

# CONSTITUTION OF CAPRICORN MUTUAL LIMITED

The Constitution dated 15 November 2012 issued by Capricorn Mutual Limited

ABN 24 104 601 194

AFS Licensee No 230038

28 Troode St West Perth WA 6005

Australia: 1800 007 022

New Zealand: 0800 555 303

Amended by special resolution on 21 October 2021

## **DEFINITION AND INTERPRETATION**

1. The Company is a public company limited by guarantee.
2. In this Constitution the following words and phrases (unless the context otherwise requires) have the following meaning:

"Act" means the Corporations Act 2001 (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

"Board" means the Board of Directors of the Company.

"Capricorn Society" means Capricorn Society Limited (ACN 008 347 313).

"Company" means Capricorn Mutual Limited (ACN 104 601 194).

"Contributions" means any money payable to the Company for Protections, in accordance with the Rules.

"Constitution" means this Constitution as amended from time to time.

"Direct Vote" means a vote delivered to the Company following a determination of the Directors under clauses 35A(a) to 35A(j) inclusive and in accordance with those clauses (including any regulations made under clause 35A(b) by the Directors."

"Director" means a duly appointed director of the Company. "Independent Director" means a Director who:

- a) is not a Director of Capricorn Society;
- b) is not formally affiliated or associated with any Member; and
- c) does not have any relationship with the Company or any other person that could, in the opinion of the elected Directors, materially interfere with:
  - i. the exercise of objective, unfettered and independent judgement by the person; or
  - ii. the person's ability to act in the best interests of the Company.

"Liquidation Proportion" means in relation to each eligible Member a fraction calculated by:

- a) the numerator, which is the sum of aggregated Subscriptions paid by that Member for the Financial Year (as defined in the Rules) in which a winding up is commenced and (to the extent applicable) for the four preceding Financial Years; and
- b) the denominator, which is the sum of all eligible Members Subscriptions for the Financial Year in which a winding up is commenced and (to the extent applicable) for the four preceding Financial Years.

"MCI" (short for mutual capital instrument) has the meaning given in the Act.

"MCI Holder" means a person who holds an MCI.

"Member" means a person, corporation, organisation or entity that has been recognised by the Directors of the Company as a member of the Company.

"Member's Representatives" means the individual(s), corporation, organisation and/or entity nominated by a Member and accepted by the Company to exercise the privileges of a Member on the Member's behalf in relation only to Protections held by the Member.

"Officer" has the meaning given in the Act.

"Period of Protection" means the term of the Protection issued to the Member, including such period as specified in any schedule of protection that may be issued.

"Protection" means the membership benefits for protection, provided on a discretionary basis, against personal and business risks which are offered to Members by the Company.

"Register" means the register of Members of the Company.

"the Rules" means the rules issued in accordance with clause 76 of the Constitution.

"Seal" means the Company's common seal.

"Secretary" means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of those joint secretaries.

"Subscription" means the annual membership fee determined in accordance with clause 15.

"Subsidiary" has the meaning given in the Act.

"Trading Account" means an account of that name established by Capricorn Society in the name of a person or persons.

3. In this Constitution, except where the context otherwise requires:
  - a) words or expressions defined in the Rules shall have their defined meaning;
  - b) expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, typewriting, lithography, facsimile, e-mail, photography and any other mode of representing or reproducing words in the visible form;
  - c) powers of delegation shall not be restrictively construed but the widest interpretation shall be given;
  - d) the word "Directors" and "Board" in the context of the exercise of any power contained in this Constitution includes any committee consisting of one or more Directors, any Director holding executive office and any other Officer or agent of the Company to which or, as the case may be, to whom the power in question has been delegated;
  - e) except where expressly provided by the terms of delegation, the delegation of a power shall not exclude the concurrent exercise of that power by any other body or person who is for the time being authorised to exercise it under this Constitution or under another delegation of the power;
  - f) words importing persons shall include individuals, partnerships, corporations and mutuals; and
  - g) the singular includes the plural and vice versa, and a gender includes other genders.
4. To the extent permitted by law, the replaceable rules contained in the Act do not apply to the Company.

## **OBJECTS**

5. The objects for which the Company has been established are:
  - a) to receive Subscriptions for membership;
  - b) to receive Contributions from Members;
  - c) to pay claims relating to certain liabilities, losses or expenses incurred by Members on a discretionary basis in accordance with the Rules;
  - d) to establish a wholly owned provider of discretionary protection in Australia or elsewhere in the world to provide discretionary protection to the Company and enter into or arrange discretionary protection, insurance or reinsurance contracts as deemed necessary from time to time and to negotiate directly or indirectly with the provider of discretionary protection or insurance market cover for any risk for the benefit of the Company;

- e) to establish a wholly owned subsidiary insurance company or companies in New Zealand or elsewhere, which subsidiary shall insure the risks of the provider of discretionary protection to the Company and the Members;
- f) to invest and deal with the monies of the Company which monies are not immediately required for the purposes of its business in or upon such stocks, shares, bonds, debentures, derivatives, futures, options, swaps, or other securities or the purchase of such currencies, commodities or other real or personal property, or by means of being deposited in accounts and in such manner as may from time to time be determined;
- g) to borrow and raise money and to give any guarantee for payment of money or the performance of any contractual obligation or undertaking by any person, company or government body and to secure any such guarantee by mortgaging or charging any real or personal property or any other asset of the Company;
- h) to pay all outgoings, costs, charges, losses and expenses incurred in or incidental to the promotion and establishment of the Company or the activities of the Company;
- i) to appoint or employ any person to act as agent, representative, manager, adviser, consultant or otherwise on behalf of the Company in relation to any of the activities or proposed activities of the Company and if the Board so determines, to employ directly any person or persons on such terms as the Board may specify;
- j) to open and operate any account or accounts with any bank or building society, to advance, lend or deposit money or give credit to or with any company on such terms as may be thought fit and with or without security;
- k) to permit any asset of the Company to be held or registered in the name of any nominee of the Company and to deposit securities or other investments belonging to or relating to the Company with any bank, building society or custodian;
- l) 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;
- m) to enter into any partnership or arrangement in the nature of a partnership, joint venture, co-operation or union of interests, profit/loss-sharing arrangement or other association or relationship, with any person or company engaged or interested in or who or which may become engaged or interested in the carrying on or conduct of any business which the Company is authorised to carry on or conduct or from which the Company would or might derive any benefit whether direct or indirect, and to take or otherwise acquire shares and securities in or of any such company (whether fully or not fully paid up or with limited or unlimited liability) and to sell, hold, re-issue with or without guarantee or otherwise deal with the same;
- n) to establish or promote, or join in the establishment or promotion of, any other company in any part of the world whose objects shall include the taking over of any of the assets or liabilities of the Company or the promotion of which shall or may be calculated to advance its interests, and to acquire, hold, sell or otherwise deal with any shares, securities or obligations of any such company;
- o) to amalgamate with any other company with similar objects;
- p) to enter into any arrangement with any government or authority, municipal, local or otherwise, that may seem conducive to the Company's objects or any of them and to obtain from any such government or authority any rights, privileges or concessions which the Company may think it is desirable to obtain, and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions and further to support or oppose any proposal made by any person or by any body of persons to secure changes in the law affecting the Company or the business of the Company or any of its rights, privileges or concessions and to subscribe to any fund that may be raised or utilised for the purpose of or in connection with the support of, or opposition to, any such proposal;

- q) to acquire or undertake the whole or any part of the business, goodwill and assets of any person or company carrying on or proposing to carry on any of the businesses which the Company is authorised to carry on and in connection with any such acquisitions to undertake all or any of the liabilities of such person or company and to conduct or carry on such business;
- r) to sell or dispose of the undertaking, property and assets of the Company or any part thereof in such manner and for such consideration as the Board may think fit, and in particular for shares (fully or partly paid up) securities or obligations of any other company whether promoted by the Company for the purpose or not and to improve, manage, develop, exchange, lease, dispose of or otherwise deal with all or any part of the property and assets of the Company;
- s) to cause the Company or any of its subsidiaries to be recognised in any foreign country;
- t) to join, co-operate with or become a member of any society, committee, association or other body or group howsoever constituted having for its object or included in its objects the defence or advancement of the interests of the Members, and staff by joint or concerted action, and to support and contribute to the funds of any such society, committee, association or other body or group and generally to make such charitable, philanthropic, useful or other donations or subscriptions to any persons or associations or objects as the Board may think fit;
- u) to do all or any of the above things in any part of the world and either as principal, agents, trustees or otherwise, and either alone or in conjunction with another or others, and by or through agents, sub- contractors, trustees or otherwise; and
- v) to do all such things as are, in the opinion of the Board incidental or conducive to the attainment of the above objects or any of them and as are permitted by law for a company limited by guarantee and with no share capital (and for an MCI mutual entity, within the meaning of the Act, if the Company issues MCIs in accordance with this Constitution).

The objects of the Company as specified in sub-clauses a). to e). above are to be construed as the main objects of the Company and the powers conferred on the Company by any of the sub-clauses f). to v). are to be restricted by reference to or inference from the terms of the main objects of the Company.

- 6. For the sole purpose of carrying out the objects and in addition to the powers set out in clause 5 the Company has the power and capacity to do all such acts, deeds and things as a company has capacity and power to do pursuant to the Act including, but not limited to all such other things that are incidental or conducive to the attainment of the objects.

## **BUSINESS**

- 7. The business of the Company is to be conducted under the control of the Board according to the terms of this Constitution and the Rules.

## **MEMBERSHIP**

- 8. The number of Members of the Company is unlimited.
- 9. The following persons will be Members:
  - a) Capricorn Society;
  - b) any of:
    - i. a Subsidiary of Capricorn Society;
    - ii. a person who is a shareholder of Capricorn Society;
    - iii. a person who holds a Trading Account;
    - iv. a person with an association with a person in (i) – (iii) that is approved by the Board, in its complete discretion; or
    - v. the initial Members in the application for registration of the Company; provided in each case that the person:
    - vi. has been accepted by the Board as a member in accordance with clause 13;

- vii. pays the relevant Subscription; and
  - viii. pays the relevant Contributions and holds a Protection.
10. Other than in accordance with clause 9, no other person, corporation, organisation or entity is eligible for membership of the Company.
  11. Capricorn Society shall notify the Company in writing, in such form as may be required by the Board, details of all persons and entities which Capricorn Society considers are eligible for membership.
  12. Membership is not transferable, assignable or subject to novation.
  13. At the next meeting of the Board after receipt by the Company of any application for membership from a person described in clause 9 (b)(iv), the application and any decision to admit or reject an applicant to membership of the Company under delegated authority will be considered by the Board. The Board shall determine whether the application is accepted or rejected, or otherwise determine whether decision to admit or reject the applicant under delegated authority is ratified. If the Board is satisfied that an applicant is eligible for membership it may, in its sole discretion, subject to clause 14, admit the applicant to membership or ratify any delegated authority to admit the applicant to membership. In no case shall the Board be required to give any reason for the rejection or admission of an applicant.
  14. When an applicant has been accepted for membership the Company will send to the applicant written notice of the acceptance and a request for payment of all applicable Subscriptions and Contributions. Upon payment of all Subscriptions the applicant will become a Member of the Company. If such payments are not received within two (2) calendar months after the date of the notice, the Board may in its discretion cancel its acceptance of the applicant for membership of the Company.
  15. The annual Subscription payable by Members of the Company will be the amount determined by the Company in general meeting. Until the Company shall otherwise resolve, the annual Subscription is ten dollars (\$10.00).
  16. All Subscriptions become payable as a consequence of membership of the Company and are due and payable at such time or times determined by the Board.
  17. A Member may, by notice in writing to the Company, nominate a party as the Member's Representative to exercise the privileges of membership of the Company in relation only to Protections held by the Member. The Board may, in its sole discretion:
    - a) accept or reject the nominated party as the Member's Representative;
    - b) accept or reject any Protection sought by the Member's Representative on behalf of the Member; or
    - c) determine any other obligations or conditions in relation to any Contributions required in respect of any Protection sought by the Member's Representative on behalf of the Member.

## **CESSATION OF MEMBERSHIP**

18. If the Subscription of a Member remains unpaid for a period of two (2) calendar months after it becomes due, the Member may, after being notified of the default, be removed as a Member by resolution of the Board from all privileges of membership and the Member's name removed from the Register of Members. The Board in its discretion may reinstate the Member and restore the Member's name to the Register on payment of all arrears, interest and costs. A Member may at any time by giving notice in writing to the Company resign their membership of the Company.
19. A Member shall continue to be liable for any unpaid Subscriptions or Contributions and all arrears, interest and costs due and unpaid at the date of the Member ceasing to be registered as a Member and for all other monies due by them to the Company and in addition to any sum for which the Member is liable as a Member of the Company under clause 24 of the Constitution. No Member is entitled to any refund (or part refund) of any Subscriptions.
20. If any Member wilfully refuses or neglects to comply with the provisions of the Constitution or is guilty of any conduct which, in the opinion of the Board is unbecoming of a Member or prejudicial to



the interests of the Company, the Board has the power to expel the Member from the Company and remove the Member's name from the Register of Members provided that at least one week before the meeting of the Board at which a resolution for the Member's removal is proposed, the Member is notified of the meeting and is afforded opportunity of providing in writing such explanation or defence the Member may think fit.

21. A Member's membership of the Company will cease immediately, without any further notice being required to be given by the Company, upon:
- a) the end of the Period of Protection of the last Protection held, but if within six months of this date the person is issued with a new Protection, the Member will be taken to have been a Member during the period in which a Protection was not held, provided that any Subscription that would be payable during the period is paid;
  - b) where the Member is not an individual, if:
    - i. a liquidator is appointed in connection with the winding-up of the Member; or
    - ii. an order is made by a Court for the winding-up or deregistration of the Member; or
  - c) where the Member is an individual, if the Member:
    - i. is declared bankrupt or insolvent;
    - ii. dies; or
    - iii. becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health.

## **INCOME AND PROPERTY**

22. Subject to clause 94, the income and property of the Company must be applied solely towards the promotion of the objects of the Company as set out in this Constitution, and no portion of it shall be paid, assigned or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit to the Members, other than in accordance with this Constitution and the Rules.

## **MEMBER'S LIABILITY**

23. The liability of each Member is limited.

24. Every Member undertakes to contribute to the property of the Company in the event of the same being wound up whilst a Member, or within one (1) year after ceasing to be a Member, for payment of the debts and liabilities of the Company contracted before ceasing to be a Member, and of the costs, charges, and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding one dollar (\$1.00).

## **GENERAL MEETINGS**

25. The Company must hold an annual general meeting in accordance with the provisions of the Act.

26. Any three Directors, may at any time, call a general meeting.

27. A general meeting may be convened on requisition provided for by the Act or in default may be convened by such requisitionists as empowered to do so by the Act.

28. Subject to the provisions of the Act allowing general meetings to be held with shorter notice, at least twenty one (21) days' notice (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) must be given to parties entitled to receive notice of general meeting, specifying:

- a) the place, the date and the hour of meeting;
- b) the general nature of the business of the meeting and if a special resolution is to be proposed, specific details of the resolution;
- c) contact details of the Company for the purposes of proxy appointment; and
- d) any other matters as are required by the Act.

29. The failure or accidental omission to send a notice of a general meeting (including proxy appointment) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

## **PROCEEDINGS AT GENERAL MEETINGS**

30. No business shall be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.

31. Three Members present constitutes a quorum, however if there are fewer than three members, a quorum will be constituted once CSL is represented at the meeting.

32. If quorum is not present within half an hour from the time appointed for the meeting to commence, the meeting will be adjourned at the same time and place one week later, or to such other day and at such other time and place as the Board may determine. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the meeting is dismissed.

33. The chairman shall preside at every general meeting of the Company, or in the chairman's absence, the vice-chairman shall be the chairman. If the chairman or vice-chairman is not present or is unwilling to act then the Members present shall elect one of their number to be chairman of the meeting.

34. The chairman may, with the consent of the Members in meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

35. Voting:

a) At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands of Members entitled to vote, who are present in person or by proxy, unless a poll is demanded:

- i. by the chairman; or
- ii. by at least (3) Members present in person or by proxy.

b) A poll may be demanded;

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

c) Unless a poll is so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect being made in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

d) The demand for a poll may be withdrawn.

e) Before a vote is taken the chairman must inform the meeting whether any proxy votes have been received and how the proxy votes are cast.

f) If a poll is duly demanded it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a chairman or on a question of adjournment shall be taken immediately.

35A. Direct Voting

### **Board may determine Direct Voting to apply**

a) The Directors may determine that Members eligible to vote on:



- i. any or all of the resolutions (including any special resolution) proposed to be considered at, and specified in a notice convening, a meeting of Members; or
- ii. an election of a Director,

may cast votes to which they are entitled by Direct Vote.

- b) If the Directors determine that votes may be cast by Direct Vote, the Directors may make such regulations as the Directors consider appropriate for the casting of Direct Votes, including regulations for:
  - i. the form, method and manner of voting by Direct Vote; and
  - ii. the time by which the votes of members to be cast by Direct Vote must be received by the Company in order to be effective (which must be no later than the time appointed for closure of postal voting as stated in the ballot paper, the commencement of the meeting or, in the case of an adjournment, the resumption of the meeting, as applicable).

#### **Direct Votes count on a poll or postal ballot**

- c) Subject to clauses 35A g), 35A h) and 35A i), Direct Votes are counted if a resolution considered at a meeting of Members is decided on a show of hands.
- d) Subject to clauses 35A g), 35A h) and 35A i), if a poll is held on a resolution, votes cast by Direct Vote by a Member entitled to vote on the resolution are taken to have been cast on the poll as if the Member had cast the votes in the poll at the meeting, and the votes of the Member are to be counted accordingly.
- e) A Direct Vote received by the Company on a resolution is taken to be a Direct Vote on that resolution as amended, if the chairperson of the meeting determines that this is appropriate.
- f) Receipt of a Direct Vote from a Member on a resolution to be considered at a meeting of Members has the effect of revoking (or in the case of a standing appointment, suspending) the appointment of a proxy, attorney or representative made by the Member under an instrument received by the Company before the Direct Vote was received.

#### **Withdrawal of Direct Vote**

- g) A Direct Vote received by the Company may be withdrawn by the Member by notice in writing received by the Company before the appointed time by which Direct Votes must be received in order to be effective. A Direct Vote withdrawn under this clause is not counted.
- h) A Direct Vote received by the Company in respect of a resolution to be considered at a meeting of Members is automatically withdrawn (and is not counted) if:
  - i. the Member attends the meeting in person (including, in the case of a Member that is a body corporate, attendance by that body corporate's representative);
  - ii. the Company receives from the Member a further effective Direct Vote or Direct Votes (in which case the most recent effective Direct Vote is, subject to the provisions of this clause 35A, counted in lieu of the prior Direct Vote); or
  - iii. the Company receives, after the Member's Direct Vote is received, a valid instrument under which a proxy, attorney or representative is appointed to act for the Member at the meeting.

#### **Vote not affected by death, etc. of Member**

- i. A Direct Vote received by the Company is valid even if, before the meeting, the Member:
  - i. dies or becomes incapacitated;
  - ii. becomes bankrupt or an insolvent under administration or is wound up; or
  - iii. where the Direct Vote is cast on behalf of the Member by an attorney, revokes the appointment of the attorney or the authority under which the appointment was made by a third party,

unless the Company has received written notice of the matter before the appointed time by which Direct Votes must be received in order to be effective.

### **Chairman's decision**

j) The chairman's decision as to whether a Direct Vote is valid is conclusive.

36. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting is entitled to a second or casting vote.
37. A Member may vote in person or by proxy and on a show of hands every person present who is a Member or a representative of the Member shall have one vote and on a poll every person present in person or by proxy shall have one vote.
38. A Member may appoint a person as their proxy to attend and vote instead of the Member. A document appointing a proxy must be in writing, in any form permitted by the Act and signed by the Member making the appointment. Except as expressly provided by the terms of their appointment, a person attending as a proxy or as representing a body corporate which is a Member has all the powers of the Member (and in the case of a proxy, that the proxy represents), except where expressly stated to the contrary in this document.
39. The instrument appointing a proxy and the power of attorney or other authority if any, under which it is signed or a notarially certified copy of that power or authority must be deposited at the registered office of the Company or at such other place as specified in the notice convening the meeting not less than forty eight (48) hours before the time for holding the meeting or adjourned meeting.
40. No Member shall be entitled to vote at any general meeting if any amount of the Member's Subscription or any Contributions are more than one (1) month in arrears at the date of the meeting.

### **BOARD OF DIRECTORS**

41. The Board shall consist of a maximum of eleven (11) Directors and a minimum of three (3) Directors and may include up to three (3) Independent Directors.
42. The Directors may, at any time and from time to time, appoint any person as a Director, either to fill a casual vacancy or as an addition to the Board, but so that the total number of Directors shall not at any time exceed the maximum number for the time being fixed. Any Director appointed under this clause must retire from office at the next annual general meeting following his or her appointment and is eligible for re-election or re-appointment.
43. The majority of Directors at all times must be Directors of Capricorn Society nominated by Capricorn Society and subject to clause 46, up to eight (8) Directors may be nominated by the Board of Capricorn Society.
44. Provided the majority of the Directors of the Company at the material time are directors of Capricorn Society nominated by Capricorn Society and not otherwise, then Capricorn Society's power of nomination under this clause is limited to being in respect of the vacancies (if any) on the Board as determined by reference to the maximum number of Directors permitted under this Constitution and the number of Directors of the Company holding office at such time.
45. Each Director that is a director of Capricorn Society must remain, whilst holding office as a Director of the Company, a director of Capricorn Society.
46. The Directors may appoint to the Board up to three (3) person(s) which they consider have special skills to fill the role of Independent Director for a maximum term of three (3) years. Subject to clause 54, the Directors may set the remuneration and allowances to be paid to the Independent Director(s) for services as a Director.
47. An Independent Director is, subject to clause 48, a Director of the Company for the period of his or her appointment.

48. Despite the term of appointment which may be fixed under clause 47:
- a. the appointed Independent Director(s) must retire and seek re-election by the Members of the Company at the next general meeting after the initial appointment of the Independent Director; and
  - b. the Members of the Company may, by ordinary resolution at a general meeting, terminate the appointment of an Independent Director, in accordance with clause 53.
49. At every annual general meeting one-third of the Directors, excluding the Independent Director(s), are subject to retirement by rotation or, if their number is not three or a multiple of three, the number nearest to one-third (by rounding down) shall retire from office and if only one Director is subject to retirement by rotation, he or she shall retire.
50. The Directors (excluding the Independent Director(s)) to retire by rotation on each occasion shall be those who have been longest in office since their last appointment, election or re-election, but as between persons who became or were last appointed, elected or re-elected Directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.
51. Retiring Directors are eligible for re-election.
52. A retiring Director shall retain office until the conclusion of the meeting at which that Director retires.
53. The Company may by ordinary resolution remove any Director from office. A resolution in accordance with this clause must have been proposed in writing, delivered to the Company at least twenty-eight  
(28) days prior to the general meeting and distributed to Members at least twenty-one (21) days prior to the general meeting at which such a resolution is to be considered.
54. The annual maximum remuneration pool of funds available to be paid to the Directors (if any) will be determined by the Members in general meeting.
55. The Directors may be paid by way of fees for their services, if any, up to the maximum amount of funds set by Members in accordance with clause 54, determined from time to time by the Board.
56. The Directors may be paid all reasonable travelling, hotel and other expenses properly incurred and accounted for by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Company or in connection with the business of the Company.
57. 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 the Director's ordinary duties may be paid additional fees for those services, exertions or work either by fixed sum or salary determined by the Directors. Such additional fees shall not be paid from the annual maximum remuneration pool of funds determined by the Members under clause 54.
58. The office of Director shall become vacant if the Director:
- a) ceases to be a Director by virtue of the Act;
  - b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in anyway under the law relating to mental health;
  - c) excluding any Independent Director(s), ceases to be a director of Capricorn Society;
  - d) resigns his or her office by notice in writing to the Company;
  - e) is removed from office pursuant to this Constitution;
  - f) excluding any Independent Director(s), ceases to be a director or owner of a Member; or
  - g) has absented himself or herself (such absence not being absence with leave or by arrangements with the Directors on the affairs of the Company) from three (3) consecutive meetings of the Directors and the Directors resolve that his or her office should be vacated.
59. Subject to a Director disclosing his or her interest in accordance with the Act, a Director is not disqualified by his or her office from:
- a) entering into any contract, agreement or arrangement with the Company;
  - b) holding an office of profit under the Company;

- c) becoming or remaining a Director of any corporation in which the Company is in any way interested or which is in any way interested in the Company;
- d) attending and voting at any meeting of the Directors in respect of any contract, agreement arrangement matter or thing in which he or she is interested (other than matters in which he or she has a material personal interest); or
- e) attending and voting at any meeting of the Directors in respect of proposed amendments to the Rules or other matters which affect all Members equally.

For the avoidance of doubt, a Director is not entitled to attend and vote at any meeting of the Directors during which any contract, agreement arrangement matter or thing in which he or she has a material personal interest (including any claim made pursuant to the Rules by a Member with whom the Director is associated) is being discussed.

A contract, agreement or arrangement entered into by or on behalf of the Company in which any Director is in any way interested is not for that reason void or voidable and a Director shall not be liable to account to the Company for any profits accruing to him or her.

## **CHAIRMAN**

- a) The Directors must appoint a Director as chairman of the Company and may appoint an Independent Director as chairman of the Company.
- b) In addition, the Directors may elect one of their number as vice-chairman of the Company and may determine the period for which the vice-chairman is to hold office. The vice-chairman is, in the chairman's absence, entitled to exercise any of the powers and obliged to carry out any of the obligations of the chairman which are granted to, or imposed upon, the chairman pursuant to this Constitution.

## **POWERS AND DUTIES OF DIRECTORS**

- 62. The business of the Company will be managed by, or under the direction of the Directors who may exercise all of the powers of the Company which are not by the Act or by this Constitution required to be exercised by the Company in general meeting. The Board shall, in accordance with the Rules, determine the Contributions to be paid in respect of each Financial Year (as defined in the Rules). The Contributions and Subscriptions shall constitute the funds of the Company. The Board or its delegates shall consider each claim made by a Member under the Rules and may, in its sole and absolute discretion and in accordance with the Rules, pay from the funds of the Company to any such Member an amount equal to some or all of the claim made by the Member. For the avoidance of doubt, nothing in this Constitution shall be interpreted as the Company providing an indemnity to any person or entity in exchange for that person or entity paying a Subscription and/or Contribution to the Company.
- 63. The Directors may meet together for the despatch of business, and may adjourn and otherwise regulate their meetings as they think fit. Three (3) Directors may at any time request a meeting of the Directors to be called by the Secretary.
- 64. Providing always that the majority of Directors present are also directors of Capricorn Society, three (3) Directors, at least one (1) of whom must be an ~~and at least one (1)~~ Independent Director (if any are appointed), form a quorum for a meeting of Directors.
- 65. A meeting of Directors may be held by telephone or teleconference or in any other way that the Directors think fit.
- 66. Questions arising at a meeting of the Directors shall be decided by a majority of votes of Directors present and voting and any such decision shall for all purposes be deemed a decision of the Directors, and on any equality of votes the chairman of the meeting, in addition to his or her deliberate vote (if any), has a casting vote.

67. In the event of a vacancy or vacancies in the office of a Director or offices of Directors the remaining Directors may act, but if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum or for convening a general meeting of the Company.
68. The Directors may delegate any of their powers to a committee or committees consisting of the Directors and any other person, and any power so exercised shall be deemed to have been exercised by the Directors.
69. A committee shall exercise the powers delegated to it in accordance with any directions of the Directors and any power so exercised shall be deemed to have been exercised by the Directors.
70. The proceedings of any committees shall be conducted in the same manner as meetings of the Directors.
71. The Directors may pass a resolution without a Director's meeting being held if a majority of all Directors 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. The resolution is passed when the majority of Directors have signed. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
72. All acts done by any meeting of the Directors or of a committee of Directors or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be Director or a member of a committee or to act as a Director or that a person so appointed was disqualified, is valid as if the person had been duly appointed and was qualified, to be a Director or be a member of the committee.
73. The Directors shall cause minutes to be made of all proceedings of general meetings of the Company, of meetings of the Directors and of any committees of the Board and of all appointments of Officers made by the Directors. Any such minute, if signed by the chairman of the meeting at which the proceedings were held or by the chairman of the next succeeding meeting, shall be evidence of the proceedings.
74. The Directors may appoint other Officers, employees and professionals to provide for the management and transaction of all aspects of the business of the Company on such terms and subject to any conditions determined by the Board. The Directors may delegate any of their powers under this Constitution or the Rules and may withdraw such delegated powers at any time.
75. The Directors shall make Rules from time to time prescribing:
- a. the form of application for admission to membership of the Company;
  - b. the nature and extent of the discretionary cover provided by the Company to Members and any exclusions from cover provided that all such cover shall be available on a discretionary basis only, such discretion to be exercised by the Directors or any other person to whom they delegate such discretion;
  - c. the basis upon which claims from eligible persons shall be considered by the Directors;
  - d. the amounts of Contributions to the Company to be paid from time to time;
  - e. the obligations of the Company and the Members in respect of their claims; and
  - f. such other matters incidental to the activities of the Company as the Directors think fit and the Directors may alter the Rules from time to time as they consider appropriate.

## **SECRETARY**

76. The Secretary, subject to the Act, will be appointed by the Board for such term, at such remuneration and upon such conditions as the Board determines and any Secretary so appointed may be removed by the Board.



## **COMMON SEAL**

77. The Board may provide for the safe custody of the Seal. The Seal shall only be used by the authority of the Board, or of a committee of the Board authorised by the members of the Board to authorise the use of the Seal. Every document to which the Seal is affixed shall be signed by a Director and countersigned by another Director, the Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.
78. The Company may execute a document without using the Seal if the document is signed by two Directors or a Director and the Secretary.

## **ACCOUNTS AND AUDIT**

79. The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Act.
80. The Board shall from time to time in accordance with the Act cause to be prepared and to be laid before the Company in general meeting such income and expenditure accounts, profit and loss accounts, balance sheets and reports as are specified in the Act. A copy of every balance sheet including every document required by the Act to be provided to Members in general meeting, together with a copy of the Auditor's report, shall at least twenty-one (21) days before the date of the meeting be sent by post or email to every Member. The Board shall from time to time determine whether and to what extent and at which times and places and under what conditions or regulations the accounting records and other documents of the Company or any of them will be open to the inspection of Members and no Member shall have the right of inspecting any documents of the Company except as provided by law or authorised by the Board or by the Company in general meeting.
81. A properly qualified auditor must be appointed and their duties shall be regulated in accordance with the Act.

## **WINDING UP**

82. In the event of the winding up of the Company, its remaining assets, including any payments to MCI Holders, will, after its liabilities (including, but not limited to, any and all subordinated debt) have been satisfied, be distributed by reference to the Liquidation Proportion of each eligible Member.
83. For the purposes of winding up, a Member is an eligible Member and entitled to participate in a distribution pursuant to clause 85 if it was a Member during the last Financial Year of the Company and the Member's Contributions are paid. For the avoidance of doubt, any amounts owing to the Company (including, but not limited to, Contributions) by a Member shall be set off against any distribution made to that Member pursuant to this clause 84.

## **NOTICES**

84. Notice may be given by the Company to any Member under this Constitution:
- by serving it on the Member; or
  - by sending it by post, facsimile transmission or electronic notification to the Member at the Member's address shown in the Register or the address or other contact details supplied by the Member to the Company for sending notices to the Member.
85. Any notice to any Member is deemed to have been served if directed to the address or other contact detail of the Member given in the Register or advised by the Member to the Company from time to time, and its non-receipt by the Member shall in no way invalidate or affect any matter or proceeding to which it relates.
86. Notice of every general meeting must be given to:
- every Member entitled to vote at the meeting;
  - the Auditor of the Company;



- c) every Director of the Company; and
- d) the Managers of the Company.

No other person is entitled to receive notices of general meetings.

## **INDEMNITY AND INSURANCE**

87. To the extent permitted by law and subject to the restrictions in section 199A of the Act the Company indemnifies every person who is or has been an Officer of the Company against:
- a) any liability (other than for legal costs) incurred by that person as an Officer of the Company (including liabilities incurred by the Officer as an Officer of a subsidiary of the Company where the Company requested the Officer to accept that appointment); or
  - b) reasonable legal costs incurred in defending an action for a liability incurred by that person as an Officer of the Company (including legal costs incurred by the Officer as an Officer of a subsidiary of the Company where the Company requested the Officer to accept that appointment).
88. The amount of any indemnity payable under clause 92 will include an additional amount ('GST Amount') equal to any GST payable by the Officer being indemnified ('Indemnified Officer') in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.
89. The Company may enter into a deed with any Officer or any other person to give effect to the rights conferred by clause 88 on terms the Directors think fit provided they are consistent with clause 88.
90. The Directors may exercise all the powers of the Company to purchase and maintain for any Officer or any other person, insurance against any liability for negligence, default, breach of duty or breach of trust or any other liability which may lawfully be insured against.

## **MCI**s

91. The Company is intended to be an MCI mutual entity for the purposes of the Act.
92. Subject to this Constitution and the Act, the Board may issue or allot MCIs (including instruments which are convertible into MCIs) to any person on such terms as the Board may determine. The issue, allotment and transfer of any MCIs (including options over MCIs) must be in accordance with this Constitution.
93. Subject to the Act, the Company may pay a dividend to MCI Holders in accordance with the terms of any issue of MCIs.
94. For the avoidance of doubt, unless expressly stated otherwise in this Constitution:
- a) an MCI Holder is not a Member merely by virtue of holding an MCI;
  - b) an MCI Holder may be (or become) a Member if they are otherwise admitted to membership in accordance with this Constitution;
  - c) an MCI Holder who is also a Member is not deemed to be a Member (and the provisions of this Constitution relating to membership do not apply) in respect of any MCIs held by that person; and
  - d) the creation, 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) does not involve or amount to a demutualisation of the Company.
95. Any MCI issued by the Company must be issued as a fully-paid share and:
- 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);
  - 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;

- 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 specified in the terms of issue not exceeding the issue price of the MCI;
  - d) does not confer on its holder any right to participate in the surplus assets, profit or property of the Company except as set out in this Constitution;
  - 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; and
  - f) may be redeemed on such terms as specified in the terms of issue (if any),
  - g) 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 Act.
96. Subject to this Constitution, the Act and the terms of issue of any MCIs, 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.
97. Subject to this Constitution, the Company may at any time create and issue MCIs ranking equally with, or in priority to, or subordinate to, MCIs already on issue or with different rights to MCIs already on issue.
98. The rights attached to MCIs (or a class of MCIs) may only be varied or cancelled by special resolution of the Company and either:
- 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
  - 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).
99. Subject to this Constitution, the Act and the terms of any MCIs:
- a) for the purpose of any meeting, resolution or consent solely relating to MCI Holders:
    - i. an MCI Holder has one vote for each MCI held in that class; and
    - ii. 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) will apply, so far as they are capable of application and with necessary changes; and
  - b) an MCI Holder has no right to vote at any general meeting of the Company by virtue of being an MCI Holder only.
100. The Company must maintain a register of MCI Holders.
101. Where two or more persons are registered as the holders of an MCI, they are taken to hold the MCI as joint tenants with benefits of survivorship subject to the following provisions:
- a) the Company is not bound to register more than two persons as the holders of an MCI (except in the case of trustees, executors or administrators of a deceased MCI Holder);
  - b) the joint holders are jointly and severally liable for all payments required to be made in respect of the MCI;
  - c) only the person whose name appears first in the register is entitled to receive notices in respect of the MCI; and
  - 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 MCI 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 in the register is entitled alone to vote in respect of the MCI.

102. The Company may treat the registered holder of an MCI as the absolute owner of that MCI and need not:

- a) recognise a person as holding an MCI on trust; or
- b) recognise, or be bound by, any equitable, contingent, future or partial claim to or interest in an MCI by any other person, except an absolute right of ownership in the registered holder,

even if the Company has notice of that trust, claim or interest.

103. Subject to this Constitution, the Act and the terms of any issue of MCIs, an MCI Holder may transfer all or any of their MCIs by an instrument in writing in the form approved by the Board or in such other manner as the Board determines.

104. Subject to the terms of any issue of MCIs and, if the Company participates in any electronic or other system for facilitating the transfer of MCIs, the requirements of the relevant exchange, the Board may, in its sole and absolute discretion, decline to register a transfer of MCIs.

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

106. The Company must retain every instrument of transfer which is registered for the period required by any applicable law.

107. Registration of transfers may be suspended at such time and for such period as the Board may determine from time to time, not exceeding 30 days in any calendar year (or otherwise permitted or required by any applicable law or listing rules).

108. If an MCI Holder dies then, without releasing the estate of the MCI Holder from any liability relating to an MCI, the only persons who the Company will recognise as being entitled to the MCI Holder's interest in those MCIs are:

- a) the legal personal representative of the MCI Holder, in relation to any MCIs held solely; and
- b) the survivor(s), in relation to any MCIs held jointly.

109. If, because of an event described in clause 112, a person becomes entitled to an MCI then, subject to producing evidence required by the Board to prove their entitlement and subject also to completing an instrument in writing in the form approved by the Board or in such other manner as the Board determines, the person may elect:

- a) to be registered as the transferee and holder of the MCI; or
- b) to nominate another person to be registered as the transferee and holder of the MCI.

110. For the purposes of clause 111, the events are:

- a) in the case of an MCI Holder who is an individual, the MCI Holder's death, bankruptcy or mental incapacity, and
- b) in the case of an MCI Holder who is a body corporate, the MCI Holder's dissolution or the succession by another person of the assets and liabilities of the MCI Holder.

111. On receipt of an election that meets the requirements of clause 111, the Board must, subject to any applicable law, register the person as the holder of the MCI. A transfer under this clause is subject to the other requirements that apply to the transfer of an MCI under this Constitution, the Act and the terms of the MCI, so far as they are capable of application and with necessary changes. For the sake of clarity, the Board need not wait until the event described in clause 112 occurs before registering the transfer.

112. If, because of an event described in clause 112, more than one person becomes entitled to an MCI then they will, on registration as holder of the MCI under clause 113, become MCI Holder as joint tenants.

113. A notice may be given to an MCI Holder in any manner permitted by this Constitution, the Act or the terms of the MCI.

114. Subject to this Constitution and the Act, the Board may determine whether and, if so, the terms on which the accounting records and other documents of the Company will be open for inspection by MCI Holders in that capacity. Except as set out in this clause, to the extent required by law or authorised in writing by the Board, an MCI Holder does not have any right to inspect any document of the Company.
115. The Board may do anything it considers necessary or desirable for the Company to participate in any electronic or other system for facilitating the transfer of MCIs or operating the Company's registers that may be owned, operated or sponsored by the Australian Securities Exchange or other body corporate declared by the Board to be the Company's primary securities exchange. For that purpose, the Board may waive or vary any of the requirements of this Constitution relating to the transfer of MCIs and prescribe alternative requirements, to the extent permitted by law.
116. Subject to this Constitution, the Act and the terms of any issue of MCIs, the Company will give preference to the interests of Members over the interests of MCI Holders.

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