI;

MCI Holder Representative has the meaning given in Rule 17.4.d;

Members Fund means a separate fund maintained and applied by the company for the mutual benefit of the Members from time to time. The fund will be used to accumulate all receipts from, or in respect of, Members and to make payments to, or in respect of, Members. If there are two or more classes of Members, a separate Members Fund will be maintained in respect of each class of Members.

Member means any person whose name appears in the Register as a member of the Company;

Member Representative has the meaning given in Rule 17.4.a;

Mutual Manager means the professional mutual manager of the Company engaged by the Company to manage the Discretionary Risk Activities and each Members Fund;

Notice Address means the last address for a person as nominated by that person and recorded in the Register of Members pursuant to Rule 8.8;

Office means the registered office of the Company;

Ordinary Resolution means in relation to a resolution of:

- a. The Board, a resolution that is passed by an affirmative vote of 51% or more of the votes cast by those directors present and entitled to vote on the resolution; and
- a. The Members, a resolution that is passed by an affirmative vote of 51% or more of the votes cast by those Members present and entitled to vote on the resolution; and
- b. The committee members, a resolution that is passed by an affirmative vote of 51% or more of the votes cast by those committee members present and entitled to vote on the resolution;

Place includes physical venue(s) and or, any online facility(ies) or platform(s) nominated by the Board to allow Members to participate in any meeting or forum of the Company, electronically in real-time or any other format that the Board considers appropriate or otherwise allowable by Law, or any combination of the aforementioned;

Product Disclosure Statement means a document titled 'Product Disclosure Statement' describing the benefits, terms and other conditions applicable to a particular Discretionary Risk Protection Product accessible by a Member;

Protection Period means the period during which a Member holds discretionary risk protection as stated on the Schedule of Protection;

Register means the register of Members of the Company under the Law;

Related Body Corporate of a body corporate is a body corporate which is related to that body corporate within the meaning of the Law;

Representative means a person appointed to represent a corporate Member at a general meeting of the Company in accordance with the Law;

Rules means the provisions of this Constitution, as amended from time to time, and **Rule** means any of them;

Schedule means the schedule to this Constitution;

Schedule of Protection means the schedule issued by or on behalf of the Company to each Member for each Protection Period detailing the Discretionary Risk Protection Products accessible by a Member;

Secretary means a person appointed under Rule 23 as a secretary of the Company and, where appropriate, includes any assistant or acting secretary and any other person appointed to perform, whether alone or in addition to any other person or persons, the duties of secretary of the Company;

Special Resolution has the meaning given by Section 9 of the Law;

Subordinate Regulations means any code of conduct, Rules, by-laws, regulations or standards issued from time to time by the Company under Rule 12 and **Subordinate Regulation** means any of them;

Voting MCI Holder means an MCI Holder who is entitled to vote at a general meeting of the Company in accordance with the MCI's terms of issue.

1.2 Interpretation

Unless the context or subject matter otherwise requires, references to:

- 1.2.a Singular words include the plural and vice versa;
- 1.2.b Any gender includes every gender;
- 1.2.c "person" or "**persons**" includes a natural person, corporations, trusts, associations, partnerships, government authorities, and other legal entities, and where necessary, includes successors and assigns;
- 1.2.d Writing includes printing and typing and other means of representing or reproducing words, figures, drawing or symbols in a visible and tangible or electronic form, in English and including the meaning given to the term "in writing" in the Electronic Transactions Act 1999 (Cth);
- 1.2.e Signature and signing means due execution of a document by a person and includes signing by an agent or attorney or representative (if a body corporate);
- 1.2.f Where a document (including a notice or consent) is required to be "**signed**", the requirement may be satisfied in relation to an electronic communication of the document in any manner:
 - a Permitted by relevant law relating to electronic transmissions (including electronic signature); or
 - b Approved by the Board (which could include authentication by providing an allocated code or specified personal information).
- 1.2.g "**present**" or "**attend**" in the context of attendance at meetings, includes whether that be in person, including by the use of technology approved by the Board for the general meeting, or by proxy, attorney or Representative (as applicable);
- 1.2.h Months means calendar months;
- 1.2.i Statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, Rules, by-laws and ordinances made under those statutes;
- 1.2.j Sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- 1.2.k An agreement or document means that agreement or document as amended, novated or supplemented;
- 1.2.l A party includes that party's executors, administrators, substitutes, successors and assigns;
- 1.2.m Sell or sold include transfer, lease, assign, grant options and/or any other form of disposing of or creating an interest in the thing being considered and buy or purchase will be interpreted accordingly;

- 1.2.n Headings and the table of contents are for convenience only and will be disregarded in the interpretation of this Constitution;
- 1.2.o If a word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning; and
- 1.2.p Each paragraph or subparagraph in a list is to be read independently from the others in the list.

1.3 Actions authorised under the Law

Subject to Rule 4, where the Law authorises or permits a company to do anything if authorised by its constitution, the Company is authorised or permitted to do that thing despite any other provision of this Constitution.

1.4 Replaceable rules do not apply

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

1.5 Law prevails

Subject to Rule 1.2, where any provision in this Constitution is invalid or unenforceable or conflicts with any provision of the Law, it will be read and interpreted as being subject to the provisions of the Law and will be ineffective, but only to the extent of any invalidity, unenforceability or conflict.

1.6 No limit on exercise of powers

Subject to Rule 4, where the Company or the Board or any other person is given a power, right or discretion under this Constitution:

- 1.6.a The power, right or discretion may be exercised absolutely without restriction unless the power, right or discretion is expressly limited; and
- 1.6.b Any exercise of that power, right or discretion on any occasion will not restrict the further exercise of the power, right or discretion on any other occasion or at any time.

1.7 MCI mutual entity

- 1.7.a The Company is intended to be an MCI mutual entity for the purposes of the Law.
- 1.7.b Subject to this Constitution and the Law, the Board may issue or allot MCIs (including, without limitation, MCIs which are issued upon conversion of another security) to any person on such terms and conditions as the Board may determine from time to time.
- 1.7.c MCIs shall be issued in accordance with, and subject to, the provisions set out in the MCI's terms of issue and the Schedule.

2 EFFECT OF THE CONSTITUTION

This Constitution will have effect as a contract:

- 2.1.a Between the Company and each Member;
 - 2.1.b Between the Company and each MCI Holder;
 - 2.1.c Between the Company and each director and Secretary; and
 - 2.1.d Between a Member or MCI Holder and each other Member or MCI Holder,
- under which each Member or MCI Holder agrees to observe and perform the Rules so far as they apply to that Member or MCI Holder.

3 PUBLIC COMPANY

The Company is registered as a public company limited by guarantee and accordingly:

- 3.1.a The number of Members must not be less than one (1) Eligible Person;
- 3.1.b The number of directors of the Company will be determined in accordance with Rule 17.1 (Number of directors).

4 OBJECTS

Without limiting the legal capacity and powers of the Company conferred by law, the Company has the following objects:

- 4.1.a To receive Contributions from Members to provide discretionary protection and other programs for the mutual benefit of members for the following common purpose: to provide discretionary protection and other programs for the protection of Members in respect of Claims;
- 4.1.b In accordance with the Constitution and the Guidelines, to receive, consider and at its sole and absolute discretion pay Claims;
- 4.1.c To provide Members with opportunities to participate in the Company's Collective Voice Scheme;
- 4.1.d To pay expenses and outgoings for the supply of outsourced services to the Company, including but not limited to the supply of the services of the Mutual Manager in relation to the Discretionary Risk Protection Product, Discretionary Risk Activities and the handling of any Claims;
- 4.1.e To maintain reserves and such financial provision in each Members Fund, and manage monies, as the Board consider fit for the Discretionary Risk Activities including in respect of insurance or reinsurance in respect of the protection of Members in respect of Claims or the scheme in respect of Claims;
- 4.1.f To acquire, dispose of, invest, participate or otherwise hold any property as an investment of any monies held by the Company, including Member Funds for any purpose and in any manner that the Board considers to be fit to meet these Objects;
- 4.1.g To provide such other benefits and services to Members as are in their mutual interest, including but not limited to the establishment and implementation of risk management initiatives and programs;
- 4.1.h To advise on and deal in financial products such as insurance /reinsurance and other forms of risk protection which are beneficial to the Company and the Members;
- 4.1.i To accept subscription moneys for MCIs in accordance with the Law, the MCI's terms of issue, and the Schedule;
- 4.1.j To borrow money, charge any property or business of the Company, give any other security for a debt, liability or obligation of the Company or of any other person; and
- 4.1.k Undertake and pursue all such other similar, related or compatible objects as may from time to time be considered appropriate by the Company.

5 PROMOTION OF OBJECTS

5.1 Benefit the Company

Subject to Clause 5.2, Clause 30 and Rule 1 of the Schedule, the income and property of the Company must be applied solely for the benefit and promotion of the Company's objects (including by way of transfer to the Member Funds) and no part of the income or property will be:

- 5.1.a Paid or transferred directly or indirectly by way of dividends, bonus or otherwise to the Members (except where permitted under the terms of issue of an MCI, or as the payment of a claim); or
- 5.1.b Paid to directors as fees or other remuneration or other benefit in money or money's worth.

5.2 Exception

Nothing in this Rule 5 precludes:

- 5.2.a Payment of the amounts contemplated under Rule 1 of the Schedule;
- 5.2.b Subsidising the cost of protection or arranging additional benefits contemplated under Rule 30;
- 5.2.c Payments of dividends for MCIs contemplated under Rule 1.3 of the Schedule;
- 5.2.d Refund of Contributions on a pro-rata basis for any unused Protection Period due to cancellation under Rule 11.5.b;
- 5.2.e Payment in good faith or reasonable and proper remuneration to any director, officer or servant of the Company or to any Member in return for any services rendered to the Company provided such payment is permitted under Rule 17.11;
- 5.2.f The payment of interest at a rate that is consistent with that charged for commercial arm's length arrangements available in the ordinary course;
- 5.2.g In the case of any director who is engaged by the Company as an executive director, consultant or servant, any reasonable and proper remuneration for services provided to the Company;
- 5.2.h The repayment of reasonable out-of-pocket expenses, properly incurred by any director provided such payment is permitted under Rule 17.11.
- 5.2.i The payment of a reasonable rental for premises demised or let by any Member to the Company; or
- 5.2.j Any payment in settlement of a Claim in accordance with Rule 4.1.b.

5.3 Directors' prior approval

Any payment authorised under Rule 5.2 may be made with the prior written approval of the Board or in accordance with the Guidelines.

6 POWERS

The Company may by Ordinary Resolution or Special Resolution as the Law requires, exercise any power which by the Law a company limited by guarantee may exercise if authorised by its constitution.

6.1 Company's powers

The Company has all of the powers of a natural person and of a body corporate, including those given to it by the Law. These powers include all powers necessary to enable the Company to carry out its objects and without limiting the generality of the foregoing, include (but are not limited to) the power to:

- 6.1.a Accept and undertake full or partial trusteeship, administration and management of trusts and funds, whether as trustee or as agent for the trustee or otherwise, and charge and accept fees, commission or other remuneration in respect of the trusteeship, administration and management;
- 6.1.b Raise funds and invite and receive Contributions, grants, distributions of income or capital, gifts (by will or otherwise), loans and deposits from any person;
- 6.1.c Purchase, take on lease or in exchange, hire or otherwise acquire real or personal property, and any rights or privileges that are required for the purposes of, or capable of being conveniently used in connection with, the Company's objects. However, if the Company takes or holds any property which is subject to a trust, the Company may only deal with that property in the manner allowed by law having regard to that trust;
- 6.1.d Control, manage, lease, exchange, mortgage, charge, sell, transfer, surrender, dispose of, develop, carry on business or otherwise deal with any real or personal property of any kind or any estate or interest in the property;
- 6.1.e Invest, deal with and lend money and otherwise provide financial accommodation to, and guarantee or otherwise secure loans;

- 6.1.f Construct, improve, maintain and develop, work, manage and control real or personal property and enter into contracts and agreements with any person including, without limitation third party provider of goods or services and referral partners or agents;
- 6.1.g Enter into any arrangement with any government or authority that seems conducive to the Company's objects, obtain from any government authority any right, privilege or concession that the Company thinks it desirable to obtain, and carry out, exercise and comply with any of these arrangements, rights, privileges and concessions;
- 6.1.h Engage, dismiss or suspend any employee, agent, contractor, volunteer or professional person;
- 6.1.i Borrow, raise or secure the payment of money and secure the repayment or performance of any debt, liability, contract, guarantee or other engagement in any way and, in particular, a mortgage, charge or overdraft or by the issue of MCIs, debentures or debenture stock (perpetual or otherwise) charged on all or any of the Company's property (both present and future) and purchase, redeem or pay off those securities;
- 6.1.j Spend money and do all other things that it considers desirable to promote the Company's objects;
- 6.1.k Make, draw, accept, endorse, discount, execute or issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- 6.1.l Print and publish newsletters, periodicals, books or leaflets, develop content, develop and own intellectual property including social media and website content and trademarks or otherwise publish, advertise or circulate information in hard copy or by electronic means;
- 6.1.m Engage in marketing, promotional and recruitment activities with and for current Members and prospects;
- 6.1.n Accept, decline or otherwise refuse to accept any gift (by will or otherwise), donation, settlement or other disposition of money or property;
- 6.1.o Take any steps by personal or written appeals, public meetings or otherwise, that the Company considers expedient to procure contributions to the Company's funds, by way of donations, gifts (by will or otherwise), grants, sponsorships or otherwise;
- 6.1.p Appoint patrons of the Company;
- 6.1.q Do all other things incidental or conducive to attaining the Company's objects; and
- 6.1.r To purchase and maintain for any director, auditor, officer, trustee, manager or any other person (including retired persons) insurance against any liability for negligence, default, breach of duty or breach of trust or any other liability which may lawfully be insured against.

7 DEMUTUALISATION

No Demutualisation may be entered into, implemented or carried out, without the passing of a Special Resolution of the Members.

8 MEMBERSHIP

8.1 Members

- 8.1.a The Members are persons admitted to membership in accordance with Rule 8.4.
- 8.1.b There is no limit to the number of Members.

8.2 Membership of MCI Holder

- 8.2.a For the avoidance of doubt, unless expressly stated otherwise in this Constitution:
 - a an MCI Holder does not have any entitlement to discretionary risk protection offered by the Company merely by virtue of holding an MCI;
 - b an MCI Holder may be (or become) a Member of the Company if they satisfy the requirements of Rule 8.4; and

- c an MCI Holder who is also a Member is not deemed to be a Member for the purposes of exercising the rights of an MCI Holder or in respect of any matters involving the MCIs held by that person.

8.3 Classes of membership

- 8.3.a If the Board considers that the rights of a particular class of Members under this Constitution are better served by dividing the Members into classes of Members:
 - a The membership of the Company may be divided into classes of membership at the determination of the Board (and the Board may create new classes of membership for that purpose).
 - b Where the membership of the Company has been divided into classes, the Board will determine the rights and duties of each class of Members and of the Members of each class.

8.4 Application for membership

- 8.4.a An Eligible Person (or any other person with the approval of the Board) may request a quotation for protection by providing the information set out in the relevant Guidelines for each Discretionary Risk Protection Product.
- 8.4.b In order to be admitted as a Member, every applicant for membership must first:
 - a Deliver to the Company any information required by the Board (including an application for membership, if one is required);
 - b Agree to the terms of membership determined by the Board, which may be changed by the Board from time to time; and
 - c Pay to the Company the Contribution and membership entrance fee (if any) determined by the Board in accordance with Rule 8.7, by the required timeframe.
- 8.4.c Following payment of their Contribution, a person will be recognised as a Member of the Company and as a Member of the Members Fund and will be issued with one or more protection Schedules of Protection
- 8.4.d The Schedule of Protection (supported by this Constitution and the Guidelines) sets out membership rights afforded to a Member in respect of their Members Fund.
- 8.4.e A person admitted as a Member of the Company and of a Members Fund will continue to be a Member while they hold at least one Schedule of Protection, which is active and current according to the Guidelines.
- 8.4.f A person may not hold a Schedule of Protection unless they are a Member of the Company
- 8.4.g An applicant for membership must provide any other information that the Board requires in order to assess the request for membership. The Board may delegate their authority to accept membership applications in accordance with the Guidelines.

8.5 Entrance fee

The Board may determine the entrance fee payable by any person applying for membership of the Company. The Board may at any time and as many times as it decides, change the entrance fee payable. Until the Board otherwise determines, no entrance fee is payable.

8.6 Membership not transferable

Membership of the Company and any interest, benefit or right of any Member (excluding in relation to MCIs) is not transferable by operation of law or otherwise. Subject to Clause 8.6 c All rights and privileges of membership of the Company, including in respect of a Members Fund , will cease immediately upon a Member:

- 8.6.a Ceasing to be a Member for any reason; or
- 8.6.b Purporting to sell or transfer their membership, or agreeing to do so whatsoever.

8.7 Member rights and obligations

- 8.7.a Each Member must comply with this Constitution and any other Rules or by-laws the Board from time to time decides.
- 8.7.b Subject to class rights of a Member (as determined by the Board in accordance with Rule 8.3), a Member has the right to receive notices of and to attend and be heard at any general meeting and has the right to vote at any general meeting.
- 8.7.c If a Member is issued with a Schedule of Protection, the member is entitled to make a Claim on the assets or property of their Members Fund in respect of discretionary risk protection specified in any Schedule of Protection held by that Member for events occurring during the Protection Period, or as otherwise specified in the product terms and conditions.
- 8.7.d A Member is entitled to request the Board considers their Claim for protection and the Board may in its sole and absolute discretion decide whether the Claim will be paid from the Members Fund. The Board must give consideration to the Guidelines, the Product Disclosure Statement, the Schedule of Protection issued to the Member, and whether payment of the Claim is in the best interests of all Members of the Members Fund when exercising its discretion.
- 8.7.e Subject to the rights of each class of membership and completion of the Company's qualification processes, a Member may participate in the Collective Voice Scheme.
- 8.7.f A Member must ensure that the Contribution for each Protection Period which is payable by them is paid, or take reasonable steps to ensure it is paid on their behalf, by the due date determined (at the discretion of the Board) in each Protection Period and that the Member otherwise complies with this Constitution.

8.8 Register of Members

The following details must be entered in the Register in respect of each Member:

- 8.8.a The full name of the Member and in the case of a body corporate or registered organisation the Australian Business Number (ABN) or other identification of registration of the body or organisation;
- 8.8.b The contact details of the Member, supplied by the Member which may include (as applicable):
 - a residential or postal address;
 - b telephone number;
 - c electronic address;
 - d social media account address; and or
 - e other electronic means for notification nominated by the Member;
- 8.8.c The date of admission to and cessation of membership; and
- 8.8.d Such other information as the Board may from time to time require.

8.9 Member to update their contact details

Each Member must notify the Company in writing, using a facility provided by the Company for notifications or communications, of any change in that Member's Notice Address or name as soon as possible, but in any event, within one (1) month after the change.

9 CONTRIBUTIONS

9.1 Contributions

- 9.1.a Contributions are determined for each Discretionary Risk Protection Product and Member class in accordance with a Contributions formula, set out in the Guidelines.
- 9.1.b Contributions are payable for each Discretionary Risk Protection Product for each Protection Period for each Member.

- 9.1.c Payment terms for Contributions for each Discretionary Risk Protection Product are set out in the Guidelines.
- 9.1.d Contributions will be credited to their respective Members Fund immediately following receipt.

9.2 Unpaid Contributions

- 9.2.a Where a Member has one (1) Schedule of Protection and the Contribution for that Schedule of Protection is overdue, or multiple Schedules of Protection which are all overdue, according to the Guidelines,
 - a the Member ceases to be entitled to any of the rights or privileges of membership;
 - b has no entitlement to make a Claim for the Protection Period; and
 - c the Member's Schedule of Protection may be cancelled according to Rule 11.1.
- 9.2.b However, the Board may in its absolute discretion extend the time for payment and/or reinstate the rights or privileges of membership (including the issue of a Schedule of Protection) upon payment of all arrears if the Board thinks fit to do so.

9.3 Different Contributions payable

In determining Contributions under this Rule, the Board may differentiate between classes of Members and between each Member as to the amounts and timing of Contributions payable.

10 VARYING OR CANCELLING CLASS RIGHTS

10.1 Varying or cancelling members rights

If the membership of the Company is divided into different classes of Members, the rights attached to any class of membership may be varied or cancelled with the written consent of 50% of the Members in that class or with the sanction of an Ordinary Resolution passed at a meeting of the Members of that class.

10.2 Varying or cancelling MCI Holder rights

In the case of MCIs, the rights attached to any class of MCI may only be varied or cancelled in accordance with section 167AE of the Law.

11 CESSATION OF PROTECTION & MEMBERSHIP

11.1 Cancellation of protection and membership

- 11.1.a A Member may cancel their discretionary protection at any time by giving written notice to the Company using a facility provided by the Company for notifications or communications or by submitting the notice by email to the Secretary.
- 11.1.b A Member that cancels or fails to maintain a current Schedule of Protection or any discretionary risk protection through the Company will have their membership cancelled in accordance with Rule 11.3.b and subject to the terms of the Schedule of Protection will cease to have any membership rights, including the right to make a Claim for events occurring thereafter
- 11.1.c The cancellation of a Member's membership under Rule 11.1.a is deemed to take effect on the day the notice period expires.

11.2 Expiration of Schedule of Protection

- 11.2.a The Company may decline to issue or decline to renew a Schedule of Protection according to the Guidelines or at the absolute discretion of the Board (or the Board's delegate).
- 11.2.b A person will cease to be a Member if they no longer hold any Schedules of Protection issued by the Company, including where their discretionary risk protection has expired and the Member has failed to renew it.
- 11.2.c Where a Member ceases to be a Member by virtue of this Rule 11.2, the Member will cease to be a Member on the date advised to the Member by the Company or the date of expiry of the Schedule of Protection.

11.3 Removal from membership

- 11.3.a The Board may at its absolute discretion cancel a Member's membership of the Company and remove the person's name from the Register, if a Member fails to pay the Contribution for discretionary protection or any of the Cessation Events described in Rule 11.4 occur.
- 11.3.b The Board must provide at least fourteen (14) days' written notice to any Member of any intention to cancel the Member's membership of the Company (except for termination under Rule 11.2) and remove the Member's name from the Register so as to enable the Member to provide any written representations to the directors.
- 11.3.c The Board does not have to give reasons for the termination of a Member's membership of the Company and the removal of the Member's name from the Register.
- 11.3.d The cancellation of a Member's membership is deemed to take effect on the day the notice period lapses.

11.4 Cessation events

A person will cease to be a Member upon notification from the Company where:

- 11.4.a a Member who is a body corporate, ceases to exist or is wound up or dissolved;
- 11.4.b the Member is no longer an Eligible Person and fails to satisfy the eligibility criteria specified in the Guidelines or as otherwise specified by the Board; or
- 11.4.c the Member's membership is cancelled by the Board because the Member has acted in a manner which is inconsistent with the common interests of the Members.

11.5 Consequences of ceasing protection and membership

- 11.5.a If a person's membership is cancelled in accordance with this Rule 11, that person is no longer eligible for discretionary protection and the Company will cancel any Schedules of Protection.
- 11.5.b If a Schedule of Protection is cancelled prior to the end of the Protection Period, a refund of a portion of the Contribution may be provided to the Member in accordance with the Guidelines and the Product Disclosure Statement for the Discretionary Risk Protection Product.
- 11.5.c The Company will notify a Member of the termination of their membership and protection and any applicable Contribution refund.
- 11.5.d The Company may remove a Member's name from the Register immediately if the Member's membership is cancelled according to Rule 11.4.
- 11.5.e If a person ceases to be a Member, they continue to be liable for:
 - a All Contributions, fees and other amounts they owe to the Company which are due and unpaid when they cease to be a Member and relates to the period of their membership and protection; and
 - b Any amounts which they are, or may become, liable to pay the Company under this Constitution.
- 11.5.f If a person ceases to be a Member, they remain entitled to make a Claim on the Company for events occurring whilst they were a Member, in accordance with Rule 8.7.c.

12 BY-LAWS, CODE OF CONDUCT, ETC.

12.1 By-law making power

- 12.1.a The Board may at any time and from time to time issue and/or impose the code of conduct, Rules and/or any other by-laws, regulations or standards for the Company which may deal with any matter within the power of the Board including (without limitation):
- a The eligibility criteria for Members and any qualifications required for membership;
 - b The admission and/or disqualification, removal or termination of Members;
 - c Any Contributions payable by Members;
 - d Cancellation of protection;
 - e Conditions of membership;
 - f Management or structure of Members Funds;
 - g Availability of services or facilities of the Company and/or access to them by Members;
 - h The rights attaching to membership;
 - i The conditions for the use or licence of any trade or other mark or property of the Company;
 - j Terms and conditions for MCI offers including type of MCI, class rights and qualifications required for MCI Holders; and/or
 - k Any other operational matters involving the Discretionary Risk Activities or the other business activities of the Company.

12.2 Subordinate Regulations

- 12.2.a The Board may at any time and from time to time without notice:
- a Vary, amend, suspend, revoke or otherwise change any Subordinate Regulation; or
 - b Make new Subordinate Regulations,
- and the Subordinate Regulations for the time being in force would be binding on all Members and MCI Holders (as appropriate).
- 12.2.b The Board may distinguish between Members, classes of Members or MCI Holders in the application or enforcement of any Subordinate Regulation without giving reasons and without being liable for any loss occasioned by doing so.
- 12.2.c In the event of any inconsistency or conflict between these Rules and any Subordinate Regulation, these Rules will prevail to the extent of any inconsistency or conflict.

13 GENERAL MEETINGS

13.1 Director may convene

- 13.1.a A general meeting may be convened by the directors by resolution of the Board.
- 13.1.b The Company must hold an annual general meeting if required by, and in accordance with, the Law.

13.2 Directors convening a general meeting at the request of Members

The Board must call and arrange to hold a general meeting on the request of Members holding at least 5% of the votes that may be cast at a general meeting.

13.3 Form of the Members request

The requests from the Members in accordance with Rule 13.2, must in addition to any requirements by the Law:

- 13.3.a state any resolution to be proposed at the meeting;
- 13.3.b be signed by the Members making the request; and
- 13.3.c be given to the Company.

13.4 Directors refusal to convene

The directors may refuse to convene a general meeting if the voting on the proposed resolution is not within the power of the Members.

13.5 Modification of this Constitution or winding up

The Members cannot vote on a resolution to voluntarily modify or replace this Constitution or wind up the Company, except where:

- 13.5.a a resolution for such action has first been passed by 95% of the votes cast by the directors entitled to vote on the resolution; and
- 13.5.b the notice of the Member's meeting to consider the resolution to modify or replace this Constitution or wind up the Company, is sent to Members after the approval in accordance with Rule 13.5.a is obtained.

13.6 Members may convene

- 13.6.a Members holding, between them, at least 5% of the votes that may be cast at a general meeting, may of their own volition, call and arrange to hold a general meeting.
- 13.6.b The Members calling a meeting in accordance with Rule 13.6.a must pay the expenses of calling and holding the meeting.

13.7 Notice of general meeting

- 13.7.a A general meeting may only be convened by giving the Members notice of the meeting.
- 13.7.b A notice shall be given in accordance with Rule 13.8.
- 13.7.c A notice of general meeting does not need to be given to Members who are not entitled to notice of meetings.
- 13.7.d A notice of a general meeting must:
 - a be given (in accordance with Rule 13.8) at least twenty-one (21) days before the date of the meeting unless otherwise agreed by all the Members entitled to notice;
 - b specify each place, day and time of the meeting;
 - c describe the nature of the business to be transacted at the meeting; and
 - d contain any other information required by the Law.
- 13.7.e The Board may postpone, cancel or adjourn a general meeting or change the place for the meeting ("replacement meeting") by giving written notice to all Members who received the original notice of meeting at least forty-eight (48) hours before the appointed time (or such other period as determined by the directors). That notice must specify the time and place for the replacement meeting.
- 13.7.f If a Member does not receive a meeting notice or the Board accidentally omits to give the Member a meeting notice, that omission will not invalidate the proceedings or any resolution passed at the meeting.
- 13.7.g No business is to be transacted at any general meeting except that contained in the meeting notice unless otherwise allowed by the Law.

13.8 How notice may be given

The Company may give a notice of meeting to a Member:

- 13.8.a Personally;
- 13.8.b By sending it by post to the residential or postal address for the Member noted in the register of Members or the alternative address (if any) nominated by the Member;
- 13.8.c By sending it to the electronic address (if any) nominated by the Member;
- 13.8.d By sending it to the Member by other electronic means (if any) nominated by the Member;
- 13.8.e By notifying the Member in accordance with Rule 27.3; or

- 13.8.f By any other means that the Board resolves as being appropriate from time to time or as otherwise allowable by the Law.

13.9 Cancellation of general meetings

- 13.9.a The Board may cancel a general meeting, other than a general meeting which they are required to convene and hold under the Law.
- 13.9.b Subject to Rule 13.9.c, a meeting may only be cancelled in accordance with Rule 13.9.a if, notice of the cancellation is given to all persons entitled to receive notice of the meeting, and such notice is given at least two (2) Business Days prior to the time of the meeting as specified in the notice of meeting.
- 13.9.c A meeting may only be cancelled in accordance with this Rule 13.9.a on less than two (2) Business Days notice, where all matters of business originally proposed at the meeting have been cancelled, withdrawn or otherwise no longer require, or are up for, consideration at the meeting.

13.10 Mode of meeting for Members

A meeting of Members may be held in two (2) or more places linked together by any technology that gives the Members as a whole in those places a reasonable opportunity to participate in proceedings, enables the chairperson to be aware of proceedings in each place, and enables the Members in each place to vote on a show of hands and on a poll. A Member present at one of those places is taken to be present at the general meeting and entitled to exercise all rights that being present at the general meeting affords.

13.11 Admission to general meetings

If a separate meeting place is linked to the main place of a general meeting by an instantaneous audio visual communication device whatsoever which, by itself or in conjunction with other arrangements:

- 13.11.a Gives the general body of Members in the separate meeting place a reasonable opportunity to participate in proceedings in the main place; and
- 13.11.b Enables the Members in the separate meeting place to vote on a poll,
- a Member present at the separate meeting place is taken to be present at the general meeting and entitled to exercise all rights as if he or she was present at the main place.

13.12 Technical difficulties

If, either before or during the meeting, any technical difficulty causes one or more of the matters set out in Rule 13.10 to not be satisfied:

- 13.12.a The chairperson may:
- a Adjourn the meeting until the difficulty is remedied; or
 - b Continue to hold the meeting and transact business in the place where the chairperson is present (and any other place which is linked under Rule 13.10).
- 13.12.b No Member may object to the meeting being adjourned, being held or continuing.

13.13 Quorum

- 13.13.a Business must not be transacted at a general meeting, except the election of a chair and the adjournment of the meeting, if a quorum of Members;
- a is not present when the meeting proceeds to business; and / or
 - b does not remain present throughout the meeting.
- 13.13.b A quorum will be:
- a If the Company has only one (1) Member entitled to receive notice of and vote at the meeting, that Member; or
 - b In every other case, two (2) Members entitled to receive notice of and vote at the meeting.

13.13.c If a quorum is lost and not present at any particular time during the meeting, business conducted whilst a quorum is absent shall not be valid.

13.14 Determine a quorum

In determining whether a quorum is present, a person attending as a proxy, or representing a body corporate that is a Member, is deemed to be a Member.

13.15 Procedure where no quorum

13.15.a If the quorum is not present within thirty (30) minutes after the time appointed for the meeting:

- a Where the meeting was convened upon the requisition of Members, the meeting will be dissolved; or
- b In any other case, the meeting will be adjourned.

13.15.b Any adjourned meeting will be rescheduled to take place on a day and time and at the place that the directors decide.

13.15.c If no directors are present at the meeting or if no decision is made by the directors, the meeting will take place on the same day and at the same time and place as originally notified, but in the next succeeding week.

13.15.d If at the rescheduled meeting the quorum is not present within thirty (30) minutes after the appointed time, then the meeting will be dissolved unless it is adjourned under Rule 13.19.

13.16 Appointment or election of chairperson

13.16.a The chairperson appointed under Rule 17.3 and 17.7 will preside as chairperson at every general meeting.

13.16.b Where a general meeting is held and:

- a a chairperson of the Board has not been elected;
 - b the chairperson of the Board is not present within 15 (fifteen) minutes after the appointed time; or
 - c the chairperson of the Board is unwilling to act,
- the directors present will elect one (1) amongst them to be chairperson of the meeting.

13.17 No casting votes

The chairperson of a general meeting is not entitled to a second or casting vote in addition to any vote he or she has as a Member or director. In the event of an equal vote at a general meeting, the matter will be resolved in the negative.

13.18 Chairperson's powers

13.18.a Subject to the terms of this Constitution dealing with adjournment of meetings, the ruling of the chairperson on all matters relating to the order of business, procedure and conduct of the general meeting is final and no motion of dissent from a ruling of the chairperson may be accepted.

13.18.b The chairperson, in his or her discretion, may expel any Member or director from a general meeting if the chairperson reasonably considers that the Member or director's conduct is inappropriate behaviour.

13.19 Adjournment of meeting

13.19.a The chairperson may adjourn any meeting of Members.

13.19.b An adjournment of a meeting of Members may be made without the consent of Members.

13.19.c Any adjournment may change the time or place for the meeting.

13.19.d Only business left unfinished from the meeting adjourned may be transacted at any rescheduled meeting.

13.20 Adjournment of thirty (30) days

If the meeting is to be adjourned for thirty (30) days or more, notice of the adjourned meeting must be given in accordance with Rule 13.7. The notice must set out the unfinished business of the original meeting. It does not need to set out anything else.

13.21 Adjournment of less than thirty (30) days

A notice of meeting is not required to be given for an adjourned meeting where the adjournment is for less than thirty (30) days.

13.22 Rights of third parties to attend general meetings

Even if they are not Members of the Company, in addition to any persons who have a right at Law to attend, the following persons have the right to attend any general meeting and, if requested by the Board, to speak at the general meeting:

13.22.a Any director;

13.22.b Any Secretary;

13.22.c Any MCI Holder who is entitled to attend general meetings under the terms of issue of their MCIs; and

13.22.d Any other person invited by the Board.

13.23 Minutes

The Board must ensure that proper minutes are made of:

13.23.a All general meetings of the Company;

13.23.b All appointments of officers;

13.23.c The proceedings of all general meetings; and

13.23.d The attendance at general meetings,

and the minutes of the meeting, if purporting to be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting, will be conclusive evidence of the matters recorded in them without any further proof.

13.24 Class and group meetings

Any matter to be determined by a class or group of Members must be determined by Ordinary Resolution (unless otherwise required by the Law) of the class or group at a meeting held, as nearly as the circumstances permit, in the same manner as a general meeting of the Company.

14 DECISIONS AT GENERAL MEETINGS**14.1 Passing of resolutions**

A resolution (unless the Law requires it to be passed by a special majority) on a question arising at a general meeting is decided by a majority of votes cast by the Members entitled to vote on the resolution, present or by proxy, attorney or Representative, on a show of hands or on a poll, as the case may be.

14.2 Demand for a poll

14.2.a At any general meeting, a resolution put to the vote of the meeting is decided on a show of hands unless a poll is demanded:

a by the chairperson;

b by at least five Members entitled to vote on the resolution; or

c by Members with at least 5% of the votes that may be cast on the resolution on a poll (the percentage having been calculated as at the midnight before the poll is demanded).

14.2.b A poll may be demanded:

- a before a vote is taken;
- b before the voting results on a show of hands are declared; or
- c immediately after the voting results on a show of hands are declared.

14.3 Chairperson's declaration of result conclusive

If the chairperson declares the result of a vote on a show of hands on a resolution and an entry to that effect is made in the book containing the minutes of the proceedings of the Company, then that is conclusive evidence of the result – unless a poll is demanded in accordance with Rule 14.2 and the demand is not withdrawn. There does not need to be any other proof of the number or proportion of the votes recorded in favour of or against the resolution.

14.4 Conduct of poll and other business

- 14.4.a If a poll is demanded at a general meeting, then the chairperson is to decide the manner and the time and place at which it is to be taken.
- 14.4.b The result of the poll is taken to be the resolution of the meeting at which the poll was demanded.
- 14.4.c After a demand for a poll, the meeting can continue to transact any business other than the question on which a poll has been demanded.

14.5 Withdrawal of demand for a poll

The demand for a poll may be withdrawn.

14.6 Validity of votes

An objection as to the validity of any vote can be made only at the meeting or adjourned meeting or poll at which the vote is tendered. Every vote not disallowed at the meeting or poll is valid. The chairperson's decision as to whether a vote is allowed is final and conclusive.

14.7 Dispute

The chairperson is to decide any dispute as to the validity, admission or rejection of a vote on a show of hands or on a poll. That determination is final and conclusive.

14.8 Discretion to permit Direct Voting

The Board may decide that a Member who is entitled to vote on a resolution at a meeting is entitled to a direct vote in respect of that resolution. A **"Direct Vote"** includes a vote delivered to the Company by post, electronic means or such other means approved by the Board. The Board may prescribe Rules about direct voting – including specifying the form, method and timing of giving a Direct Vote for the vote to be valid. Such voting procedures include but are not limited to email or internet based voting procedures.

14.9 Representation at general meeting

Subject to this Constitution, each Member entitled to vote at a meeting of Members may vote:

- a In person
- b By its Representative;
- c By proxy;
- d By attorney;
- e By Direct Vote; or
- f By such other means as the Board may determine or the Law may allow.

15 DIRECT VOTING

15.1 One vote per Member

Each Member only has one vote, regardless of how that vote is cast.

15.2 Priority of votes

If a Member attempts to cast more than one vote on a particular resolution, only the last vote received is to be taken to have been cast, irrespective of the way the vote is cast. That is, if a Member appoints a proxy to vote on their behalf on a particular resolution, however subsequently casts a vote on that same resolution using another method of voting (for example by a Direct Vote), that Member shall be taken to have revoked the authority of the previously authorised proxy to vote on their behalf on that resolution, and unless a subsequent vote is cast by that Member on that resolution, the Direct Vote shall be the vote counted.

15.3 Deposit of instrument

In the case of Direct Vote, at least forty-eight (48) hours before the time for holding the relevant general meeting or an adjourned meeting, there must be transmitted to an electronic address specified in the notice of meeting, the Member's Direct Vote.

15.4 Chairperson's decision

The chairperson's decision as to whether a Direct Vote is valid is conclusive.

15.5 Attendance by Member who has cast a Direct Vote

A Member who has cast a Direct Vote is entitled to attend the meeting in person. Any vote cast by the Member in person shall cancel any prior vote on the relevant resolution in accordance with Rule 15.2.

15.6 Members not to vote unless fully paid

A Member is not entitled to vote at a general meeting if all Contributions and any other amounts presently payable by the Member have not been paid by the due date.

15.7 Objection to qualification of Member

Any objection to the qualification of a person to vote must be made at the same meeting at which that person's vote is tendered. Any objection must be referred to the chairperson of the meeting whose decision is final and:

15.7.a Any vote approved will be valid for all purposes; or

15.7.b Any vote disallowed will be invalid and must be disregarded.

15.8 Only Members entitled to vote may vote

Only those Members who belong to a class of Members who are entitled to vote at a general meeting will be entitled to vote.

15.9 Resolution in writing

The Company may pass a resolution without a general meeting being held if all the Members 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.

15.10 Form of resolution in writing

Separate copies of the document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.

The resolution is passed when the last Member signs.

16 RULES FOR VOTING BY PROXY

16.1 Proxies and representatives of Members

- 16.1.a Subject to the terms of their appointment, a person attending as a proxy, or as the attorney of a Member, or as representing a corporation which is a Member has all the powers of a Member, except where expressly stated to the contrary.
- 16.1.b An instrument appointing an attorney or Representative must be in a form as the director may prescribe or accept. An instrument appointing a proxy is valid if it is signed by the Member making the appointment and contains the name and address of that Member, the name of the company, the name of the proxy or the name of the office of the proxy, and the meeting of Members at which the proxy may be used. The chairperson of a meeting of Members may determine that an instrument appointing a proxy is valid even if it contains only some of the information.

16.2 Appointment of proxies

- 16.2.a A Member may appoint another person as their proxy to attend and vote instead of the Member. A proxy need not be a Member.
- 16.2.b A document appointing a proxy must be in writing, in any form permitted by the Law and signed by the Member making the appointment.
- 16.2.c A proxy may be appointed for all or for any number of general meetings, or for a particular general meeting.

16.3 Authority of proxies

A document appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the document so provides, the proxy is not entitled to vote on the resolution except as specified in the document.

16.4 Verification of proxies

- 16.4.a At least forty-eight (48) hours before the scheduled time for holding the meeting or adjourned meeting at which a proxy proposes to vote, both of the following documents must be deposited with the Company:
 - a The document appointing the proxy.
 - b If the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of that authority.
- 16.4.b Those documents must be either received at the Office or electronic address specified for that purpose in the notice convening the meeting.
- 16.4.c If a general meeting has been adjourned, an appointment and any authority received by the Company at least forty-eight (48) hours before the resumption of the meeting are effective for the resumed part of the meeting.

16.5 Validity of proxies

A proxy document is invalid if it is not deposited or produced prior to a meeting or a vote being taken as required by this Constitution.

16.6 Revocation of appointment of proxy

A vote given in accordance with the terms of a proxy document is valid despite the occurrence of any one or more of the following events if no intimation in writing of any of those events has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the document is used:

- 16.6.a The previous death or unsoundness of mind of the principal; or
- 16.6.b The revocation of the instrument or of the authority under which the instrument was executed.

17 APPOINTMENTS, REMOVAL AND REMUNERATION OF DIRECTORS

17.1 Number of directors

At any time that the Company is operating as a discretionary mutual company:

- 17.1.a The number of directors must not be less than four(4); and
- 17.1.b The Company may by Ordinary Resolution passed at a general meeting of the Members increase the number of directors but must not increase the number of directors above twelve (12) or reduce the minimum number of directors below four(4).

17.2 Appointment of directors

- 17.2.a The Company may by Ordinary Resolution passed at a general meeting of the Members and Voting MCI Holders appoint a person as a director, unless appointed in accordance with the procedure in Rule 17.6.
- 17.2.b The Board may by Ordinary Resolution appoint a person as a director provided that the appointment is subsequently confirmed by Ordinary Resolution at the Company's next annual general meeting. If the appointment is not confirmed, the person ceases to be a director at the end of the annual general meeting.
- 17.2.c The appointment of the directors must comply with the Law including the requirement for the Company to confirm the appointment of the directors at a general meeting or by resolution.
- 17.2.d A person, other than the directors holding office at the date of the adoption of this Constitution, are only to be appointed as a director of the Company if the following criteria is met:
 - a Each person's appointment must be approved by the directors holding office at the date the appointment approval is sought;
 - b Each person must meet the requirements at Law, including but not limited to being a fit and proper person; and
 - c Each person must provide a signed consent to act as a director of the Company to the Secretary prior to the appointment.

17.3 Term of director's appointments

- 17.3.a An Independent Representative or Manager Representative will remain in office until they retire in accordance with Rule 17.8 or their office becomes vacant by reason of Rule 17.9.
- 17.3.b A Member Representative will be appointed for an initial term of five (5) years and the Board may extend this appointment for one (1) additional term of five (5) years.
- 17.3.c An MCI Holder Representative will be appointed for an initial term of five (5) years and the Board may extend this appointment for one (1) additional term of five (5) years.
- 17.3.d Each other director will be appointed for a five (5) year term and this appointment can be extended to one (1) consecutive five (5) year term if approved by the Board.

17.4 Representation Requirements of Board

The Board as a collective group must meet the following requirements for relationship, expertise, experience and acumen:

- 17.4.a **Member Representatives:** director(s) will be an individual who is a Member or Representative of a Member;
- 17.4.b **Independent Representative:** at least one (1) of the directors must be an independent, non-executive director who is not a Member but has experience in business, accounting/audit, insurance/reinsurance or previously acted in a Board role for a listed or unlisted public company and who is invited to join the Board by the Company;
- 17.4.c **Manager Representative:** at least one (1) director will be an individual that is appointed by and represents the Mutual Manager;
- 17.4.d **MCI Holder Representative:** up to two(2) of the directors can be an MCI Holder or Representative of an MCI Holder.

17.5 Appointment of Member Representatives

- 17.5.a The Board may appoint Members who apply to be appointed as a Member Representative on the Board by unanimous decision.
- 17.5.b A person is eligible to apply to be appointed as the Member Representative ("applicant") provided they:
 - a Meet the requirements in Rule 17.4.a;
 - b Comply with the application process set out in this Rule 17.5; and
 - c Meet the criteria set out in Rule 17.2.d.
- 17.5.c Subject to Rule 17.5.d, an applicant may apply by completing and submitting an application for appointment to the Board in the form which the Board determines and the signed consent to act as a director.
- 17.5.d The applicant must provide, in writing, any other information in addition to that contained in the application, as the Board requires to make its determination and within the relevant timeframe.
- 17.5.e The Board will determine the outcome of the application within ten (10) business days of receiving the application.
- 17.5.f The Board may approve or reject any applicant in the directors' absolute discretion and is not required to give or assign any reason or explanation for the approval or rejection of any application for appointment to the Board.
- 17.5.g If the application is accepted, the Secretary will send to the applicant written notice of acceptance of the application and, for the purposes of complying with Rule 17.2.a will organise a general meeting of the Company in accordance with these Rules. The meeting must be held no later than thirty (30) days after the Board accepts the application.
- 17.5.h If the application is rejected, the Secretary will send to the applicant written notice of the rejection.
- 17.5.i The applicant will be appointed as a director of the Company on the day the resolution appointing the applicant is passed at the general meeting of the Company.

17.6 Appointment of MCI Holder Representative

- 17.6.a The Board may, at its discretion, invite at least one MCI Holder ("MCI nominee") to be appointed as a director to act as the MCI Holder Representative, by unanimous decision.
- 17.6.b An MCI Holder will be eligible for invitation to the Board if:
 - a The person is an MCI Holder of the Company; and
 - b The person meets the criteria set out in Rule 17.6.f and any other criteria as determined by the Board.
- 17.6.c The MCI nominee must accept or decline the invitation, within 10 (ten) business days of receiving the invitation from the Board.
- 17.6.d If the MCI nominee accepts the invitation, the Secretary will organise a meeting of the MCI Holders in accordance with these Rules to allow the MCI Holders to vote on the appointment of the MCI nominee as an MCI Holder Representative.
- 17.6.e If the MCI nominee declines the invitation, the Board may invite another person in the nominee's place.
- 17.6.f The MCI nominee will be appointed as a director of the Company on the day the resolution appointing the MCI nominee is passed at a meeting of MCI Holders, provided the MCI nominee:
 - a Meets the requirements at Law, including but not limited to being a fit and proper person; and
 - b Has provided a signed consent to act as a director of the Company to the Secretary prior to the meeting.

17.7 Appointment and term of chairperson

- 17.7.a The Board must appoint a chairperson and any replacement chairperson.
- 17.7.b The chairperson must be an Independent Representative.
- 17.7.c The first chairperson appointed under Rule 17.7.a will act as chair of the Board and Members meetings until the earlier of the chairperson's retirement or resignation or removal by unanimous approval of the other directors.

17.8 Retirement of directors

A director may retire from office by giving notice in writing to the Board advising of the director's intention to retire. A notice of resignation takes effect at the time which is the later of either of the following events:

- 17.8.a The time of giving the notice; and
- 17.8.b The expiration of the period, if any, specified in the notice.

17.9 Vacation of office

In addition to the circumstances in which the office of a director becomes vacant by virtue of the Law or another provision of this Constitution, the office of director becomes vacant if any of the following occurs:

- 17.9.a If the director becomes a bankrupt or an insolvent under administration or disqualified from managing a corporation or providing financial services;
- 17.9.b If the director 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 incapacity; or
- 17.9.c If the director becomes prohibited from being a director by reason of an order made under the Law.

17.10 Removal of director

- 17.10.a The Company may remove any director and appoint another director as a replacement provided that any replacement must satisfy the requirements of Rule 17.2.
- 17.10.b Subject to Rule 17.10.c, the removal or replacement of a director must be affected by Ordinary Resolution of the Board, unless otherwise provided for by the Law.
- 17.10.c Whether or not the appointment of a managing or executive director was expressed to be for a specified term, the appointment of a managing or executive director terminates if the managing or executive director ceases to be employed by the Company or a related body corporate.

17.11 Directors' expenses and remuneration

- 17.11.a A director's fee will be paid to each of the directors and the amount of that fee will be determined each year by a unanimous resolution of the Board.
- 17.11.b The directors will be entitled to reimbursement of all travelling, accommodation and other expenses properly incurred by them:
 - a in attending and returning from meetings of the directors or any committee of the directors;
 - b in attending and returning from general meetings of the Company; or
 - c in connection with the Company's business.
- 17.11.c A director who is called upon to perform extra services or to make a special exertion or to undertake executive or other work for the Company beyond or outside of the director's ordinary duties or is engaged to provide any other service, may be paid a fee for those services, exertions or work provided that those fees are approved by a Special Resolution of the Board.

18 POWERS AND DUTIES OF DIRECTORS

18.1 Directors manage the business

18.1.a Subject to the Law and to these Rules, the Company's business will be managed by the Board.

18.1.b The Board may exercise all powers of the Company except where those powers must be exercised by the Company in general meeting under the Law or these Rules.

18.2 All powers of Company

Without limiting Rule 18.1, the Board may exercise all the powers of the Company to:

18.2.a Borrow money;

18.2.b Charge any property or business of the Company or all or any of its uncalled capital;

18.2.c Issue debentures;

18.2.d Give any other security for a debt, liability or obligation of the Company or of any other person;
or

18.2.e Issue MCIs in accordance with Rule 1 of the Schedule.

18.3 Appointment of attorney

18.3.a The Board may appoint any person or persons under a power of attorney to be the attorney or attorneys of the Company.

18.3.b The appointment may be:

a for any purpose;

b in relation to any of the Board's powers, authorities and discretions;

c for any period; and

d subject to any conditions as the Board decides.

18.4 Provisions of power of attorney

Any power of attorney may contain provisions for the protection and convenience of persons dealing with the attorney as the Board decides and may authorise the attorney to delegate all or any of the powers, authorities and discretions vested in them.

18.5 Cheques and promissory notes

All cheques, promissory notes, banker's drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed:

18.5.a By any two (2) directors; or

18.5.b In any other manner as the Board decides.

18.6 Guidelines

Notwithstanding Rule 12, the Board must adopt Guidelines from time to time in relation to the offer of discretionary risk protection to the Members and may amend those Guidelines from time to time, and those Guidelines may include:

18.6.a The manner and form in which offers of membership of the Company will be made including consideration of applications for admission to membership of the Company;

18.6.b The types of Discretionary Risk Protection Products to be offered to Members;

18.6.c The formula used to calculate the Contribution for each Discretionary Risk Protection Product and Member class;

18.6.d The form of any Product Disclosure Statement, Schedule of Protection or other document relating to the offer of protection to the Members;

18.6.e The nature of any insurance policies which are to be purchased by the Company and the setting of aggregate and stop loss limits for the mutual and such insurance;

- 18.6.f The nature and extent of the Claims that the Company will consider paying at the discretion of the Board or by a committee or delegate of the Board;
- 18.6.g The basis upon which the payment of Claims will be considered by the Board or by a committee or delegate of the Board;
- 18.6.h The obligations of the Company and the Members in respect of Claims;
- 18.6.i The terms on which services will be provided to the Company including for professional mutual management and platform operation services;
- 18.6.j Cancelling or discontinuing a discretionary risk protection for a Member;
- 18.6.k The operation of the Collective Voice Scheme;
- 18.6.l Investment of company funds;
- 18.6.m Acceptance or rejection of gifts; and
- 18.6.n Such other matters incidental to the activities of the Company as the Board thinks fit.

The Board may apply the Guidelines as it considers fit and can depart from the Guidelines at any time in the exercise of its decision-making powers. The Board's power to consider a broad range of factors when considering a Claim and in the exercise of its sole and absolute discretion is unfettered.

18.7 Delegation of powers to committee and other entities

- 18.7.a The Board may delegate any of their powers to committees consisting of directors or other persons as it thinks fit.
- 18.7.b The exercise of a power by a committee in accordance with this Constitution is to be treated as the exercise of that power by the Board.
- 18.7.c In the exercise of any powers delegated to it, a committee formed by the Board must conform to the directions of the Board.
- 18.7.d Subject to Rules 18.7.e and 18.7.f, the Board may delegate any of their powers to other entities or persons (including to the Mutual Manager) for the management of the Company as they see fit.
- 18.7.e The Board may delegate their powers for making decisions regarding Claims to a Board committee with at least one director and such other persons and entities as agreed by the Board (including representatives of the Mutual Manager).
- 18.7.f Any delegation under this Rule must be affected by a written instrument authorised by the Board.

18.8 Proceedings of committees

Except as provided in a direction of the Board, the meetings and proceedings of a committee formed by the Board must be governed by the provisions of this Constitution, insofar as they are applicable, as if meetings and proceedings of the committee are meetings and proceedings of the Board.

19 PROCEEDINGS OF DIRECTORS

19.1 Use of technology

- 19.1.a Any directors' meeting may be conducted at more than one (1) venue by using any technology that gives each director a reasonable opportunity to participate in the meeting and permits each director present to hear and be heard by each other director present.
- 19.1.b Except in situations where the Law requires, documents and resolutions may be signed with electronic signatures.

19.2 Directors' meetings

- 19.2.a Any director may convene a directors' meeting. The Secretary must convene a meeting at the request of a director.
- 19.2.b Notice of each meeting of the directors must be given to each director at least forty-eight (48) hours before the meeting or at another time determined by resolution of the directors. Despite this requirement, all directors may waive in writing the required period of notice for a particular meeting and it is not necessary to give a notice of a meeting of directors to a director who has been given leave of absence.
- 19.2.c The notice may be given by telephone or other electronic means of communication. The notice must specify:
- a The date and time for the proposed meeting;
 - b The place for the meeting;
 - c If the meeting is to be conducted using technology, the method for conducting the meeting; and
 - d The nature of the business to be transacted at the meeting.

19.3 Quorum

- 19.3.a At a meeting of Board, the number of directors whose presence is necessary to constitute a quorum is three (3) directors, with one (1) of those directors being the Manager's Representative appointed under Rule 17.2.c, entitled to vote on any motion that may be moved by the meeting.
- 19.3.b The quorum of directors must be present throughout each Board meeting. If a quorum is lost and not present at any time, any business conducted before the absence of a quorum occurs shall be valid.

19.4 Directors to continue to act

Where a vacancy in the office of a director occurs, the remaining directors may continue to act. If the number of remaining directors is insufficient to constitute a quorum, the directors may act only for the purpose of increasing the number of directors to that required to constitute a quorum or to convene a general meeting.

19.5 Chairperson not present

Where a Board meeting is held and the chairperson:

- 19.5.a Has not been appointed; or
- 19.5.b Is not present within fifteen (15) minutes after the appointed time; or
- 19.5.c Is unwilling to act,

then the directors present must elect one (1) amongst them to be chairperson of the meeting but the meeting can only proceed if the quorum requirements in Rule 19.3 are satisfied.

19.6 Voting

At meetings of the Board, each director entitled to vote has one (1) vote.

19.7 No casting votes

The chairperson does not have a casting vote at any meeting of the Board, in addition to any vote the chairperson has as a director. In the event of an equal vote at any meeting of the Board, the matter will be resolved in the negative.

19.8 Circular resolution

The Board may pass a resolution without a Board meeting if all of the directors entitled to vote on the resolution sign a document stating that they are in favour of the resolution. Duplicate copies of the document may be used for signing. The resolution is deemed to be passed when the last director signs.

19.9 Validity of directors' acts

All things done by any Board meeting or by a committee of directors or by any person acting as a director will be valid even though it subsequently becomes known that:

- 19.9.a There was some defect in the appointment of a person to be a director or a member of the committee, or to act as a director; or
- 19.9.b A person appointed was disqualified.

19.10 Decisions of the Board

19.10.a Except where a Special Resolution is required under this Constitution or the Law, decisions, matters and actions arising at a meeting of the Board must be decided by an Ordinary Resolution of directors present and voting and an Ordinary Resolution is for all purposes a decision of the Board.

19.10.b The following decisions, matters and actions must be decided by the Board by passing a resolution that is passed by an affirmative vote of 75% or more of the votes cast by those directors present and entitled to vote on the resolution except where such expenditure, liabilities or actions are taken in accordance with the Guidelines or complying with regulatory requirements which relate to its Discretionary Risk Activities:

- a To authorise any borrowings or financial accommodation or increasing existing borrowings or financial accommodation (in whatever form) of an amount in excess of \$250,000 per annum;
- b Issue or redeem MCIs;
- c To incur expenditure or liability exceeding \$250,000 per annum on its capital accounts in any financial year for an individual transaction or a series of transactions in aggregate;
- d To enter into any transaction that is not proposed on a commercial "arm's length basis" or of any unusual or onerous nature or that is outside the ordinary course of the Discretionary Risk Activities;
- e To request financial assistance to finance the operations of the Company whether by way of capital contribution and/or loan;
- f To sell any part of the Company or any asset of the Company;
- g To implement any proposal to cease to carry on the Discretionary Risk Activities or a substantial part of the Discretionary Risk Activities;
- h To merge all or any substantial part of the assets of the Company with any other entity's business;
- i To give guarantees or indemnities for or on behalf of the Company;
- j To make any material change to the accounting policies for the Company (other than as required to comply with applicable accounting standards);
- k To transfer, sell or surrender any asset of the Company or the whole or any part of any material undertaking of the Company;
- l To purchase the freehold in any property or determine the terms and conditions on which the Company will at any time and from time to time lease or purchase premises for the Company or the operation of the Discretionary Risk;
- m To commence, defend or settle any legal or arbitration proceedings other than routine debt collection (excluding Claims) for an amount in excess of \$250,000;
- n To invest the Contributions other than in accordance with a delegated investment mandate given by the Board and always in accordance with the Law;
- o To exercise discretion to pay Claims other than in accordance with a delegated claims handling authority given by the Board;
- p To create, grant or release any mortgage, charge, or undertaking or other security or encumbrance over assets of the Company;
- q To dispose of or grant any option or right of pre-emption in respect of assets of the Company;
- r To make any material alteration in the nature and/or direction of the Company or the Discretionary Risk Activities or the nature or scope of the Discretionary Risk Activities;
- s To acquire any personal property for the Company with a value in excess of \$250,000;

19.10.c The Board may by Special Resolution change or modify the matters, decisions and actions that require approval of the Board under Rule 19.10.b.

19.11 Minutes

The Board will cause proper minutes to be made of:

19.11.a All Board meetings;

19.11.b All appointments of Officers;

19.11.c The proceedings of all Board meetings and committees of directors;

19.11.d The attendance at all meetings of the Board and the business transacted at those meetings, and any minutes purporting to be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting, will be conclusive evidence of the matters recorded in them without any further proof.

19.12 Resolution in writing

A resolution in writing signed by all directors, excluding directors who have been given leave of absence, is to be treated as a determination of the directors passed at a meeting of the Board duly convened and held.

20 PERSONAL INTERESTS OF DIRECTORS

20.1 Director's duty to notify

20.1.a A director who has a material personal interest in a matter relating to the affairs of the Company must give the other directors notice of the interest as the Law requires.

20.1.b A contravention of Rule 20.1.a by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

20.2 Restriction on voting

20.2.a A director who has, directly or indirectly, a material personal interest in any matter that is being considered at a Board meeting must not (except as allowed under Rule 20.2.b or otherwise by the Law):

- a be present while the matter is being considered at the meeting;
- b be counted in the quorum for the purposes of considering the matter; or
- c vote on the matter.

20.2.b Rule 20.2.a does not apply in the situations allowed under section 195(2) of the Law which, as at the date of this Constitution, means that Rule 20.2.a does not apply if directors who do not have a material personal interest in the matter have passed a resolution that:

- a identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the Company; and
- b states that those directors are satisfied that the interest should not disqualify the director from voting, being present or being counted in the quorum.

20.2.c If section 195(2) of the Law is modified, replaced or substituted, then this Rule 20.2 is read as amended so that it is consistent with the modified, replaced or substituted section.

20.2.d A contravention of Rule 20.2.a by a director does not affect the validity of any resolution.

21 EXECUTION OF DOCUMENTS

21.1 Execution of documents

The Company may execute a document without affixing a common seal, if the document is executed in accordance with the Law.

21.2 Execution of deeds

The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with this Rule 21.

21.3 No limitation

This Rule will not be interpreted as limiting the manner in which the Company may execute a document (including a deed).

22 COMMITTEE

22.1 Delegation to committee

The Board may delegate any of their powers to any committee or committees of directors as they decide.

22.2 Powers of committee

A committee to which any powers have been delegated must exercise the powers delegated in accordance with the Guidelines and any directions of the Board. A power exercised in accordance with those directions is deemed to have been exercised by the Board.

22.3 Committee chairperson

The members of the committee may elect one (1) of their number as chairperson of their meetings.

22.4 Election of chairperson

Where a committee meeting is held and:

22.4.a A chairperson has not been elected; or

22.4.b The chairperson is not present within fifteen (15) minutes after the appointed time; or

22.4.c The chairperson is unwilling to act,

the committee members present may elect one (1) of their number to be chairperson of the meeting.

22.5 Decision by Ordinary Resolution

Questions arising at a committee meeting will be determined by an Ordinary Resolution of the committee members who are present and entitled to vote.

22.6 Voting

At a committee meeting, committee members present and entitled to vote have one (1) vote.

22.7 No casting votes

The chairperson does not have a casting vote, in addition to any vote he or she has as a committee member. In the event of an equal vote on any decision of the committee, the matter will be resolved in the negative.

23 SECRETARY

The Secretary will be appointed by the Board on terms and conditions determined by the Board. The Board may appoint a person as an additional Secretary or as acting Secretary or as a temporary substitute for the Secretary who will, for the purposes of these Rules, be deemed to be the Secretary. The Board may at any time remove or replace the Secretary.

24 ACCOUNTS AND AUDIT

24.1 Proper records kept

The Board must ensure that proper accounting and other records are kept. A balance sheet and profit and loss account must be prepared and made available to all Members and MCI Holders at least once in each year.

24.2 Auditor

The Company must appoint an auditor or auditors, whose duties and appointment and removal will be regulated in accordance with the Law.

25 RESERVES

25.1 Make reserve

The Board may:

- 25.1.a Write off from the Company's earnings any amount for loss or depreciation of any property;
- 25.1.b Set aside any amount out of the Company's surplus, as a reserve fund to meet contingencies or for repairing, improving and/or maintaining any of the Company's property and/or for any other purposes which are conducive to the interests of the Company.

25.2 Deal with reserve

The Board may:

- 25.2.a Invest, lend or dispose of any reserved amounts in any way;
- 25.2.b Deal with, vary and dispose of any investments or parts of them for the benefit of the Company;
- 25.2.c Divide the reserve fund into special funds; and/or
- 25.2.d Employ the assets constituting the reserve fund in the business of the Company and without being bound to keep the same separate from other assets.

26 INSPECTION OF RECORDS

26.1 Conditions

Subject to Rule 24.1, the Board may determine whether and under what conditions the accounting records or other documents of the Company will be open to the inspection of Members or MCI Holders.

26.2 No right unless authorised

A Member or MCI Holder does not have the right to inspect any document of the Company except as provided by the Law or authorised by the Board or by the Company in a general meeting.

26.3 Directors' right

The directors have the right at any time to inspect the accounting records or other documents of the Company, whether or not they are a Member.

27 NOTICES

27.1 Form of notice

Any notice or other communication in connection with this Constitution must be in writing and signed by the person giving the notice and be addressed to the Notice Address of the person to whom it is to be given.

27.2 Time of delivery

The notice or other communication will be deemed to be received unless otherwise stipulated by the Law:

- 27.2.a In the case of a posted letter, on the third day after posting;
- 27.2.b In the case of delivery by generally recognised overnight courier, on the second day after dispatch with that courier;
- 27.2.c In the case of personal delivery, on the date of delivery;
- 27.2.d In the case of transmissions by electronic mail, on the day of transmission if the electronic medium sending the notice states that the transmission was completed before 5:00pm on a business day, otherwise on the next business day. This method of service is effective only if the medium's report states that it was sent in full and without error and the message is not rejected or undeliverable as evidenced by a message to that effect received by the sender.

27.3 Electronic means

- 27.3.a A director, MCI Holder or a Member may nominate an electronic means ("**nominated notification means**") by which the director, MCI Holder or the Member (as the case may be) may be notified that any notices, including notices of meeting, are available.
- 27.3.b The Company may from time to time elect an electronic means ("**nominated access means**") by which the director, MCI Holder or the Member (as the case may be) may nominate to use to access any notices, including notices of meeting.
- 27.3.c If a director, MCI Holder or Member nominates:
 - a A nominated notification means; and
 - b A nominated access means,the Company may give the person any notices, including notices of meeting, by notifying the person (using the nominated notification means):
 - i That the notice is available; and
 - ii How the director, MCI Holder or Member may use the nominated access means to access the notice.
- 27.3.d The director, MCI Holder or the Member can provide any notice to the Company by using a facility provided by the Company for notifications or communications.

28 INDEMNITY AND INSURANCE

- 28.1.a Every person who is or has been a director or other officer of the Company or Related Body Corporate is to be indemnified, to the maximum extent permitted by law, out of the property of the Company against any liabilities for loss, damage, costs and expenses incurred by the person in:
 - a defending any proceedings (whether civil or criminal) relating to that person's position with the Company or a Related Body Corporate in which judgment is given in that person's favour or in which that person is acquitted, or which are withdrawn before judgment;

- b connection with any administrative proceedings relating to that person's position with the Company or a Related Body Corporate except proceedings which give rise to proceedings (whether civil or criminal) against that person in which judgment is not given in that person's favour or in which that person is not acquitted or which arise out of conduct involving a lack of good faith; or
- c connection with any application in relation to any proceedings (whether civil or criminal) relating to that person's position with the Company or a Related Body Corporate in which relief is granted to that person under the law by the court.

28.1.b Every person who is or has been a director or other officer of the Company or a Related Body Corporate is to be indemnified, to the maximum extent permitted by law, out of the property of the Company against any liabilities to another person (other than the Company or a Related Bodies Corporate) as such an officer unless the liabilities arise out of conduct involving a lack of good faith in accordance with section 181 of the Law.

28.1.c The Company may pay a premium for a contract insuring a person who is or has been a director or officer of the Company or a Related Body Corporate against:

- a any liability incurred by that person as such a director or officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a Related Body Corporate or a contravention of sections 182 to 184 of the Law; and
- b any liability for costs and expenses incurred by that person in defending proceedings (whether civil or criminal) relating to that person's position with the Company or a Related Body Corporate and whatever their outcome.

28.1.d Amounts paid by the Company by way of indemnity or premium in accordance with this Rule 28.1.a do not form part of the remuneration of the relevant director or officer for the purposes of this Constitution.

28.1.e The indemnity in Rule 28.1.a does not apply in respect of liability incurred by a person in his capacity as an employee of the Company.

28.1.f A director may vote in favour of the resolution that the Company grant an indemnity pursuant to Rule 28, take insurance or pay the premiums on an insurance policy even though the director has a direct and material interest in the outcome of the resolution.

29 WINDING UP

29.1 Contributions to cover debts etc.

In the event of the winding up of the Company, every Member of the Company undertakes to contribute to the property of the Company, the amount which is agreed to be paid by each Member to be applied:

- 29.1.a To the payment of the debts and liabilities of the Company before ceasing to be a Member;
- 29.1.b To fund the Claims approved for payment by the Board;
- 29.1.c To the costs, charges and expenses of winding up; and
- 29.1.d For the adjustment of the rights of the contributors among themselves.

29.2 Liability of Members

29.2.a The liability of each Member under Rule 29.1, will terminate on the day on which the Member's membership of the Company ceases.

29.2.b The maximum amount to be contributed by each Member under this Rule 29.1 will be \$2.

30 SURPLUS FUNDS

30.1 Dealing with surplus funds

Subject to the Law, if upon winding up or dissolution of the Company or prior to closing any relevant financial year, the Board reasonably consider that:

- 30.1.a The Contributions and other receipts (including transfers from reserves and provisions) in respect of the previous financial period; and
- 30.1.b All transfers to reserves and provisions made out of the Contributions paid for Claims to be determined by the Board in respect of such financial period including reasonable provision for likely Claims to be made by the Members,

will or is likely to exceed the claims, expenses, losses and other outgoings (whether incurred, accrued, contingent or anticipated) falling upon the Company for that financial period, then the excess may at the discretion of the Board by passing a Special Resolution or in accordance with Guidelines be disposed of in whole or in part as follows:

- 30.1.c To establish any additional Claims reserves which in the reasonable opinion of the Board are appropriate for the Company;
- 30.1.d To fund the operations of a non-for-profit association or company which is operated for the benefit of the Members collectively with objects which are similar to the objects of the Company or to provide benefits which are similar to one or more of the benefits provided by the Company;
- 30.1.e Any other distribution which is permitted by law and consistent with the principles of mutuality, Rule 30.3 and the Board shall seek advice on the taxation implications of such distributions and dividend payments before declaring them.

30.2 Surplus following closure of financial year

Except in the case of winding up or dissolution of the Company, a disposal under Rule 30.1 may be made by way of:

- 30.2.a Subsidising the cost of protection for a Member or a group of Members in a future financial period;
- 30.2.b Arranging additional benefits for Members in accordance with the objects of the Company; or
- 30.2.c Arranging a distribution to Members which is permitted by Law and is consistent with the principles of mutuality.

30.3 Distributions to MCI Holders

Any surplus or profit which is to be paid to MCI Holders, may be paid by way of dividend subject to the Law, this Constitution and any terms of issue, provided that an MCI Holder's entitlement to a dividend will be determined by the Board after making provision for reserves and upon winding up any claim to the paid-up amount of any MCI, is ranked after provision for all Claims and equally and proportionately with the claims of all other MCI Holders and the total amount of the MCI Holder's claim cannot exceed the paid-up value of the MCIs held.

31 GENERAL

31.1 Submission to jurisdiction

Each member and each MCI Holder submits to the non-exclusive jurisdiction of the Supreme Court of New South Wales, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

31.2 Prohibition and enforceability

Any part of this constitution which is prohibited or unenforceable in any place is, in that place, ineffective only to the extent of that prohibition or unenforceability.

SCHEDULE

Provisions relating to MCIs.

1 Issuance of MCIs

1.1 Issue of MCIs

The Company may issue MCIs, including MCIs which are, or at the option of the Company are, liable to be redeemed.

1.2 Terms of issue of MCIs

Each MCI issued by the Company must be issued as a fully paid share and:

- 1.2.a may confer a right to receive dividends as specified in the terms of issue (provided that an MCI must not confer on the holder a right to receive dividends that are cumulative);
- 1.2.b may confer a right on its holder to receive dividends in priority to, equally with, or subordinated to, the payment of any dividend on any other class of MCIs;
- 1.2.c may confer a right on its holder in a winding up and on redemption (if redeemable) to payment in priority to, equally with, or subordinated to, any other class of MCIs as specified in the terms of issue, of:
 - i. the amount of any dividend accrued but unpaid on the MCI at the date of winding up or the date of redemption (if redeemable); and
 - ii. any amount paid up on the MCI or any other amount stated in, or calculated under, the terms of issue;
- 1.2.d does not confer on its holder any right to participate in the surplus assets or property of the Company except as set out Rule 29, Rule 30 or otherwise in this Schedule;
- 1.2.e may confer a right to a bonus issue or capitalisation of profits in favour of holders of those MCIs only, as specified in the terms of issue;
- 1.2.f may be redeemed on such conditions as specified in the terms of issue (if any); and
- 1.2.g may entitle its holder to vote at, or may prohibit its holder from voting at, any general meeting of the Company, as specified in the terms of issue,

in each case, as determined by the Board under the terms of issue, provided that the rights attaching to MCIs must comply with this Constitution and the Law.

1.3 Dividends

- 1.3.a Subject to the Law, this Constitution and the terms of issue, the Board may determine that a dividend is payable, fix the record date, amount and time for payment and authorise the payment to (or at the direction of) an MCI Holder entitled to that dividend. The Board may rescind or alter any such determination before payment is made.
- 1.3.b The Board must not pay a dividend unless the payment of the dividend can be made from surplus or profits as determined by the Board in accordance with Rule 30 and where to do so is fair and reasonable to the Company's Members as a whole.
- 1.3.c Unless otherwise determined by the Board, interest is not payable by the Company on a dividend.
- 1.3.d Dividends on MCIs will be paid in the form of cash, but may be reinvested in accordance with a dividend reinvestment plan (if any such plan has been approved by the Board).
- 1.3.e A dividend may be paid using any payment method determined by the Board, including by means of direct credit. The payment of any money is at the risk of the holder to whom it is sent.

1.4 Additional MCIs

The Company may at any time create and issue MCIs ranking equally with, or in priority to, or subordinated to, MCIs already on issue or with different rights to MCIs already on issue.

1.5 Variation of rights attached to MCIs

The rights attached to MCIs (or a class of MCIs) may only be varied or cancelled by Special Resolution of the Company and either:

- 1.5.a by a Special Resolution passed at a meeting of MCI Holders holding MCIs (or that class of MCIs in the event of a variation of rights attaching only to a class of MCIs); or
- 1.5.b with the written consent of MCI Holders holding at least 75% of the issued MCIs (or that class of MCIs in the event of a variation of rights attaching only to a class of MCIs).

1.6 Meetings of MCI Holders

Subject to the Law, the terms of issue of any MCIs and this Schedule, the provisions of this constitution which deal with general meetings of members of the Company (including relating to the appointment of proxies, attorneys and Representatives, and direct voting) shall apply, so far as they are capable of application and with any necessary changes, to meetings of MCI Holders.

1.7 Voting MCI Holders

- 1.7.a A Voting MCI Holder is for the purposes of Rules 13, 14, 15 and 16 of the Constitution only, to be deemed a Member of the Company and will be entitled to vote on resolutions at a meeting of the Members of the Company to the extent that is permissible under the terms of issue of the MCIs.
- 1.7.b Unless otherwise provided by Law, a person who is both a Voting MCI Holder and a Member shall only be entitled to exercise one (1) vote in each capacity in which they act and on each question arising for determination by either the Members of the Company or the Voting MCI Holders.

1.8 Joint MCI Holders

The Board may in its discretion register two or more persons as an MCI Holder and they are taken to hold the MCI as joint tenants with benefits of survivorship subject to the following provisions:

- 1.8.a the Company is not bound to register more than three persons as the holders of an MCI (except in the case of trustees, executors or administrators);
- 1.8.b the joint holders are jointly and severally liable for all payments required to be made in respect of the MCIs;
- 1.8.c only the person whose name appears first in the register is entitled to receive notices in respect of the MCIs; and
- 1.8.d any one of the joint holders may vote at a meeting of MCI Holders (either personally or by proxy, attorney or Representative) in respect of the MCIs and, if more than one joint holder is present at any meeting (either personally or by proxy, attorney or Representative), the joint holder who is present and whose name appears first out of those present in the register of MCI Holders is entitled alone to vote in respect of the jointly held MCIs.

1.9 Register

The Company must maintain a register of MCI Holders.

1.10 Certificates

- 1.10.a An MCI certificate may be issued by the Company to any MCI Holder, in any form deemed appropriate by the Board.
- 1.10.b Any MCI certificate issued will remain the property of the Company and must be returned to the Company on written demand by the Secretary.
- 1.10.c The Company may issue a replacement certificate to an MCI Holder if the Company receives and cancels the existing MCI certificate for that person's MCIs, or the Company is satisfied that the existing certificate is lost or destroyed, and the MCI Holder pays any fee as the Board resolves.

2 Transfer of MCIs

2.1 Form of instrument of transfer

Subject to this Constitution, and the terms of issue of any MCIs, approved by the Board (by passing a simple majority), an MCI Holder (“transferor”) may transfer, all or, any of their MCIs by any method of transfer permitted by the Law to any other person (“transferee”). A transfer must do both of the following:

- 2.1.a Show the jurisdiction of incorporation of the Company; and
- 2.1.b Be executed by or on behalf of both the transferor and the transferee.

2.2 Execution and delivery of transfer

If a duly completed instrument of transfer:

- 2.2.a is used to transfer an MCI in accordance with Rule 2.1 of this Schedule; and
- 2.2.b is left for registration with the Secretary of the Company, accompanied by any information that the Board properly requires to show the right of the transferor to make the transfer (including but not limited to an MCI certificate),

the Company must, subject to this Constitution, the Law and the terms of issue of any MCIs, register the transferee as the holder of the MCI.

2.3 Refusal of Registration

- 2.3.a The Board may refuse to register a transfer of MCIs in the Company if either of the following apply:
 - a The MCIs are not fully paid; or
 - b The Company has a lien on the MCIs and they are not bound to give their reasons for doing so.
- 2.3.b If the Board refuses to register a transfer of MCIs in the Company, the Board must give written notice of the refusal to the person who lodged the transfer within one (1) month after the date on which the transfer was lodged with the Company.

2.4 Effect of registration

A transferor of an MCI remains the holder of the MCI transferred until the transfer is registered and the name of the transferee is entered in the register of MCI Holders.

2.5 Company to retain instrument of transfer

The Company must retain every instrument of transfer which is registered for the period required by Law.

2.6 Power to suspend registration of transfers

The registration of transfers may be suspended at such time and for such period as the Board may determine from time to time, not exceeding thirty (30) days in any calendar year.

2.7 Closure of register

The Board may suspend registration of transfers of MCIs in the Company at the times and for those periods they determine. The periods of suspension must not exceed thirty (30) days in any one (1) calendar year.

2.8 Powers of Attorney

- 2.8.a The Company may assume that a power of attorney authorising an attorney to transfer some or all of an MCI Holder’s MCIs that an MCI Holder appears to have granted is a valid and effective grant of power and continues in full force and effect.

- 2.8.b The Company may rely on the power of attorney until it receives a notice that the power of attorney has been revoked or ceases in accordance with the applicable law.

3 Transmission of MCIs

3.1 Transmission of MCIs on death

If an MCI Holder who is an individual and does not hold MCIs jointly dies, the Company will recognise only the legal personal representative of the MCI Holder as being entitled to the MCI Holder's title or interest in the MCI or any benefits accruing in respect of the MCI. That person may do either of the following:

- 3.1.a elect to be registered as an MCI Holder in respect of those MCIs by giving evidence of their status as the MCI Holder's legal personal representative and a signed notice in writing to the Company, and on receiving this notice the Company must register the person as the holder of those MCIs; or
- 3.1.b elect to transfer those MCI to another person in accordance with Rule 2 of this Schedule.

3.2 Death of joint MCI Holder

- 3.2.a If an MCI Holder, who is an individual and holds MCIs jointly with one or more other persons, dies, the Company will recognise only the surviving joint registered holders as being entitled to the MCI Holder's title or interest in the MCIs or any benefits accruing in respect of the MCI.
- 3.2.b The estate of the deceased joint holder of an MCI is not released from any liability in respect of the MCIs which has been jointly held by the deceased MCI Holder with other persons.
- 3.2.c Where two (2) or more persons are jointly entitled to any share as a consequence of the death of the registered holder of that MCI, they are taken to be the joint holders of that MCI.

3.3 Transmission of MCIs on bankruptcy

Subject to any provisions of the Law or the *Bankruptcy Act 1966* (Cth), if a person who is entitled to an MCIs because of the bankruptcy of an MCI Holder gives the Board the information it reasonably requires to establish the person's entitlement to be registered as the holder of the MCIs, the person may do either of the following:

- 3.3.a elect to be registered as an MCI Holder in respect of those MCIs by giving evidence of the person's entitlement to be registered as the holder of the MCIs and a signed notice in writing to the Company, and on receiving this notice the Company must register the person as the holder of those MCIs; or
- 3.3.b elect to transfer the MCIs to another person in accordance with Rule 2 of this Schedule.

3.4 Transmission of MCIs on mental incapacity

Subject to any provision of the Law, if a person entitled to MCIs because of the mental incapacity of an MCI Holder gives the Board the information it reasonably requires to establish the person's entitlement to be registered as the holder of the MCIs, that person may do either of the following:

- 3.4.a elect to be registered as an MCI Holder in respect of those MCIs by giving evidence of the person's entitlement to be registered as the holder of the MCIs and a signed notice in writing to the Company, and on receiving this notice the Company must register the person as the holder of those MCIs; or
- 3.4.b elect to transfer the MCIs to another person in accordance with Rule 2 of this Schedule.