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Sunsuper Pty Ltd (ABN 88 010 720 840)

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# Consolidated Constitution

# Constitution

***Consolidated constitution comprising:***

***Articles of Association***

***as amended by:***

***Resolution dated 7 March 1995***

***Resolution dated 14 December 2005***

***Resolution dated 23 April 2008***

***Resolution dated 25 June 2009***

***Resolution dated 27 November 2012***

***Resolution dated 10 December 2014***

***Resolution dated 5 August 2015***

***Resolution dated 25 July 2016***

***Resolution dated 5 July 2018***

***Original Memorandum of Association***

# Contents

<b>1</b>	<b>Interpretation</b>	<b>1</b>
1.1	Definitions	1
1.2	Construction	3
1.3	Replaceable rules excluded	3
<b>2</b>	<b>Statutory prohibitions</b>	<b>3</b>
2.1	Transfer restrictions	4
2.2	Maximum number of shareholders	4
2.3	Fundraising	4
<b>3</b>	<b>Share capital</b>	<b>4</b>
3.1	Issue of shares	4
3.2	Rights	4
3.3	Commission	5
3.4	Recognition of interest	5
3.5	Certificates	5
3.6	Joint holders	6
<b>3A</b>	<b>Object of the Company</b>	<b>6</b>
<b>3B</b>	<b>Amendment of the Memorandum and Articles</b>	<b>7</b>
<b>4</b>	<b>Transfer of shares</b>	<b>7</b>
4.1	General	7
4.2	Refusal of registration	7
<b>5</b>	<b>Transmission of shares</b>	<b>8</b>
5.1	Death or bankruptcy	8
5.2	Procedure for transfer on death or bankruptcy	8
5.3	Restrictions on transfer on death or bankruptcy	8
5.4	Effect of death or bankruptcy	8
<b>6</b>	<b>Increase, reduction and alteration of capital</b>	<b>8</b>
6.1	Alteration of capital	8
6.2	Rights of new shares	9
6.3	Reduction of capital	9
<b>7</b>	<b>General meetings</b>	<b>9</b>
7.1	Convening and notice of general meetings	9
7.2	Proceedings at general meetings	9
7.3	Voting procedures at general meetings	10
7.4	Adjournment of general meetings	11
<b>8</b>	<b>Votes of shareholders</b>	<b>12</b>
8.1	Right to vote	12
8.2	Proxies and attorneys	13
8.3	Signed document passing resolution	15

<b>9</b>	<b>Directors</b>	<b>16</b>
	9.1 General provisions	16
	9.2 Appointment and removal of Directors	16
	9.2A Fit and Proper Information	20
	9.3 Remuneration and expenses	20
	9.4 Vacation of office	20
	9.5 Filling of vacancies	21
	9.6 Conflict of interest	21
	9.7 Powers of Directors	22
	9.8 Meetings of Directors	23
	9.9 Proceedings of Directors	23
	9.10 Resolution in writing	25
	9.11 [Deleted]	25
	9.12 Appointment of attorney	25
	9.13 Minutes	26
<b>10</b>	<b>Board committee</b>	<b>26</b>
<b>11</b>	<b>Secretary</b>	<b>27</b>
	11.1 Appointment by Directors	27
	11.2 Terms of office	27
<b>12</b>	<b>Seal</b>	<b>27</b>
	12.1 Types of seals	27
	12.2 Use of seal	27
	12.3 Cheques and negotiable instruments	28
<b>13</b>	<b>Application of profits</b>	<b>28</b>
	13.1 Establishment and application of reserves	28
	13.2 No dividends	28
<b>14</b>	<b>Payments of capital</b>	<b>28</b>
<b>15</b>	<b>Accounts and audit</b>	<b>28</b>
	15.1 Requirements as to accounts and audits	28
	15.2 Auditor	28
	15.3 Inspection of Company records	28
<b>16</b>	<b>Notices</b>	<b>29</b>
	16.1 Mode of service	29
	16.2 Deemed receipt of notice	29
	16.3 Proof of service	29
	16.4 Notice of general meeting of the Company	29
	16.5 Previous notice	30
	16.6 Notice on transmission	30
<b>17</b>	<b>Indemnity</b>	<b>30</b>
	17.1 Definitions	30
	17.2 Indemnity for Officers and auditors	31
	17.3 Indemnity for proceedings	31

17.4	Liability as between Officers	31
17.5	Reimbursement of expenses	31
<b>18</b>	<b>Subscribers</b>	<b>31</b>

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Corporations Law  
A company limited by shares  
Articles of association  
of  
Sunsuper Pty. Ltd.<sup>1</sup>

1 Interpretation

1.1 Definitions

In these Articles, unless the contrary intention appears:

**Articles** means these Articles of Association as amended from time to time.

**business day** means a day on which trading banks are open for business in Brisbane in the State of Queensland.

**Company** means Sunsuper Pty. Ltd.

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

**Director** means each and any of:

- (a) an Employer Representative Director;
- (b) a Member Representative Director; and
- (c) an Independent Director.

**Employer Organisation** means any of:

- (a) Queensland Chamber of Commerce and Industry Limited ABN 55 009 662 060, a company incorporated in the State of Queensland and registered as an industrial organisation in that State; and
- (b) any corporation, unincorporated association or other organisation which in the opinion of the Company represents the interests of any employer or group of employers which contribute to Sunsuper.

**Employer Representative Director** means a Director appointed under Article 9.2(a) on the nomination of a shareholder holding an “A” class, “B” class or “C” class share.

**Fit and Proper** in relation to a person means that the person is eligible to serve as a Director under the Company’s Fit and Proper Policy.

**Fit and Proper Assessment** means the process described in the Company’s Fit and Proper Policy in relation to the assessment of a Director’s fitness and propriety prior to their appointment.

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<sup>1</sup> The Original Memorandum of Association is set out at the conclusion of these Articles of Association

**Fit and Proper Policy** means the Sunsuper Fit and Proper Policy adopted by the Directors for the Company to meet the requirements of APRA *Superannuation Prudential Standard 520 – Fit and Proper* in relation to the eligibility of persons to serve as Directors of the Company.

**Independent Director** means a Director appointed under Article 9.2(d).

**Member** means any person who is at the relevant time a member of Sunsuper.

**Member Organisation** means any of:

- (a) Queensland Council of Unions ABN 43 109 318 638, an unincorporated association formed to represent industrial unions registered in the State of Queensland;
- (b) The Australian Workers' Union of Employees, Qld, a registered industrial union; and
- (c) any other corporation, unincorporated association or other organisation which in the opinion of the Company is a registered industrial union or other body which represents the interests of the Members or a group of Members.

**Member Representative Director** means a Director appointed under Article 9.2(a) on the nomination of a shareholder holding a "D" class, "E" class or "F" class share.

**paid**, in relation to shares and capital, includes credited as paid.

**register** means the register of shareholders of the Company kept pursuant to the Corporations Law.

**Regulated Superannuation Fund** has the meaning give in the *Superannuation Industry (Supervision) Act 1993 (Cth)*.

**representative** means a representative appointed by a shareholder pursuant to section 250D of the Corporations Law.

**seal** means the common seal of the Company and includes any official seal of the Company.

**Secretary** means any person appointed to perform all or any of the duties of a secretary of the Company.

**shareholder** means a person entered in the register as a shareholder of the Company for the time being.

**Sunsuper** means the indefinitely continuing superannuation fund known as Sunsuper established by the Company pursuant to a trust deed dated 12 March 1987 as amended from time to time.

**Superannuation Law** means any requirement of a law or a Superannuation Regulator:

- (a) prescribed for the operation of Regulated Superannuation Funds; or
- (b) which must be complied with in order to:

- (i) obtain the maximum tax concessions available to Regulated Superannuation Funds; or
- (ii) avoid any penalty.

**Superannuation Regulator** means the governmental body or bodies having responsibility for the regulation of, or the administration of tax concessions available to, Regulated Superannuation Funds from time to time, including:

- (a) the Australian Prudential Regulation Authority;
- (b) the Australian Securities and Investments Commission;
- (c) the Australian Taxation Office; and
- (d) the Australian Transaction Reports and Analysis Centre.

## 1.2 Construction

- (a) In these Articles, a reference to legislation is to be construed as a reference to that legislation, any subordinate legislation under it, and that legislation and subordinate legislation as amended, re-enacted or replaced for the time being.
- (b) An expression used in a particular Part or Division of the Corporations Law that is given by that Part or Division, a special meaning for the purposes of that Part or Division has, in any of these Articles that deals with a matter dealt with by that Part or Division, unless the contrary intention appears, the same meaning as in that Part or Division.
- (c) A reference to a body or entity (whether corporate or unincorporate) includes, in the event that such body or entity ceases to exist, or is reconstituted, renamed or replaced from time to time, a reference to such other body or entity as the Directors consider most nearly fulfils the objects of the first mentioned body or entity.
- (d) Unless the contrary intention appears:
  - (i) words importing the singular include the plural and vice versa;
  - (ii) words importing any gender include all genders; and
  - (iii) the term "person" or words importing persons include bodies corporate.
- (e) Headings are for ease of reference only and do not affect the construction of these Articles.

## 1.3 Replaceable rules excluded

The replaceable rules contained in the Corporations Law are excluded and do not apply to the Company.

## 2 Statutory prohibitions

The Company shall be a proprietary company and the provisions set out in this Article 2 shall accordingly apply.



## **2.1 Transfer restrictions**

The right to transfer shares in the Company shall be restricted in the manner provided in these Articles.

## **2.2 Maximum number of shareholders**

The number of shareholders of the Company (counting joint holders of shares as one person and not counting any person in the employment of the Company or of its subsidiaries or any person who, while previously in the employment of the Company or of its subsidiaries, was and thereafter has continued to be a shareholder of the Company) shall not at any time exceed 50.

## **2.3 Fundraising**

The Company shall not engage in any activity that would require the lodgement of a disclosure document under Chapter 6D of the Corporations Law, except for an offer of shares to:

- (a) existing shareholders of the Company; or
- (b) employees of the Company or a subsidiary of the Company.

# **3 Share capital**

## **3.1 Issue of shares**

- (a) The share capital of the Company is divided into the following share classes:
  - (i) "A" class shares;
  - (ii) "B" class shares;
  - (iii) "C" class shares;
  - (iv) "D" class shares;
  - (v) "E" class shares;
  - (vi) "F" class shares; and
  - (vii) ordinary shares.
- (b) The Directors may issue unissued ordinary shares to any person who makes application for issue of ordinary shares. The Directors must not issue more than one share in each other class and:
  - (i) the "A" class share, "B" class share and "C" class share must be issued to an Employer Organisation,
  - (ii) the "D" class share, "E" class share and "F" class share must be issued to a Member Organisation.
- (c) All shares must be issued fully paid.

## **3.2 Rights**

- (a) All shares have the same rights, except as provided in Article 3.2(b).

- (b) Shareholders holding ordinary shares have no right to appoint or remove Directors. Shareholders holding any other class of shares have the right to appoint and remove Directors as provided in Article 9.2.

### **3.3 Commission**

The Company must not make payments by way of brokerage or commission to any person in consideration of the person subscribing or agreeing to subscribe for shares or procuring or agreeing to procure subscriptions for shares.

### **3.4 Recognition of interest**

- (a) Except as required by law and subject to Article 4.2(b), the Company shall not recognise a person as holding a share upon any trust.
- (b) The Company is not bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any share or unit of a share or (except as otherwise provided by these Articles or by law) any other right in respect of a share, except an absolute right of ownership in the registered holder of the share.
- (c) In the case of the death of a shareholder who is a sole holder, the legal personal representatives of the deceased shall be the only persons recognised by the Company as having any title to the shares held by the deceased shareholder, and for this purpose, the Directors may require reasonable evidence of death.

### **3.5 Certificates**

- (a) It shall be a condition of the issue of any shares in the capital of the Company that the Company is under no obligation to have ready for delivery, any certificate or certificates relating to those shares unless the person who is registered as the holder of those shares (either as original subscriber, transferee or otherwise) makes a written request of the Company for the completion and delivery of share certificates, in which case the Company shall complete and deliver to the registered holder, the relevant share certificates within one calendar month of receipt by the Company of that request.
- (b) Shares shall be allotted and share certificates relating to shares in the Company shall be issued and delivered, in accordance with the Corporations Law, if required to be issued under the Corporations Law having regard to Article 3.5(a).
- (c) Where a share certificate is stolen, lost or destroyed, and an application to the Company by the owner of that certificate is made in accordance with section 1070D of the Corporations Law, the Directors shall, subject to that section, and in any other case may, issue a duplicate certificate in lieu of the stolen, lost or destroyed share certificate.
- (d) Where a share certificate is worn out or defaced, the Directors may, upon its production to the Company, order the certificate to be cancelled and issue a replacement certificate in lieu of the worn out or defaced certificate.

- (e) A fee may be charged for the issue of a replacement certificate in the amount determined by the Directors, provided that the fee does not exceed the fee (if any) prescribed in that regard by the Corporations Law.
- (f) Delivery of a certificate for a share to one of the several joint holders is sufficient delivery to all several joint holders.

### 3.6 Joint holders

Where two or more persons are registered as the holders of a share, they shall be deemed to hold it as joint tenants with rights of survivorship, subject to the provisions of these Articles as to joint shareholdings and the following provisions:

- (a) they and their respective legal personal representatives shall be deemed to be jointly and severally liable to pay all amounts payable in respect of the share;
- (b) subject to Article 3.6(a), on the death of any one of them, the survivor or survivors shall be the only person or persons whom the Company shall recognise as having any title to the share, and for this purpose, the Directors may require reasonable evidence of death; and
- (c) any one of them may give effectual receipts for any amounts payable in respect of the share.

## 3A Object of the Company

- (a) The object of the Company is to act as the trustee of:
  - (i) the indefinitely continuing superannuation fund known as Sunsuper, which is a regulated superannuation fund within the meaning of Section 19 of the *Superannuation Industry (Supervision) Act 1993*, and of which the Company acts as trustee;
  - (ii) any other superannuation entity within the meaning of Section 10 of the *Superannuation Industry (Supervision) Act 1993*; or
  - (iii) any other trust, where acting as trustee of that trust is necessary or reasonably incidental to the Company's activities as trustee of a superannuation entity.
- (b) In carrying out its object the Company has all the powers of a natural person and may do all things necessary, desirable or expedient in relation to, in connection with, arising from or incidental to the carrying out of its object.
- (c) The income and property of the Company:
  - (i) must be applied by the Company for the purpose of carrying out its object; and
  - (ii) must not be distributed to the members of the Company.
- (d) **[Deleted]**.

## 3B Amendment of the Memorandum and Articles

The Memorandum of Association and the Articles of Association, including this Article, may be amended only if the amendments are approved by:

- (a) the agreement of all of the shareholders in writing or at a meeting of them; and
- (b) the agreement of all of the Employer Representative Directors and the Member Representative Directors in writing or at a meeting of them.

## 4 Transfer of shares

### 4.1 General

- (a) Subject to these Articles, a shareholder may transfer all or any of the shareholder's shares by instrument in writing duly stamped in any usual or common form or in any other form that the Directors approve.
- (b) Shares shall be transferred and share certificates relating to shares in the Company shall be issued and delivered, in accordance with the Corporations Law, if required to be issued under the Corporations Law having regard to Article 3.5(a).
- (c) An instrument of transfer shall be executed by or on behalf of both the transferor and the transferee (except where execution by the transferee is rendered unnecessary by the Corporations Law) or may be otherwise executed in accordance with the Corporations Law.
- (d) The transferor of shares remains the holder of the shares transferred and a shareholder of the Company in respect of those transferred shares, until the transfer is registered and the name of the transferee is entered in the register in respect of those shares.
- (e) The instrument of transfer shall be left for registration at the registered office of the Company or at the address where the register is kept, accompanied by such evidence (including the certificate for the shares to be transferred where such a certificate has been issued) as the Directors may properly require to prove the title of the transferor.

### 4.2 Refusal of registration

- (a) The Directors must not register a transfer of the "A" class share, the "B" class share or the "C" class share unless the transferee of the share is an Employer Organisation or in the opinion of the Company will hold the share on trust for an Employer Organisation.
- (b) The Directors must not register a transfer of the "D" class share, the "E" class share or the "F" class share unless the transferee of the share is a Member Organisation or in the opinion of the Company will hold the share on trust for a Member Organisation.
- (c) Where the Company refuses to register a transfer of any shares, the Company shall, within 2 months after the date of lodgment of the transfer,

send to the transferee a notice of refusal in accordance with section 1071E of the Corporations Law.

## **5 Transmission of shares**

### **5.1 Death or bankruptcy**

Subject to Article 5.3, a person becoming entitled to a share in consequence of the death or bankruptcy of a shareholder may, upon producing such evidence as is properly required by the Directors to establish the person's entitlement, elect either to be registered as the holder of the share, or to transfer the share to some other person nominated by that person.

### **5.2 Procedure for transfer on death or bankruptcy**

If a person becoming entitled to a share under Article 5.1:

- (a) elects to be registered as the holder of such share, the person shall deliver or send to the Company a signed notice in writing stating that the person so elects; or
- (b) elects to have another person registered as the holder of such share, the person shall execute a transfer of that share to that other person.

### **5.3 Restrictions on transfer on death or bankruptcy**

The restrictions on the right to transfer shares and on the registration of transfers of shares are applicable to any notice or transfer under Article 5.2 as if the notice or transfer were a transfer signed by the shareholder who has died or become bankrupt.

### **5.4 Effect of death or bankruptcy**

Subject to Articles 8.1(f) and (g), 16.5 and 16.6, a person entitled to a share under Article 5.1 is upon production of such evidence as is properly required by the Directors to establish the person's entitlement entitled to the same rights (whether in relation to meetings of the Company or to voting or otherwise) as the shareholder would have been entitled to had the shareholder not died or become bankrupt.

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

### **6.1 Alteration of capital**

The Company may convert all or any of its shares into a larger or smaller number of shares in the manner set out in section 254H of the Corporations Law.

### **6.2 Rights of new shares**

New shares created upon an increase of the Company's authorised capital shall be deemed to be part of the original capital and shall rank equally with and carry the same rights as the existing shares and shall be subject to the provisions of these Articles.

### **6.3 Reduction of capital**

Subject to the Corporations Law, the Company may, by special resolution, reduce its share capital, any capital redemption reserve, any share premium account or any other reserve in any way.

## **7 General meetings**

### **7.1 Convening and notice of general meetings**

- (a) **[Deleted]**
- (b) Any Director may, whenever the Director thinks fit, convene a general meeting of the Company or a meeting of any class of shareholders of the Company.
- (c) The Directors shall, on such requisition as is provided for by section 249D of the Corporations Law, convene a general meeting of the Company or a meeting of any class of shareholders of the Company.
- (d) Subject to the provisions of the Corporations Law as to shorter notice, at least 21 days notice shall be given in writing to each shareholder entitled to attend general meetings or a meeting of a class of shareholders of the Company, as the case may be.
- (e) A notice convening a meeting of the Company or of any class of shareholders shall specify the place, day and hour of the meeting and the general nature of the business to be dealt with at the meeting.
- (f) Subject to the Corporations Law, the Directors may, by notice in writing to the shareholders, postpone any meeting which has been convened to a date specified in such notice, or may cancel the holding of such a meeting.
- (g) The accidental omission to give notice of any general meeting to or the non-receipt of any such notice by any person entitled to be so notified, shall not invalidate the meeting or any resolution passed at that meeting.

### **7.2 Proceedings at general meetings**

- (a) **[Deleted]**
- (b) The number of shareholders whose presence is necessary to constitute a quorum at any general meeting of the Company is 6, comprising at least:
  - (i) one holder of an "A" class share;
  - (ii) one holder of a "B" class share;
  - (iii) one holder of a "C" class share;
  - (iv) one holder of a "D" class share;
  - (v) one holder of an "E" class share; and
  - (vi) one holder of a "F" class share.

For the purpose of determining whether a quorum is present, a person attending as a proxy, as the attorney of a shareholder or as a

representative of a corporation that is a shareholder, is deemed to be a shareholder.

- (c) No business shall be transacted at any general meeting unless a quorum of shareholders is present at the time when the meeting proceeds to business.
- (d) If a quorum is not present within 15 minutes after the time appointed for a meeting or such longer period as the chair of the meeting may allow, the meeting:
  - (i) if convened upon requisition of shareholders, or by shareholders, shall be dissolved;
  - (ii) in any other case, shall stand adjourned to the same day in the next week at the same time and place or to such other day, time and place as the Directors determine.
- (e) If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, the meeting shall be dissolved.
- (f) The chair's ruling on all matters relating to the order of business, procedure and conduct of a general meeting shall be final and no motion of dissent from the chair's ruling shall be accepted.

### **7.3 Voting procedures at general meetings**

- (a) The chair of Directors shall preside at every general meeting of the Company, but where the chair is not present within 15 minutes after the time appointed for a meeting or is unwilling to act or has signified that the chair will not be present or willing to act, the following shall preside as chair of the meeting, in the following order of entitlement - the deputy chair; a Director chosen by a majority of the Directors present; the only Director present; a shareholder present in person or by proxy, attorney or representative chosen by a majority of the shareholders present in person or by proxy, attorney or representative.
- (b) In the case of an equality of votes, the chair of the meeting shall not have, either on a show of hands or at a poll, a casting vote and the motion shall be deemed to have been lost.
- (c) Every question submitted to a meeting shall be decided by a show of hands unless, before or upon the declaration of the result of the show of hands, a poll is demanded by:
  - (i) the chair of the meeting;
  - (ii) not less than 2 shareholders present in person or by proxy, attorney or representative and having the right to vote at the meeting; or
  - (iii) a shareholder or shareholders present in person or by proxy, attorney or representative representing not less than 10% of the total voting rights of all shareholders having the right to vote at the meeting; or

- (iv) a shareholder or shareholders present in person or by proxy, attorney or representative holding shares conferring a right to vote at the meeting on which an aggregate sum has been paid up equal to not less than 10% of the total sum paid up on all shares conferring that right.
- (d) Unless a poll is so demanded, a declaration by the chair of the meeting that the resolution has been carried or carried unanimously or without dissent or by a particular majority or lost and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the result of the resolution and it shall not be necessary to prove the number or proportion of votes cast in favour of or against the resolution.
- (e) Where a poll is duly demanded, it shall be taken in such manner and at such time and place and at once or after an interval or adjournment or otherwise as the chair of the meeting directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- (f) A poll shall not be demanded on the election of a chair of a meeting or on the adjournment of a meeting. A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.
- (g) The demand for a poll may be withdrawn.

#### **7.4 Adjournment of general meetings**

- (a) The chair of a meeting may, with the consent of the meeting, adjourn the meeting from time to time and place to place, but the only business that may be transacted at an adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- (b) Where a meeting is adjourned for more than 21 days, at least 3 business days notice of the adjourned meeting shall be given as in the case of an original meeting.
- (c) Except as provided in Article 7.4(b), it is not necessary to give any notice of any adjournment of or the business to be transacted at an adjourned meeting.

## **8 Votes of shareholders**

### **8.1 Right to vote**

- (a) An entitlement to receive notice of general meetings of the Company shall confer on shareholders the right to attend those general meetings.
- (b) Unless by these Articles or by the terms of issue of the share, a share does not carry any voting right, and subject to any rights or restrictions attached to or affecting any class of shares:
  - (i) on a show of hands, each shareholder present in person or by proxy, attorney or representative has one vote; and



- (ii) on a poll, each shareholder present in person or by proxy, attorney or representative has one vote for each share held by the shareholder.
- (c) In the case of joint holders of a share, the vote of the senior who tenders a vote, whether in person or by proxy, attorney or representative, shall be accepted to the exclusion of the votes of other joint holders and for this purpose, seniority shall be determined by the order in which the names stand in the register, but the other or others of the joint holders are entitled to be present at general meetings.
- (d) Several legal personal representatives of a deceased shareholder in whose sole name a share stands shall for the purposes of Article 8.1(c) be deemed joint holders of the share.
- (e) Where two proxies have been appointed by a shareholder, the proxy mentioned first in the instrument appointing the proxy shall have the right to vote on a show of hands.
- (f) A person entitled to a share under Article 5.1 may vote at a meeting or adjourned meeting or on a poll in respect of that share as if the person were the registered holder of the share if:
  - (i) the Directors have previously admitted the person's right to vote at that meeting or adjourned meeting or on that poll in respect of the share; or
  - (ii) the person satisfies the Directors of the person's entitlement to that share under Article 5.1 not less than 48 hours before the time appointed for the meeting, adjourned meeting or poll at or on which the person proposes to vote in respect of the share.
- (g) If a shareholder is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the shareholder's committee or trustee or such other person as properly has the management of the shareholder's estate, may exercise any rights of the shareholder in relation to a general meeting as if the committee, trustee or other person were the shareholder.
- (h) Objection shall not be raised to the right of a person to attend or vote at a meeting or adjourned meeting or to vote on a poll except at that meeting or adjourned meeting or when that poll is taken, and every vote not disallowed at the meeting or adjourned meeting or when the poll is taken shall be deemed valid for all purposes.
- (i) In the case of a dispute as to the admission or rejection of a vote, the chair of the meeting shall decide the matter and the chair's decision shall be final and conclusive.
- (j) A shareholder is not entitled to vote at a general meeting unless all calls and other sums presently payable by the shareholder in respect of shares in the Company have been paid.

## 8.2 Proxies and attorneys

- (a) A shareholder entitled to attend and vote at a meeting of the Company or of any class of shareholders of the Company is entitled to appoint not more than 2 other persons (whether shareholders or not) as the shareholder's proxy or proxies to attend and vote in the shareholder's stead at the meeting and a proxy has the same right as the shareholder to speak at the meeting.
- (b) Where a shareholder appoints two proxies, the appointment is of no effect unless each proxy is appointed to represent a specified proportion of the shareholder's voting rights.
- (c) An instrument appointing a proxy shall be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing, or if the appointor is a body corporate under its common or official seal or the hand of an officer or attorney duly authorised in writing.
- (d) An instrument appointing a proxy shall be in or to the effect of the following form or in any other form acceptable to the Directors generally or in a particular case:

### Sunsuper Pty. Ltd. Form of Proxy

I/We \_\_\_\_\_

of \_\_\_\_\_

being a shareholder or shareholders of **Sunsuper Pty. Ltd.**, hereby appoint as my proxy to vote on my behalf at the \*annual general meeting/general meeting of the Company to be held on the \_\_\_\_\_ day of \_\_\_\_\_ and at any adjournment thereof, \_\_\_\_\_ of \_\_\_\_\_ or failing him, the chair of the meeting.

This Form of Proxy is to be used \*in favour of/against the resolution.

If this proxy is signed under power of attorney, the signatory declares that the attorney has had no notice of revocation thereof.

**Dated** this \_\_\_\_\_ day of \_\_\_\_\_ 19 .

-----  
Signature(s)

-----

THE COMMON SEAL of )  
) -----

is affixed in accordance with its )  
Articles of Association in the )  
presence of: ) -----

-----

\* delete as appropriate.

- (e) An instrument appointing a proxy shall, unless the instrument expressly provides otherwise, be deemed to confer authority to agree to:
  - (i) a meeting being convened by shorter notice than is required by the Corporations Law or by these Articles; and
  - (ii) a resolution being proposed and passed as a special resolution at a meeting of which less than 21 days notice has been given; and
  - (iii) demand or join in demanding a poll.
- (f) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and where the instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
- (g) A shareholder may, by power of attorney duly executed in the presence of at least one witness and (if necessary) duly stamped, appoint an attorney (whether a shareholder or not) to act on the shareholder's behalf at all or any meetings of the Company or of any class of shareholders.
- (h) A shareholder may, if it is a body corporate, appoint a representative (whether a shareholder or not) to act on its behalf at all or any meetings of the Company or of any class of shareholders.
- (i) Subject to the Corporations Law, an instrument appointing a proxy shall not be valid unless there is deposited or received (as the case may be) not less than 48 hours before the time appointed for the meeting or adjourned meeting at which the person named in the proxy proposes to attend and vote or, in the case of a poll, not less than 24 hours before the time appointed for the taking of a poll, at the registered office of the Company or at such other place as is specified by the Company in the notice of meeting or instrument of proxy:
  - (i) an instrument appointing a proxy and any power of attorney or other authority under which the instrument of proxy is executed (or a copy of the power or the authority notarially certified), together with such evidence of due stamping, execution and non-revocation of the instrument or power as the Directors may require; or
  - (ii) a legible facsimile transmission copy of the instrument of proxy where that instrument is signed under the hand of the shareholder, together with such evidence of due stamping, execution and non-revocation of that instrument as the Directors may require.

- (j) A vote cast by a proxy, attorney or representative is valid:
  - (i) notwithstanding the previous revocation of the proxy's, attorney's or representative's authority by the death or unsoundness of mind of the principal or otherwise; and
  - (ii) notwithstanding the transfer of the shares in respect of which the vote is cast,

unless an intimation in writing of the revocation or transfer has been received by the Company at the registered office before commencement of the meeting or adjourned meeting or poll at which the instrument, authority or certificate is to be used or the power is to be exercised.

### **8.3 Signed document passing resolution**

- (a) Subject to the Corporations Law, a resolution in writing signed by all the shareholders of the Company for the time being entitled to vote is as valid and effectual for all purposes as if it had been passed as an ordinary resolution or a special resolution (as the case may be) at a general meeting of the Company duly called and constituted and may consist of several documents in like form each signed by one or more of the shareholders.
- (b) Where a shareholder is a body corporate, a resolution in writing signed by a representative of the shareholder, authorised by the shareholder to sign the resolution on the shareholder's behalf, is deemed to have been signed by the shareholder for the purposes of Article 8.3(a).
- (c) Where the document referred to in Article 8.3(a) is so signed, the document shall be deemed to have been passed at a general meeting of the Company and shall be deemed to constitute a minute of that general meeting.
- (d) Any document that is attached to a document signed in accordance with this Article 8.3 and is signed by the shareholder or shareholders who signed the last mentioned document shall, for the purposes of these Articles and the Corporations Law, be deemed to have been laid before the Company at the general meeting referred to in Article 8.3(a).
- (e) The meeting referred to in Article 8.3(a) shall be deemed to be held on the day on which the document was signed and at the time at which the document was last signed or if the shareholders of the Company sign the document on different days, on the day on which, and at the time at which, the document was last signed by a shareholder of the Company.
- (f) For the purposes of this Article 8.3, an electronically transmitted facsimile copy of a document, the original of which, in the opinion of the Secretary has been apparently signed by a shareholder of the Company, shall be deemed to be a document signed by such shareholder.

## 9 Directors

### 9.1 General provisions

- (a) Unless otherwise determined by the Company in general meeting, the number of Directors shall be not more than 9.
- (b) Each Director must be a natural person who is not disqualified by law from being appointed as a director of the trustee of a regulated superannuation fund.
- (c) Each Director must consent in writing to the appointment.
- (d) A Director is not required to have any share qualification and is not subject to retirement by rotation.
- (e) Each appointment of a Director shall (subject to Articles 9.1(f), 9.2(bb), 9.2(d) and 9.2(f)) be for a term of 3 years. Each Director is, subject to Article 9.1(f), eligible for reappointment.
- (f) The term of office for any Director in office at 1 July 2016 is the term that was agreed in respect of them between the Shareholders on 3 June 2016.
- (g) The maximum tenure of a Director shall, subject to Article 9.1(h), be twelve (12) years
- (h) The Directors can resolve to extend the tenure of a Director beyond twelve (12) years for a period of up to one (1) more term where the Directors determine that the interests of the Members will be best served by retaining the skills, experience and expertise of the Director and where such extension would better manage the process of board renewal and transition.

### 9.2 Appointment and removal of Directors

#### ***Appointment of Employer Representative and Member Representative Directors***

- (a) Each of the shareholders for the time being holding the “A” class share, the “B” class share, the “C” class share, the “D” class share the “E” class share and the “F” class share respectively has the right to nominate one person for each class of share held as a Director (“**the Nominee**”).
- (aa) The Directors must appoint the Nominee as a Director provided:
  - (i) at least 15 days prior to the nomination being made an authorised representative of the relevant shareholder and the chair of Directors, or in the chair’s absence the deputy chair, informally meet face to face or via telephone or other electronic means of audio or audio-visual communication to discuss the proposed nomination and suitability of the Nominee having regard to the requirements of the Fit and Proper Policy;
  - (ii) the shareholder subsequently makes a formal nomination by notice in writing to the Secretary accompanied by such documentation and information as may reasonably be required for a Fit and Proper Assessment under the Fit and Proper Policy;

- (iii) the shareholder or the Nominee, as the case may be, promptly provides the Secretary with any additional information required by the Secretary in order to ensure the Directors have all the relevant information in order to be able to make their Fit and Proper Assessment; and
  - (iv) at the meeting held to consider the nomination the Directors do not resolve on the basis of the information before them that the Nominee is not a Fit and Proper person to be appointed as a Director.
- (ab) If the Directors resolve that the Nominee is not a Fit and Proper person to be appointed as a Director, the Secretary must advise the shareholder within 2 business days of the decision and any reasons given and formally request the shareholder to propose another nominee for consideration by the Directors.
- (ac) In the event that after consultation with the chair, or the deputy chair as the case may be, under Article 9.2(aa)(i) the shareholder resolves to make a substitute nomination the process described in Article 9.2(aa) applies with such shortened timeframes as the chair and the shareholder agree are reasonable in the circumstances.
- (ad) Notwithstanding Article 9.2(aa)(i), the chair and the relevant shareholder can, once the process described in Article 9.2(aa) has commenced and only for the purpose of meeting the requirements of Superannuation Law, resolve that the times for notice, consultation and consideration in Article 9.2(aa) can be modified in order to ensure that the requirements of Superannuation Law are, or will be, met.

***Removal of Employer Representative and Member Representative Directors***

- (bb) A shareholder holding the “A” class share, the “B” class share, the “C” class share, the “D” class share, the “E” class share or the “F” class share may at any time by, wherever possible, at least 90 days’ notice in writing to the Secretary:
- (i) remove the Director nominated by that shareholder;
  - (ii) nominate a Director (**Substitute Nominee**) in substitution for a Director removed by the shareholder or to fill a vacancy in the office of the Director appointed by the shareholder.

The removal of the Director takes effect from the date nominated in the notice. The date must not be earlier than the period of notice given. Notice of less than 90 days is permitted wherever 90 days is not reasonably practicable or where the relevant shareholder, having consulted with the chair, or in the chair’s absence the deputy chair, about the likely impact of giving less than 90 days’ notice, determines that to avoid a possible detrimental impact on Sunsuper or the Directors notice of less than 90 days is appropriate. Reasons for the removal should be given in the notice to the Secretary however in some circumstances the reasons may be limited to a statement about what the reason is not.

- (c) The Directors must appoint the Substitute Nominee as a Director provided:
- (i) at least 15 days prior to the notice of removal and substitute nomination being made an authorised representative of the relevant shareholder and the chair of Directors, or in the chair's absence the deputy chair, informally meet face to face or via telephone or other electronic means of audio or audio-visual communication to discuss the proposed removal and substitute nomination and the suitability of the Substitute Nominee having regard to the requirements of the Fit and Proper Policy;
  - (ii) the shareholder subsequently gives a formal notice of removal and substitute nomination by notice in writing to the Secretary accompanied by such documentation and information as may reasonably be required for a Fit and Proper Assessment under the Fit and Proper Policy;
  - (iii) the shareholder or the Substitute Nominee, as the case may be, promptly provides the Secretary with any additional information required by the Secretary in order to ensure the Directors have all the relevant information in order to be able to make their Fit and Proper Assessment in respect of the Substitute Nominee; and
  - (iv) at the meeting held to consider the substitute nomination the Directors do not resolve on the basis of the information before them that the Substitute Nominee is not a Fit and Proper person to be appointed as a Director.
- (ca) If the Directors resolve that the Substitute Nominee is not a Fit and Proper person to be appointed as a Director, the Secretary must advise the shareholder within 2 business days of the decision and any reasons given and formally request the shareholder to propose another substitute nominee for consideration by the Directors.
- (cb) In the event that after consultation with the chair, or the deputy chair as the case may be, under Article 9.2(c)(i) the shareholder resolves to make another substitute nomination the process described in Article 9.2(c) applies with such shortened timeframes as the chair and the shareholder agree are reasonable in the circumstances.
- (cc) Notwithstanding Article (9.2) (c)(i) the chair and the relevant shareholder can, once the process described in Article 9.2(aa) has commenced and only for the purpose of meeting the requirements of Superannuation Law, resolve that the times for notice, consultation and consideration in Article (9.2) (c) can be shortened provided that the purpose of any such change is only to ensure that the requirements of Superannuation Law are, or will be, met.

#### ***Independent Directors***

- (cd) Where there is a vacancy or will be a vacancy in the position of Independent Director, any Director may notify the other Directors of a potential candidate for the position. The Directors will meet to discuss the suitability of the candidate for the position of Independent Director.

- (ce) Following a discussion in accordance with Article 9.2(cd), the Employer Representative Directors and the Member Representative Directors may all agree, in writing or at a meeting of them, to make a recommendation to the other Directors of their nomination of a candidate to the position of Independent Director.
- (d) The Directors will following receipt of a nomination in accordance with Article 9.2(ce), consider whether to appoint the nominated candidate as an Independent Director, provided that the person:
  - (i) is a Fit and Proper person; and
  - (ii) qualifies as an “independent director” under Superannuation Law.

Article 9.1(e) generally applies to the term of office of an appointee under this Article 9.2(d). Notwithstanding Article 9.1(e), the Directors may, for the purpose of ensuring an appropriate staggering of the terms of directors appointed under this Article 9.2(d) determine other periods of office.
- (e) Up to three Independent Directors may be appointed, if permitted under Superannuation Law.
- (f) An Independent Director ceases to hold office as a Director if:
  - (i) their term of office expires and they are not reappointed in accordance with the appointment process outlined in this Article of the Constitution; or
  - (ii) they are removed during their term of office by the Directors.

## **9.2A Fit and Proper Information**

- (a) A shareholder that has nominated a Director pursuant to Article 9.2(a) must, subject to any conflicting obligations under the general law, disclose to the Company Secretary any material information relevant to the ongoing fitness and propriety of that Director that the shareholder becomes aware of.
- (b) The shareholder must notify the Company Secretary as soon as practicable and in event within ten (10) business days after becoming aware of the relevant information.
- (c) For the purposes of Article 9.2A(a), information will be deemed to be material if a reasonable person would consider it relevant to the question as to whether the Director continues to be a Fit and Proper person to serve as a Director of the Company.

## **9.3 Remuneration and expenses**

- (a) The Directors shall be paid such remuneration, if any, as is from time to time agreed by all of the Employer Representative Directors and the Member Representative Directors in writing or at a meeting of them.



- (b) All Directors' fees shall accrue on a day to day basis and be apportionable accordingly.
- (c) Where a Director renders or is called upon to perform extra services or to make any special exertions or otherwise for the Company, the Directors may arrange with that Director, special remuneration by payment of a stated sum of money determined by the Directors and that special remuneration may be either in addition to or in substitution for the Director's remuneration provided for in these Articles.
- (d) A Director shall, in addition to the Director's remuneration provided for in these Articles, be reimbursed out of the funds of the Company, reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from and attending meetings of the Directors or a committee of the Directors or when otherwise engaged on the business of the Company.

#### **9.4 Vacation of office**

- (a) In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Law, the office of a Director becomes vacant if:
  - (i) the Director becomes disqualified from acting under any legislation regulating superannuation funds;
  - (ia) the Directors pass a resolution that the Director is not a Fit and Proper person;
  - (ii) the Director dies or suffers physical or mental incapacity which in the opinion of the other Directors renders the Director unable to perform the Director's duties;
  - (iii) the Director resigns from office by notice in writing to the Company;
  - (iv) the Director is removed in accordance with Article 9.2(bb) or Article 9.2(f).
- (b) A Director must notify the Company on becoming aware that the Director has become disqualified from acting.

#### **9.5 Filling of vacancies**

- (a) Any vacancy in the office of Director must be filled in accordance with Article (f) within 90 days of the date on which the vacancy occurred, but a failure to fill a vacancy within that period does not invalidate any subsequent appointment.
- (b) The remaining Directors may continue to act in the meantime unless the number or composition of the Directors is not sufficient to constitute a quorum, in which case the remaining Directors may only act for the purpose of filling the vacancies or of convening a general meeting of the Company and not for any other purpose.

## **9.6 Conflict of interest**

- (a) Subject to compliance with Article 9.6(b), a Director may, notwithstanding the Director's office as such and the fiduciary relationship thereby established:
  - (i) hold any other office or place of profit (except that of auditor of the Company) in the Company or in any body corporate in which the Company is a shareholder or otherwise interested;
  - (ii) enter into a contract or arrangement with the Company as vendor, purchaser, underwriter or otherwise and may participate in any association, institution, fund, trust, scheme or convenience for past or present employees or Directors of the Company;
  - (iii) retain for the Director's own benefit, any profit arising from any such other office or place of profit, or from any such contract or arrangement and any remuneration, pension, allowance, commission or other benefit received in relation to those matters or received by reason of participation in any such association, institution, fund, trust, scheme or convenience;
  - (iv) vote in respect of any contract or arrangement or proposed contract or arrangement or any other matter in which the Director has, directly or indirectly, an interest;
  - (v) sign or countersign a contract or other document to which the seal is affixed and in which the Director has, whether directly or indirectly, an interest; and
  - (vi) be counted in the number present for a quorum, notwithstanding the Director's interest in any matters arising in the meeting.
- (b) Each Director must comply with the general law in respect of disclosure of conflicts of interest and with section 191 in respect of disclosure of material personal interests. Without limiting the foregoing, a Director who is in any way, directly or indirectly, interested in a contract or arrangement or proposed contract or arrangement with the Company or who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Director's duties or interests as Director, shall declare the nature of the interest or the nature, character and extent of the conflict (as the case may be).

## **9.7 Powers of Directors**

- (a) Subject to the Corporations Law, the management of the business of the Company is vested in the Directors and they may exercise all such powers of the Company and do all such acts and things as the Company is by its Memorandum of Association or otherwise authorised to exercise and do.
- (b) Without limiting the generality of Article 9.7(a), the Directors may exercise all powers of the Company to borrow or raise or secure the payment or repayment of any sum or sums of money, to charge, mortgage or otherwise encumber any or all of the undertakings, property, assets or business of the Company (both present or future whatsoever and wheresoever situate) or

all or any of its uncalled capital and to issue notes, bonds, debentures or any other securities whatsoever or give any other security or guarantee for any debt, liability or obligation of the Company or of any other person, and in each case, in such manner and on such terms and conditions as the Directors in their absolute discretion think fit.

- (c) Subject to section 199A of the Corporations Law, where a Director or other officer of the Company becomes personally liable for the payment of a sum primarily due from the Company, the Directors may execute or cause to be executed any mortgage, charge or other security over the whole or any part of the Company's undertakings, property or assets (present or future) including its uncalled capital, by way of indemnity to secure the Director against any loss in respect of that liability.

## **9.8 Meetings of Directors**

- (a) The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit.
- (b) Without limiting the generality of Article 9.8(a), the Directors may, if they think fit, confer by telephone, videoconference, closed circuit television or other electronic means of audio or audio-visual communication and a resolution passed at such conference shall, notwithstanding the Directors are not present together in one place at the time of the conference, be deemed to have been passed at a meeting of the Directors held on the day on which and at the time at which the conference was held. The provisions of these Articles relating to proceedings of Directors shall apply, so far as they are capable of application (*mutatis mutandis*), to conferences held by these means.
- (c) A Director may, and the Secretary shall upon the request of a Director, convene a meeting of the Directors.
- (d) Notice of meetings of Directors shall be given to each Director by delivering, emailing or posting the notice or by sending the notice by communication service to the last address or communication service number (as the case may be) within Australia provided by the Director for the purposes of this Article 9.8.
- (e) If any of the Directors consider that a meeting of the Directors is required upon short notice for consideration of urgent business, notice of such meeting and of the general nature of the business for discussion at the meeting may be given by telephone to each Director at the Director's last telephone number within Australia provided by the Director for the purposes of this Article 9.8.
- (f) Notice of meetings of Directors may be given to each Director at the Director's last address, email address or communication service number outside Australia provided by the Director for the purposes of this Article 9.8, provided that the Director or Secretary convening the meeting of Directors is not in any way obliged to give notice of the meeting to a Director at such an address or communication service number outside Australia.

- (g) For the purposes of this Article 9.8, **communication service** means any facsimile, electronic post service or other electronic means of written communication.
- (h) Two-thirds of the total number of Directors constitute a quorum at a meeting of Directors, provided that at least one Employer Representative Director, one Member Representative Director and one Independent Director (if there is one appointed) are in attendance at the meeting.

## 9.9 Proceedings of Directors

- (aaa) Any Director may notify the other Directors of a candidate for the position of chair or deputy chair of Directors. The Directors will meet to discuss the candidate.
- (aab) Following a discussion in accordance with Article 9.9(aaa) the Employer Representative Directors and the Member Representative Directors must either:
  - (i) all agree in writing or at a meeting of them, to recommend to the Directors that candidate as their nominee to be the chair or deputy chair of the Directors; or
  - (ii) all agree in writing or at a meeting of them, not to recommend the candidate to the Directors as their nominee to be the chair or deputy chair of the Directors.
- (aac) The Directors (excluding the candidate recommended for the position of chair or deputy chair) will, following receipt of a recommendation in accordance with Article 9.9(aab)(i), consider whether to appoint that candidate as chair or deputy chair.
- (aad) If the Employer Representative Directors and the Member Representative Directors have not either agreed to recommend or not to recommend a candidate under Article (aab) within 10 business days of the Directors meeting to discuss the candidate under Article 9.9(aaa), then all of the Directors (excluding the candidate recommended for the position of chair or deputy chair) will consider whether to appoint the candidate as chair or deputy chair at a meeting of them, without first requiring a recommendation of the Employer Representative Directors and the Member Representative Directors.
- (aae) The chair and deputy chair of Directors must each be a Director.
- (aa) Subject to the agreement of all Directors to the contrary, the chair of Directors shall serve a term of up to three (3) years. The Director holding the position as chair is eligible for reappointment as chair.
- (a) The deputy chair will be appointed for the same term as the chair. The Director holding the position as deputy chair is eligible for reappointment as deputy chair.
- (b) The chair of Directors or in the chair's absence the deputy chair, shall preside at meetings of the Directors, but if at the time of any meeting, no such chair or deputy chair has been elected and is in office or if at any

meeting, no such chair or deputy chair is present within fifteen minutes of the time appointed for holding such meeting, the Directors present shall choose one of their number to be chair of that meeting.

- (c) Subject to these Articles, a resolution of Directors is passed if at least three-quarters of that number of Directors entitled to vote on the resolution, vote in favour of the resolution, and otherwise is deemed not to have been passed.
- (d) The chair of the meeting does not have a casting vote in addition to a deliberative vote.
- (e) All acts of the Directors or a person acting as a Director are valid notwithstanding that it is afterwards discovered that there was some defect in the appointment, election or qualification of them or any of them or that they or any of them were disqualified or had vacated office.

#### **9.10 Resolution in writing**

- (a) Subject to the provisions of the Corporations Law, a resolution in writing signed by all the Directors or all the members of a committee of the Directors for the time being present within Australia is as valid and effectual as if it had been passed at a meeting of the Directors or committee duly called and constituted and may consist of several documents in like form each signed by one or more of the Directors or the members of a committee, as the case may be, and where the document is so signed, the document shall be deemed to constitute a minute of that meeting.
- (b) The meeting referred to in Article 9.10(a) shall be deemed to be held on the day on which the document was signed and at the time at which the document was last signed or if the Directors or the members of a committee signed the document on different days, on the day on which, and at the time at which, the document was last signed by a Director or a member of a committee, as the case may be.
- (c) For the purposes of this Article 9.10, an electronically transmitted facsimile copy of a document, the original of which in the opinion of the Secretary has been apparently signed by a Director or a member of a committee, shall be deemed to be a document signed by such Director or member.
- (d) A reference in Article 9.10(a) to all Directors or all members of a committee of the Directors does not include a reference to a Director who is not competent to vote on the resolution.

#### **9.11 [Deleted]**

#### **9.12 Appointment of attorney**

- (a) The Directors may, by power of attorney under the seal of the Company, appoint a person or persons (jointly or severally and whether a shareholder or shareholders of the Company or not) to be the attorney or attorneys of the Company for such purposes and with such powers (not exceeding those conferred on the Directors by these Articles) and on such terms and conditions as the Directors think fit.

- (b) Without limiting the generality of Article 9.12(a), any such appointment may be made in favour of the Directors or shareholders of the Company or in favour of a body corporate or of the shareholders, directors, nominees or managers of a body corporate.
- (c) Any such power of attorney may contain such provisions for the protection or convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers for the time being vested in the attorney.

### **9.13 Minutes**

- (a) The Directors shall, in accordance with the Corporations Law, cause minutes of all proceedings of general meetings and of meetings of Directors to be entered, within one month after the relevant meeting is held, in books kept for that purpose.
- (b) Except in the case of documents that are deemed to be minutes by virtue of Articles 8.3 and 9.10, those minutes shall be signed by the chair of the meeting at which the proceedings took place or by the chair of the next succeeding meeting.

## **10 Board committee**

If the Board has delegated its powers to a committee, then:

- (a) Any Director may notify the other Directors of a candidate(s) for the position of committee chair. The Directors will meet to discuss the candidate(s).
- (b) Following a discussion in accordance with Article 10(a), the Employer Representative Directors and the Member Representative Directors must either:
  - (i) all agree in writing or at a meeting of them, to recommend to the Directors that candidate as their nominee to be the committee chair;
  - (ii) all agree in writing or at a meeting of them, not to recommend the candidate to the Directors as their nominee to be the committee chair.
- (c) The Directors (excluding the candidate recommended for the position of committee chair) will, following receipt of a recommendation in accordance with Article 10(b)(i) consider whether to appoint that candidate as a committee chair.
- (d) If the Employer Representative Directors and the Member Representative Directors have not either agreed to recommend or not to recommend a candidate under Article 10(b) within 10 business days of the Directors meeting to discuss the candidate under Article 10(a), then all of the Directors (excluding the candidate recommended for the position of committee chair) will consider whether to appoint the candidate as committee chair at a meeting of them, without first requiring a

recommendation of the Employer Representative Directors and the Member Representative Directors.

- (e) Subject to the agreement of all Directors to the contrary, the committee chair shall serve a term of up to three (3) years. The Director holding the position as committee chair is eligible for reappointment as the committee chair.
- (f) A person ceases to hold the position of committee chair if they cease to be a Director.

## **11 Secretary**

### **11.1 Appointment by Directors**

The Directors shall appoint at least 1 Secretary of the Company and may at any time terminate any such appointment(s).

### **11.2 Terms of office**

A Secretary of the Company holds office on such terms and conditions, as to remuneration or otherwise, as the Directors determine.

## **12 Seal**

### **12.1 Types of seals**

- (a) The Directors may (but are not obliged to) adopt a common seal of the Company. Where the Company has a common seal, the Company may have a duplicate common seal, which must be a copy of the common seal with the words “duplicate seal”, “share seal” or “certificate seal” added.
- (b) The Directors shall provide for the safe custody of all seals in such manner as they think fit.

### **12.2 Use of seal**

- (a) The seal shall be used only by the authority of the Directors and every document to which the seal is affixed shall be signed by a Director and countersigned by the Secretary or a second Director or by some other person appointed generally or in a particular case by the Directors for that purpose.
- (b) The Directors may determine, generally or in a particular case, that the seal and the signatures of the Director, Secretary or other person appointed by the Directors for the purpose of signing documents to which the seal is affixed, may be affixed or written on documents by a specified mechanical means so as to produce a facsimile of such seal and signatures.

### **12.3 Cheques and negotiable instruments**

All cheques, bills of exchange, promissory notes, bankers drafts and other negotiable instruments and all receipts for money paid to the Company, shall be signed, accepted, drawn, made, endorsed or otherwise executed for and on behalf of the Company by such persons (whether Directors or officers of the

Company or not) in such manner as the Directors shall from time to time determine.

## **13 Application of profits**

### **13.1 Establishment and application of reserves**

Any profits of the Company must be:

- (a) set aside as reserves to be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied; or
- (b) carried forward without being transferred to a reserve.

### **13.2 No dividends**

Neither the Directors nor the Company in general meeting have power to declare dividends.

## **14 Payments of capital**

The Directors may from time to time apply the capital of the Company for any purpose consistent with the Company's objects.

## **15 Accounts and audit**

### **15.1 Requirements as to accounts and audits**

The Directors shall ensure that the requirements of the Corporations Law as to accounts and audit are complied with by the Company.

### **15.2 Auditor**

The auditor of the Company or the auditor's agent authorised in writing for the purpose, is entitled to attend general meetings, to receive all notices of and other communications relating to general meetings which a shareholder is entitled to receive and to be heard at any general meeting which the auditor attends on any part of the business of the meeting which concerns the auditor in that capacity, but does not have the right to vote at general meetings.

### **15.3 Inspection of Company records**

- (a) Subject to the provisions of the Corporations Law, the Directors shall determine whether and to what extent and at what times and places and under what conditions the accounting records and other documents of the Company or any of them will be open to inspection by the shareholders and other persons.
- (b) A shareholder or other person (not being a Director):
  - (i) has no right to inspect any documents of the Company, except as conferred by the Corporations Law or any other statute or except as authorised by the Directors; and



- (ii) is not entitled to require or receive any information concerning the business; trading or customers of the Company or any trade secret or secret process of or used by the Company.

## **16 Notices**

### **16.1 Mode of service**

- (a) Subject to Article 16.4(c), a share certificate, cheque, warrant, notice or other document may be given by the Company to any shareholder either by serving it on the shareholder personally, or by sending it by post or courier to the shareholder at the address shown in the register or the address supplied by the shareholder to the Company for the giving of notices to the shareholder, or where applicable, by sending it to the shareholder by email transmission to the email address supplied by the shareholder to the Company for the giving of notices to the shareholder.
- (b) A notice may be given by the Company to joint holders of a share by giving the notice to the joint holder first named in the register in respect of the share.

### **16.2 Deemed receipt of notice**

- (a) A document sent by way of ordinary post or courier by the Company in accordance with this Article 16 shall be deemed to have been received or served on the day next following that on which it was posted or dispatched and in proving delivery or service, it is sufficient to prove that the envelope or wrapper containing the document was properly addressed and stamped (if posted) and was posted or dispatched.
- (b) A document sent by way of email transmission by the Company in accordance with this Article 16 shall be deemed to be received on the next business day.

### **16.3 Proof of service**

A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was so addressed and stamped (if posted) and was posted or dispatched, or that a document was sent by email transmission and a transmission report was not produced by the machine from which it was sent which indicated that the email was not sent in its entirety, shall be conclusive evidence of those facts.

### **16.4 Notice of general meeting of the Company**

- (a) Subject to Article 16.4(c), notice of every general meeting shall be given in the manner authorised by this Article 16 to:
  - (i) every shareholder;
  - (ii) every person entitled to a share in consequence of the death or bankruptcy of a shareholder who, but for the shareholder's death or bankruptcy, would be entitled to receive notice of meeting; and
  - (iii) the auditor for the time being of the Company.

- (b) No other person is entitled to receive notices of general meetings.
- (c) A shareholder who has no registered address in Australia or who has not supplied to the Company any address or facsimile number within Australia for the giving of notices to the shareholder shall not be entitled to receive any notices from the Company.

### **16.5 Previous notice**

A person who by operation of law, or by transfer or other means becomes entitled to be registered as the holder of or to transfer a share, is bound by every notice previously given in respect of that share.

### **16.6 Notice on transmission**

A notice may be given by the Company to a person entitled to a share in consequence of the death or bankruptcy of a shareholder by serving it on the person personally or by sending it to the person by post, courier, airmail or facsimile transmission addressed to the person by name, or by the title of representative of the deceased or assignee of the bankrupt or by any like description, at the address or facsimile number (if any) within Australia supplied for the purpose by the person or, if such an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred.

## **17 Indemnity**

### **17.1 Definitions**

In this Article 17:

- (a) **Officer** means:
  - (i) a Director, Secretary or executive officer of the Company;
  - (ii) a receiver, or receiver and manager, of property of the Company;
  - (iii) an administrator of the Company or an administrator of a deed of company arrangement executed by the Company;
  - (iv) a liquidator of the Company; and
  - (v) a trustee or other person administering a compromise or arrangement made between the Company and another person or persons;
- (b) References to “Officers” or to “the auditor” include references to former Officers and former auditors.

### **17.2 Indemnity for Officers and auditors**

- (a) Subject to Article 17.2(b), every Officer and auditor of the Company and any employee of the Company shall be indemnified out of the assets of the Company against all costs, losses, expenses and liabilities incurred by that Officer, auditor or employee in-the person’s capacity as an Officer, auditor or employee of the Company by reason of any act or thing done or omitted to be done by that person in that capacity or in any way in the discharge of

that person's duties or by reason of or relating to the person's status as an Officer, auditor or employee of the Company.

- (b) An Officer of the Company is not entitled to be indemnified out of the assets of the Company for a liability which arises out of conduct involving a lack of good faith or where the liability is to the Company or a related body corporate.

### **17.3 Indemnity for proceedings**

Without limiting Article 17.2, every Officer, auditor and employee of the Company shall be indemnified out of the assets of the Company against any liability for costs and expenses incurred by that person:

- (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application in relation to such proceedings in which the Court grants relief to the person under the Corporations Law.

### **17.4 Liability as between Officers**

Subject to the Corporations Law, an Officer is not liable for the acts, deceits, neglects or defaults of any other Officer, or for joining in any receipt or other act for conformity, unless arising from the Officer's own negligence, default, breach of duty or breach of trust of which the Officer may be guilty in relation to the Company.

### **17.5 Reimbursement of expenses**

Every Officer is entitled to have reimbursed to the Officer out of the funds of the Company all expenses which the Officer may from time to time incur in consequence of and in discharge or attempted discharge of the Officer's duties and shall be indemnified by the Company against all liabilities whatsoever which the Officer may from time to time undertake as agent for the Company or for its benefit or intended benefit.

## **18 Subscribers**

We, the Subscribers to the Memorandum of Association of the Company hereby agree to the foregoing provisions as prescribing the Articles of Association of the Company.

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Name	Signature of Witness Attesting to Subscriber's Signature	Full Name and Address of Witness
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COMPANIES (QUEENSLAND) CODE

A COMPANY LIMITED BY SHARES

MEMORANDUM OF ASSOCIATION

OF

MINEOI PTY. LTD.



1. The name of the Company is MINEOI PTY. LTD.
2. The amount of the share capital of the Company is ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) divided into One Hundred Thousand (100,000) Shares of ONE DOLLAR (\$1.00) each.
3. The liability of the members is limited.
4. The full names, addresses and occupations of the subscribers to the Company are:-

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1. Name: ROGER ALAN NORTH  
Address: 3 Rex Street,  
Aspley, Brisbane  
Occupation: Solicitor

2. Name: JOHN DOUGLAS STORY  
Address: 67 Tenth Avenue,  
St. Lucia, Brisbane  
Occupation: Solicitor

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5. We, the said Subscribers, are desirous of being formed into a Company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the capital of the Company set out opposite our respective names.

NAME	NUMBER OF SHARES TAKEN BY EACH SUBSCRIBER
<i>[Signature]</i> ROGER ALAN NORTH	<i>one (1) subscriber share</i> One (1) Subscriber Share
<i>[Signature]</i> JOHN DOUGLAS STORY	<i>one (1) subscriber share</i> One (1) Subscriber Share

DATED this *twenty-first* day of *May* 1987.

Signature of witness attesting to the above Signatures:

*J E Stewart*

Full Name and Address of Witness

GUSAN ELIZABETH STEWART  
65 SOMERS ROAD  
BUNDALAH BRISBANE.