

Constitution of Retail Energy Market Company Limited

(ABN 15 103 318 556)

Amendment History

Version No.	Date approved by Members	Author	Comments
1	8 January 2003	Blake Dawson Waldron	Initial version of Constitution
2	15 April 2004	A Panther	Amend clauses 25 and 5 re. winding up
3	7 May 2004	A Panther	Delete cost recovery clauses (clause 20, Schedule 3 and associated definitions); create Associate Member class (clause 7A include definitions & consequential amendments),
4	15 July 2004	A Panther	Insert clause 28; provides that legislation overrides Constitution in case of inconsistency
5	11 November 2004	A Panther	Delete definition of "Authorisation" in Constitution
6	17 May 2005	A Panther	Amend definition of "Member" and cessation thereof
7	15 November 2005	A Panther	Amend aspirant retailer members' rights; drafting corrections
8	14 March 2006	A Panther	Application of RMR to exited members; cessation of membership of exiting retailers; power to revoke membership of certain exited members
9	16 November 2006	A Panther	Amend officer indemnities
10	12 February 2009	S. Thomson, Freehills	Establish REMCo as WA only operating entity.
11	18 December 2009	S Eliot	Amend reference to the Energy Coordination Act 1994 in the definition of "Gas Distribution Licence" and "Gas Trading Licence".

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CONSTITUTION OF RETAIL ENERGY MARKET COMPANY LIMITED

GENERAL

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Constitution the following definitions apply unless the context requires otherwise:

"**Appointing Member**" means the Majority Network Operator or the Majority Retailer, depending on the context.

"**Approved Scheme**" means the Retail Market Rules, and this Constitution that will govern the operations of the Retail Market Administrator, and the Market Participants.

"**Associate**" means, with respect to a Member (First Person), another Member who is a related body corporate of, or who controls, or is controlled by, the First Person.

"**Associate Member**" means any person for the time admitted to the membership of the Company in accordance with Clause 7A.

"**Associate Membership**" has the meaning given in Clause 7A.

"**Calendar Year**" means the period from 1 January to 31 December (both inclusive) in any year.

"**Company**" means Retail Energy Market Company Limited.

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

"**Corporate Representative**" means a representative appointed by a Member in accordance with section 250D of the *Corporations Act* 2001.

"**Defaulting Member**" means any Member who wilfully refuses to comply with the provisions of this Constitution or who is in material breach of the Retail Market Rules.

"**Director**" means any director of the Company for the time being and includes an alternate Director.

"**Directors**" or the "**Board**" means the whole or any number of Directors assembled at a meeting of Directors not being less than a quorum.

"**Eligible**" means, with respect to a person, that the person satisfies the criteria in clause 7.1.

"**Ex-Licensee**" means a person that before 14 March 2006 held a Licence but ceased to do so, or was a Gas Retailer as defined in Clause 7.1 but ceased to be so, before 14 March

2006, whether or not that person is a Member or the person's membership has been revoked under clause 8.6;

"**Financial Year**" means the financial year of the Company, as described in clause 21.3.

"**Founding Members**" means the Members at the date of incorporation of the Company who subscribe to this Constitution.

"**Gas Distribution Licence**" a Distribution Licence issued under Part 3 of the *Energy Coordination Act 1994* of Western Australia.

"**Gas Trading Licence**" a Trading Licence issued under Part 3 of the *Energy Coordination Act 1994* of Western Australia.

"**Government**" means the Government of Western Australia.

"**Independent**" means, with respect to a Director or a nominee for election as a Director at a particular time, that the person is not then a current nor has been within 3 years, an employee or director of any Member nor an adviser or consultant to, nor an employee of or partner in any partnership, firm or company which is an adviser or consultant to any Member unless the person has disclosed his position prior to becoming a Director or where he is a Director discloses any change in his position promptly on such change occurring.

"**Jurisdiction**" means a State or Territory of Australia.

"**Licence**" means a Gas Distribution Licence, or a Gas Trading Licence.

"**Majority Retailer**" means the retailer which meets the market share requirements in clause 11.3(b)(vi)(C), from time to time.

"**Majority Network Operator**" means the network operator which meets the control or ownership requirements in clause 11.3(b)(vi)(A), from time to time.

"**Market Participant**" means a participant in a gas retail market of Western Australia.

"**Market Share**" means, with respect to a Member at a particular time, the percentage of gas delivery point identifiers for which the Member is the current User in Western Australia as compared to the total number of gas delivery point identifiers for all current Users in Western Australia on the last day of a calendar month.

"**Member**" means any person for the time admitted to membership of the Company and includes:

- (a) the Founding Members until their membership of the Company ceases; and
- (b) Associate Members until their Associate Membership of the Company ceases.

"**Network Operator**" means a Member that is the owner of a gas distribution network in Western Australia, including, but not limited to, the Majority Network Operator.

"**Officer**" has the same meaning given in section 9 of the *Corporations Act 2001*.

"**Panel**" means the Independent Compliance Panel constituted under the Retail Market Rules.

"**Permitted Purpose**" means for the purpose of the Company fulfilling the Guiding Principles and Objectives set out in clauses 2.1, 2.2 and 2.3.

"**Register**" means the register of Members kept as required by sections 168 and 169 of the *Corporations Act 2001*.

"**Retail Market Administrator**" means the entity responsible for the administration of the Retail Market Rules.

"**Retail Market Rules**" means the rules, identified as such, as made and amended by the Company from time to time for the operation of Western Australia's retail gas markets.

"**Seal**" means any common seal, or any duplicate common seal of the Company.

"**Secretary**" means any person appointed as a secretary of the Company and, where appropriate, includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

"**Self-Contracting User**" has the meaning given to it in Rule 2 of the Retail Market Rules.

"**User**" means an entity as defined in section 10.8 of the *Gas Pipelines Access (Western Australia) Act 1998*.

"**Year**" means a period of 12 consecutive months.

1.2 Interpretation

In this Constitution, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) the word person includes a firm, body corporate, unincorporated association or authority;
- (e) a reference to writing includes typing, printing, lithography and any other mode of representing or reproducing words or figures in a visible form including words or figures displayed on an electronic screen;
- (f) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(g) terms defined in the *Corporations Act 2001* have the same meaning when used in this Constitution; and

(h) headings are for convenience only and do not affect interpretation.

1.3 **Replaceable Rules**

The replaceable rules contained in the *Corporations Act 2001* do not apply to the Company.

1.4 **Retail Market Rules Definitions**

For the purposes of this Constitution and the Schedules "**delivery point**", "**delivery point identifier**", "**current User**" and "**GDS**" have the meaning given to those terms in the Retail Market Rules.

2. **OBJECTS**

2.1 **Primary Aim**

The primary aim of the Company is to develop and operate cost efficient and effective retail market arrangements for the gas industry, which are fair and equitable, to facilitate competition in the gas retail market within Western Australia.

2.2 **Guiding Principles**

The Company should, in developing and operating the retail market arrangements, act in accordance with the following principles:

- (a) where possible, to seek to minimise the costs of participating in the gas retail market;
- (b) to seek that gas retail market arrangements deliver benefits to gas consumers;
- (c) to facilitate and promote forms of convergence;
- (d) to minimise barriers to entry by new gas retail market participants;
- (e) to ensure fair, reasonable and commercially sustainable cost recovery arrangements;
- (f) to ensure the provision of gas retail market services necessary to meet the needs of the gas retail market;
- (g) to review and enhance services during the operation of the gas retail market arrangements; and
- (h) to consult with Government on the development and operation of the gas retail market arrangements.

2.3 Objectives

Subject to the principles identified in clause 2.2, the Company should, in developing and operating the gas retail market arrangements, act in a manner so as to meet the following objectives:

- (a) to ensure that the gas retail market arrangements:
 - (i) have reasonable flexibility to facilitate and promote forms of convergence and meet the needs of Market Participants;
 - (ii) achieve the best possible price-service mix;
 - (iii) are neutral between the Market Participants and, subject to commercial confidentiality, provide transparent processes; and
 - (iv) operate so as to maintain the commercial confidentiality of the Market Participants;
- (b) to act in the best interests of the gas market, including both Market Participants and consumers;
- (c) to operate in a transparent and accountable manner, subject to protection of commercial confidentiality;
- (d) to be flexible and responsive to the Members;
- (e) to comply with trade practices legislation and other relevant legislation, and all applicable laws; and
- (f) to act in a manner which treats all Members fairly and equitably and does not unfairly discriminate between the interests of Members.

2.4 Future Aims

The Company may consider providing similar services to the retail energy market at which time it will obtain Member approval in accordance with clause 10.8(a)(iv)(B) and any other regulatory approvals that may be required.

3. LEGAL CAPACITY AND POWERS

The Company has all of the powers of a natural person and of a body corporate, including those set out in the *Corporations Act 2001*.

4. LIABILITY OF MEMBERS LIMITED

4.1 Limited by guarantee

The Company is a public company limited by guarantee and the liability of the Members is limited as provided in this Constitution.

4.2 **Limited liability of Members**

Every person who is or has been a Member undertakes that in the event that the Company is wound up during the currency of the person's membership or within one year of the person ceasing to be a Member, they will contribute to the property of the Company for:

- (a) payment of the debts and liabilities of the Company incurred before the person ceased to be a Member;
- (b) the costs, charges and expenses of winding up;
- (c) an adjustment of the right of the contributories among themselves; and
- (d) such other amount as may be required,

up to a maximum amount of one hundred dollars (\$100).

5. **INCOME AND PROPERTY OF THE COMPANY**

5.1 **Application of income and property**

The entire income and property of the Company shall be applied solely towards the promotion of the objects of the Company as set out in clause 2. No part shall be paid or transferred directly or indirectly to Members by way of dividend, bonus or otherwise.

5.2 **Certain payments allowed**

Nothing in clause 5.1 of this Constitution prevents the payment or distribution:

- (a) in good faith of remuneration to any Officers or employees of the Company or to any Member in return for goods supplied or services rendered in the ordinary and usual course of business;
- (b) of interest at prevailing market rates on money borrowed from any Member, or
- (c) made in accordance with clause 25.

6. **MEMBERS OF THE COMPANY**

The Members of the Company shall consist of the Founding Members, being the subscribers to this Constitution, and such other persons who are admitted to membership in accordance with this Constitution from time to time, until their membership of the Company ceases.

7. MEMBERSHIP

7.1 Eligibility

A person, or if more than one person collectively holds a Licence each of those persons collectively, (in either case the "applicant") shall be eligible to be a Member only if the applicant:

- (a) is the holder of a Licence; or
- (b) is lawfully entitled to carry on, or intends to carry on, the business of Gas Retailer;

and

- (c) agrees in writing to become a Member of the Company and to be bound by the Constitution by completing an application for membership in the form prescribed by the Board.

For the purposes of this Clause 7.1, the words "Gas Retailer" mean a person who sells gas that has been transported through a GDS to one or more customer(s).

7.2 Application for membership

The Board must (subject to clause 8.3) accept an application for membership if the applicant is Eligible. If the Board is not satisfied an applicant is Eligible, it may reject or defer consideration of an application by that applicant. If accepted, the applicant is taken to be a Member from the date of acceptance.

7.3 Rights non-transferable

The rights and privileges of a Member are not transferable.

7A ASSOCIATE MEMBERSHIP

7A.1 Eligibility

A person (or if more than one person, each of those persons collectively) shall be eligible to be an Associate Member only if the person:

- (a) is a Self-Contracting User;
- (b) agrees in writing to:
 - (i) become an Associate Member; and
 - (ii) be bound by the Constitution; and
- (c) completes an application for Associate Membership in the form prescribed by the Board.

7A.2 **Application for Associate Membership**

The Board must (subject to clause 8.3) accept an application for Associate Membership if the applicant is a Self-Contracting User. If the Board is not satisfied that an applicant is a Self-Contracting User, it may reject or defer consideration of an application by that applicant. If accepted, the applicant is taken to be an Associate Member from the date of acceptance.

7A.3 **Rights of Associate Member**

An Associate Member has all the rights and privileges of a Member pursuant to this Constitution, subject to the following:

- (a) an Associate Member is not entitled to vote at a general meeting of the Company (subject to the requirements in section 246B of the Corporations Act 2001); and
- (b) an Associate Member does not have a right to nominate a Director.

7A.4 **Rights non-transferable**

The rights and privileges of an Associate Member are not transferable.

8. **CESSATION OF MEMBERSHIP**

8.1 **Resigning as a Member**

Any Member may withdraw from the Company by giving the Secretary not less than one month's notice to that effect and its membership shall cease on expiry of such notice.

8.2 **Automatic cessation**

A person ceases to be a Member:

- (a) if the person was the holder of a Gas Distribution Licence, if that person ceases to hold a Gas Distribution Licence;

or,

- (b) if the person carried on the business of Gas Retailer, if that person ceases, or has ceased, to carry on the business of Gas Retailer.

For the purposes of this Clause 8.2, the words "Gas Retailer" have same the meaning given to them in Clause 7.1.

8.3 **Expelling a Member**

The Directors may pass a resolution recommending the expulsion of a Defaulting Member from the Company. The Directors must, within 21 days of such a resolution being passed, convene a meeting of Members to determine whether or not to adopt the Directors' recommendation and expel the Defaulting Member. Membership ceases on the passing of the Members' resolution. A person expelled in this way, even if otherwise Eligible, may

not become a Member again unless the Members resolve to accept an application from that person.

8.4 Ceasing to be a Member

Any person who ceases to be a Member shall:

- (a) forfeit all and any rights and privileges of membership as at the date of cessation of membership;
- (b) have no further rights against or claims upon the Company or the property or funds of the Company, except rights or claims as a creditor (if any) and any rights or claims arising from actions or omissions during the period of membership;
- (c) continue to be liable for payment of monies due to the Company by the Member and unpaid as at the date of cessation of membership and in addition for any sum for which that person is liable as a Member under clause 4.2 of the Constitution;
- (d) continue to be liable for any obligations (including any charges that may be imposed) under the Retail Market Rules as if the Member were a user for the purposes of rule 377B for the period ceasing on the earlier of the dates in subparagraphs (i) and (ii) of sub-rule 377B(2)(b) of the Retail Market Rules; and
- (e) continue to be bound by (and shall discharge) any determination of the Panel made in respect of any complaint unresolved or outstanding at the date of cessation of membership.

8.5 Ex-Licensees

An Ex-Licensee continues to be liable for any obligations (including any charges that may be imposed) under the Retail Market Rules until 453 days have passed since that person first became an Ex-Licensee.

8.6 Removal of Ex-Licensees

The Board may by resolution revoke the membership of an Ex-Licensee and, upon receipt by that Ex-Licensee of written notice of such resolution, the person ceases to be a Member and, for the avoidance of doubt, clauses 8.4 and 8.5 apply to such an Ex-Licensee.

9. MEETINGS OF MEMBERS

9.1 Annual general meeting

Annual general meetings of the Company shall be held in accordance with the provisions of the *Corporations Act 2001*.

9.2 **General meeting**

General meetings may be convened by the Board whenever and wherever it thinks fit or by requisition as provided by the *Corporations Act 2001*.

9.3 **Notice of meeting**

Subject to the provisions of the *Corporations Act 2001* relating to special resolutions and consent to short notice, at least twenty-one days' notice (exclusive of the day on which the notice is served or received or deemed to be served or received and exclusive of the day for which notice is given) specifying the place, the day and the time of meeting and, in the case of special business, the general nature of that business, shall be given to persons entitled to receive such notices from the Company.

9.4 **Postponement or cancellation**

Subject to the *Corporations Act 2001*, the Board may:

- (a) postpone a meeting of Members;
- (b) cancel a meeting of Members; or
- (c) change the place for a general Meeting,

by written notice given individually to each person entitled to be given notice of the meeting.

9.5 **Fresh notice**

If a meeting of Members is postponed or adjourned for one month or more, the Company must give new notice of the resumed meeting.

9.6 **Technology**

The Company may hold a meeting of Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

9.7 **Special business**

For the purposes of clause 9.3, all business that is transacted at a general meeting or annual general meeting (with the exception of the consideration of accounts, financial statements and the reports of the Board and auditors) shall be special business.

9.8 **Accidental omission**

Accidental omission to give notice of a general meeting or annual general meeting by the Company to, or the non-receipt of notice of a meeting by, any Member shall not invalidate proceedings at a general meeting or annual general meeting.

9.9 Meetings requisitioned by Members

This clause 9.9 applies only to resolutions proposed by requisitioning Members to be considered at a general meeting of Members of the Company requisitioned or convened by the Members as provided by the *Corporations Act 2001*.

- (a) A Member may, by giving at least 7 days' prior written notice to the Board, request the Board to consider whether any of the resolutions proposed by the requisitioning Members to be put to that general meeting would, in the opinion of the Board, if approved, result in any circumstances or matter inconsistent with a Permitted Purpose. If the Board determines that there would be such an inconsistency, the majority required in order for the relevant resolution to be passed is, notwithstanding any other provision of this Constitution, approval, without dissent, by all Members present (whether in person, by proxy, by attorney or other representative) and entitled to vote at that general meeting.
- (b) Nothing in clause 9.9 applies to a resolution for the removal of one or more persons from the office of Director.

10. PROCEEDINGS AT GENERAL MEETINGS AND ANNUAL GENERAL MEETINGS

10.1 Quorum

No business shall be transacted at a general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Except as otherwise provided in this Constitution, Members entitled to cast one half of the votes at that meeting shall constitute a quorum at any general meeting. The quorum must be present at all times during the meeting. For the purpose of this clause, persons attending as a proxy, attorney or Corporate Representative shall be counted as Members.

10.2 If Quorum is Not Present

- (a) If a quorum of Members is not present within 30 minutes of the time appointed for a general meeting, the meeting shall, if convened upon the requisition of Members, be dissolved or, in any other case, stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the chair may determine (being a day which is not more than 30 days after the originally scheduled date).
- (b) If a quorum of Members is not present within 30 minutes of the time appointed for the adjourned meeting then the meeting shall be dissolved.

10.3 Chair

The chair of the Board shall preside as chair at general meetings of the Company. If the chair of the Board is not present within 30 minutes of the time appointed for holding a general meeting or if the chair of the Board is unable or unwilling to act, the Members present shall elect one of the Directors to be chair of the general meeting.

10.4 Attendance at meetings

- (a) Every Member has the right to attend all meetings of Members.
- (b) Every Director has the right to attend and speak at all meetings of Members.
- (c) The auditor has the right to attend any meeting of Members and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

10.5 Adjourned Meetings

- (a) The chair of any general meeting may, with the consent of the majority of those Members present at the general meeting (being a meeting at which the quorum is present) and entitled to vote at that general meeting adjourn the general meeting. No business shall be transacted at any adjourned general meeting other than the business left unfinished at the general meeting from which the adjournment took place.
- (b) Except as otherwise provided by the Constitution, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at any adjourned general meeting.

10.6 Voting

- (a) Any resolution to be considered at a general meeting shall be decided on a show of hands, unless a poll is demanded before or on the declaration of the result of the show of hands by any Member present in person, by proxy, by attorney or by Corporate Representative and who is entitled to vote. The demand for a poll may be withdrawn.
- (b) Unless a poll is so demanded, a declaration by the chair of the general meeting that a resolution has been carried, carried unanimously, carried by a particular majority or lost on a show of hands and an entry to that effect made in the book containing the minutes of proceedings of the Company, shall be conclusive evidence of this fact.
- (c) Subject to clause 10.6(e), each Member has on a show of hands one vote.
- (d) Subject to clause 10.6(e) each Member on a poll has one vote.
- (e) (i) A Member holding a Gas Distribution Licence and each of its Associates which is a Member and also holds a Gas Distribution Licence are, for the purposes of clause 10.6(c) and clause 10.6(d), taken to be one Member and both or all of those Members (as the case may be) together shall have one vote on a show of hands and on a poll.
(ii) A Member holding a Gas Trading Licence or carrying of the business of Gas Retailer and each of its Associates which is a Member and also hold a Gas Trading Licence or carries on the business of Gas Retailer are, for the purpose of clause 10.6(c) and clause 10.6(d), taken to be one Member and

both or all of those Members (as the case may be) together shall have one vote on a show of hands and on a poll.

- (iii) An Associate Member shall not be entitled to vote at a general meeting of the Company (subject to the requirements in section 246B of the Corporations Act 2001).
- (iv) Subject to the requirements in section 246B of the Corporations Act 2001, a Member other than an Associate Member shall not be entitled to vote at a general meeting of the Company unless that Member:
 - (A) is the holder of a Licence; or
 - (B) carries on the business of Gas Retailer.
- (v) For the purposes of this Clause 10.6, the term "Gas Retailer" has the same meaning given to that term in Clause 7.1.
- (f) If a poll is duly demanded, it shall be taken either at once or after an interval or adjournment and in such manner as the chair of the general meeting directs provided that a poll demanded on the election of the chair of the general meeting or on the question of adjournment shall be taken immediately.

The result of the poll shall constitute the resolution of the meeting at which the poll was demanded.
- (g) In the case of an equality of votes on a show of hands or on a poll, the chair of the general meeting at which the show of hands takes place or at which the poll is demanded shall not be entitled to a second or casting vote and the motion shall be lost.
- (h) A Member may vote in person, by proxy, by attorney or by Corporate Representative.

10.7 Proxies and Other Authorities

- (a) The instrument appointing a proxy shall:
 - (i) be in writing and signed by the appointor or his duly authorised attorney; or
 - (ii) if the appointor is a corporation, executed in accordance with Section 127 of the *Corporations Act 2001*, the instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A Member shall be entitled to instruct its proxy to vote in favour of, or against, any proposed resolution. Unless otherwise instructed, a proxy may vote as it thinks fit.
- (b) The instrument appointing a proxy may be in any common or usual form acceptable to the Directors.

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- (c) The instrument appointing a proxy for a Member and a copy of the power of attorney or other authority under which it is signed shall be deposited at the registered office of the Company (or such other place as is specified for that purpose in the notice convening the general meeting) not less than 48 hours before the general meeting or adjourned general meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 48 hours before the time appointed for the taking of the poll.
 - (d) A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding:
 - (i) the previous death or unsoundness of mind of the principal;
 - (ii) revocation of the instrument; or
 - (iii) revocation of the authority under which the instrument was executed,unless an indication in writing of such death, unsoundness of mind or revocation has been received at the registered office of the Company before the commencement of the general meeting at which the instrument is used.
 - (e) Any corporation which is a Member of the Company may appoint such person or persons as it thinks fit to act as its Corporate Representative at any general meeting of the Company. The person so authorised shall be entitled to exercise the same powers on behalf of the appointor as the appointor could exercise if it were a member of the Company in accordance with its authority until its authority is revoked by the corporation.

10.8 **Matters Required to be Dealt with by Members**

- (a) The following matters may only be effected by special resolution of the Members in general meeting:
 - (i) an amendment to, or replacement of, this Constitution;
 - (ii) the expulsion of a Member under clause 8.3;
 - (iii) the acceptance of an application for membership made by a person previously expelled under clause 8.3;
 - (iv) any proposal involving the Company:
 - (A) disposing of substantially the whole of its undertaking;
 - (B) subject to clause 9.9(a), acquiring or commencing any undertaking other than for a Permitted Purpose;
 - (C) entering into any partnership, joint venture or merger; or
 - (D) being wound up.

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- (b) Amendments to clauses 11.3(b), 11.3(c) and 11.3(d) of this Constitution require the prior written consent of every Member.

11. APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS

11.1 Number of Directors

The Board shall consist of not more than 6 Directors who must be appointed, nominated and elected in accordance with clause 11.

11.2 No membership qualification

A Director need not be a Member. Neither the auditor of the company nor any partner or employee of the auditor is eligible to act as a Director.

11.3 The Board

- (a) [DELETED]

- (b) The composition of the Board will be determined as set out in this clause 11.3(b):

- (i) subject to clause 11.3(b)(ii), the composition of the Board shall be as follows:

- (A) 1 Director nominated by the Majority Retailer;
 - (B) 1 Director nominated by the Majority Network Operator;
 - (C) 2 Independent Directors; and
 - (D) 2 Directors nominated by Members other than the Majority Network Operator and the Majority Retailer;

- (ii) if, at any time:

- (A) none of the Members meets the requirements for Majority Retailer set out in clause 11.3(b)(vi)(C), the Director that otherwise would have been nominated by the Majority Retailer under clause 11.3(b)(i)(A) will instead be nominated by agreement of Members holding a Gas Trading Licence or carrying on the business of a Gas Retailer; or
 - (B) none of the Members meets the requirements for Majority Network Operator set out in clause 11.3(b)(vi)(A), the Director that otherwise would have been nominated by the Majority Network Operator under clause 11.3(b)(i)(B) will instead be nominated by agreement of Members who are Network Operators;

- (iii) subject to clause 11.3(b)(iv), and so long as that Member satisfies the relevant ownership or market share qualification set out in clause 11.3(b)(vi), an Appointing Member may, by written notice to the Company

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- remove any Director appointed by it and replace that Director, or replace a Director appointed by it who ceases for any other reason to be a Director;
- (iv) the Members in general meeting may by an ordinary resolution veto the appointment of a particular person as a replacement Director under clause 11.3(b)(iii), in which case the Appointing Member may appoint another person as a replacement Director. The appointment of a replacement Director whose appointment is subsequently vetoed, and all acts undertaken by him as Director between the time of his appointment until the day on which notice of a meeting at which a resolution to veto his appointment is to be proposed is given to Members, are valid;
 - (v) if a Director is not nominated by an Appointing Member pursuant to clause 11.3(b)(A) or clause 11.3(b)(B), the Members (other than Associate Members) may nominate, and in general meeting may elect, persons to fill that vacancy on the Board; and
 - (vi) the ownership/control or market share qualification referred to in clauses 11.3(b)(ii) and 11.3(b)(iii) is set out below and is subject to the proviso that an Appointing Member will be deemed to own, control or have market share of at least 50% of the distribution system or market, even where its ownership, control or market share drops below 50%, but not where the ownership, control or market share drops below 50% for a continuous period greater than 6 months:
 - (A) the Majority Network Operator must own or control at least 50% of the number of distribution system delivery points in Western Australia;
 - (B) [DELETED]
 - (C) the Majority Retailer must have a Market Share of at least 50%.; and
 - (D) [DELETED]
 - (vii) For the purposes of this Clause 11.3(b), the term "Gas Retailer" has the same meaning given to that term in Clause 7.1.
- (c) Where an Appointing Member no longer has the right to appoint a Director, that Director must retire at the next annual general meeting. Nominations of persons to fill that vacancy may be made by any Member such that the requirements of clause 11.3(b) are satisfied.
 - (d) Where a Member (which may be a previous Appointing Member) gains the ownership/control or market share qualification identified in clause 11.3(b)(vi) for a continuous period greater than 6 months and accordingly becomes an Appointing Member, and that Appointing Member does not already have a representative on the Board, that Appointing Member may, by written notice to the Company, appoint a Director, such appointment to take effect at the close of the next annual general meeting.

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- (da) Any Member may nominate a person to be an Independent Director for the purposes of clause 11.3(b)(i)(C).
- (e) Subject to clauses 11.3(b)(i) to 11.3(b)(iii), 11.3(b)(v) and 11.3(d), the Board may appoint a person to fill a vacancy on the Board. Such a Director holds office only until the end of the next annual general meeting of the Company following appointment.
- (f) If there are more nominees than positions available (taking into account Directors who continue in office following election):
- (i) being nominations for the purposes of clauses 11.3(b)(i)(A) and 11.3(b)(i)(B), the nominee for each position with the highest vote is elected; and
 - (ii) being nominations for the purposes of clause 11.3(i)(D), the nominee with the highest vote is elected so that there is not more than two in total.
 - (iii) [DELETED]
- (g) Separate resolutions must be put as to the election of each nominee. Each nominee must be elected as set out in this clause.
- (i) A person nominated to be an Independent Director for the purposes of clause 11.3(b)(i)(C) will only be elected if none of the Members votes against his election as a Director.
 - (ii) A person nominated for the purposes of clauses 11.3(b)(i)(A), 11.3(b)(i)(B) or 11.3(b)(i)(D) will only be elected if he receives more than 50% of the votes cast in favour of his election as a Director. If the number of nominees receiving more than 50% of the votes cast exceed the vacancies on the Board, then:
 - (A) the person or persons with the highest number of votes will be elected; and
 - (B) in the event that any two or more nominees have an equal number of votes, then the matter will be decided by lot.
 - (iii) If, by reason of nominees not receiving the votes required by clauses 11.3(g)(i) or 11.3(g)(ii), there remain vacancies on the Board, the Board must convene a further general meeting to be held not less than seven days after the meeting in question to consider resolutions for the election of persons to fill the vacancies. A previously unsuccessful nominee may be nominated again.
 - (iv) If an Appointing Member's nominee is not re-elected following retirement by rotation, that Appointing Member has the right to appoint a replacement Director to the Board..

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- (h) The Directors shall appoint one of their number who is Independent to be the chair of the Board.
 - (i) No Director shall hold office for a period beyond the end of the third annual general meeting following the Director's election, without submitting himself for re-election.
 - (j) At every annual general meeting, one-third of the Directors or, if their number is not a multiple of three, then the number nearest to but not exceeding one-third, shall retire from office and be eligible for re-election.
 - (k) The Directors to retire in every year shall be the Directors longest in office since last being elected or re-elected. Between Directors who were elected on the same day, the Director to retire shall be decided by lot, unless they agree otherwise.

11.4 Vacation of Office

The office of a Director becomes vacant if the Director:

- (a) becomes prohibited from holding the office of a Director under the *Corporations Act 2001*;
- (b) becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the law relating to mental health;
- (c) resigns by notice in writing to the Company;
- (d) is absent from meetings of the Board for more than 6 months without the permission of the Board;
- (e) holds any office of profit under the Company or receives any payment from the Company other than remuneration properly payable in accordance with this Constitution;
- (f) having been nominated and elected for the purposes of clause 11.3(b)(i)(C), is not, or ceases to be Independent;
- (g) was appointed by an Appointing Member whose share qualification does not meet the requirements set out in clause 11.3(b)(vi) and the office is vacated at the next annual general meeting;
- (h) is removed or not re-elected by the Members in general meeting;
- (i) being a Director appointed or replaced by the Majority Network Operator, the Majority Network Operator serves a notice on the Company stating that the Director's office is vacated;
- (j) [DELETED]

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- (k) being a Director appointed or replaced by the Majority Retailer, the Majority Retailer serves a notice on the Company stating that the Director's office is vacated; or
 - (l) [DELETED]
 - (m) [DELETED]
 - (n) being a Director nominated for the purposes of clause 11.3(c), an Appointing Member appoints a Director in accordance with clause 11.3(d).

11.5 Remuneration

- (a) The Members may in a general meeting approve a total annual figure for the remuneration of the Independent Directors and on recommendation of a resolution of the Board of Directors. If so (and in no other case), the Independent Directors may, by resolution of the Board, be entitled to be paid out of the funds of the Company, as remuneration for their ordinary services as Independent Directors. Such remuneration must be the same for each of these Independent Directors, except that the Board may resolve that the chair may receive greater remuneration than the other Independent Directors. Remuneration fixed by the Board for the Independent Directors' ordinary services must not exceed the relevant total annual figure approved by the Members in general meeting. If any Independent Director performs services which, in the opinion of the Board, are outside the scope of the ordinary duties of an Independent Director, he may be paid a sum determined by the Board, by way of special remuneration.
- (b) The Directors may be paid their reasonable travelling, accommodation and other expenses incurred in consequence of their attendance at meetings of Directors or general meetings of the Company and otherwise in the execution of their duties as Directors.

12. POWERS AND DUTIES OF THE DIRECTORS

12.1 Powers generally

Subject to:

- (a) the *Corporations Act 2001*;
- (b) this Constitution; and
- (c) such regulations as may be prescribed by the Board or the Company in general meeting that are not inconsistent with the *Corporations Act 2001* or this Constitution,

the business, affairs and property of the Company shall be managed by the Board who may pay all expenses incurred in promoting and registering the Company out of the funds of the Company and may exercise all powers of the Company that are not required to be exercised by the Company in general meeting.

12.2 Director's duties

Each Officer of the Company (including each Director) must comply with the following duties (insofar as the *Corporations Act 2001* imposes them, or they are otherwise imposed by law, from time to time):

- (a) he must at all times act honestly in the exercise of his powers and the discharge of the duties of his office;
- (b) in the exercise of his powers and the discharge of his duties, he must exercise the degree of care and diligence that a reasonable person in a like position in a corporation would exercise in the Company's circumstances;
- (c) he must not make improper use of information acquired by virtue of his position to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the Company; and
- (d) he must not make improper use of his position to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the Company.

Each Officer of the Company (including each Director) must also comply with all other obligations imposed by law on him.

12.3 Power to borrow

The Board may exercise all the powers of the Company to borrow or raise money.

12.4 Execution of negotiable instruments

All cheques, promissory notes, drafts, bills or exchange and other negotiable instruments drawn on bank accounts maintained by the Company and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in the manner determined by the Board from time to time.

12.5 Board minutes

The Board shall cause minutes to be made of:

- (a) the names of Directors present at all general meetings and meetings of the Board; and
- (b) all resolutions and proceedings at general meetings and meetings of the Board.

The chair of the meeting at which the proceedings are held or the chair of the next succeeding meeting shall sign the minutes.

13. PROCEEDINGS OF THE BOARD

13.1 Board meetings

The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A Director may at any time and the Secretary shall on the requisition of a Director, summon a meeting of the Board.

13.2 Voting

Questions arising at any meeting of the Board shall be decided by a majority of votes and a determination by a majority of the Board shall be deemed to be a determination of the Board.

13.3 Quorum

- (a) Subject to this Constitution, the number of Directors necessary for a quorum shall be one half of the number of Directors elected to the Board, such number where necessary, rounded up to the nearest whole number.
- (b) The Directors may act notwithstanding any vacancy in the Board, but if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as a quorum of the Board, the Directors may only act for the purpose of appointing additional Directors in accordance with clause 11.3(e) or for calling a general meeting to enable sufficient Directors to be appointed to constitute a quorum.

13.4 Chair

- (a) If there is no chair, or if he is not present within 30 minutes after the time appointed for holding a meeting of the Board, then the Directors present may elect one of their number to be the chair of the meeting.
- (b) The chair of a meeting of the Board who has been appointed under clause 11.3(h) shall have a casting vote at that meeting, in addition to a deliberative vote but any other chair shall have a deliberative vote only.

13.5 Committees

- (a) The Board may delegate any of its powers and/or functions (except powers conferred and duties imposed on the Directors by law which are incapable of delegation) to one or more committees consisting of any number of Directors and/or other persons as the Board thinks fit. Any committee so formed shall:
 - (i) conform to any regulation that may be imposed by the Board; and
 - (ii) have power to co-opt any person or persons provided that any person so co-opted shall not have a vote on such committee.
- (b) Subject to this Constitution, a committee may meet for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. Questions arising at

any meeting shall be determined by a majority of votes of the committee members present and, in the event of an equality of votes, the chair of the committee shall not have a second or casting vote and the motion shall be lost.

- (c) All acts done by the Board, a committee or by a person acting as a Director or committee member shall be valid, notwithstanding that it is subsequently discovered that:
- (i) there was a defect in the appointment of a Director or committee member or person so acting; or
 - (ii) a Director or committee member was disqualified,
- as if every such person had been duly appointed and was qualified to hold their purported office.

13.6 Resolutions in Writing

A resolution in writing signed by all the Directors for the time being entitled to receive notice of meetings of the Board and being entitled to vote at that meeting, shall be valid and effectual as if it had been passed at a duly convened meeting of the Board. Any such resolution may consist of several identical documents each signed by one or more Directors.

13.7 Meetings by Technology

- (a) If:
- (i) the Directors confer by radio, telephone, closed circuit television or other electronic means of audio or audio-visual communications;
 - (ii) all the Directors who for the time being are entitled to receive notice of a meeting of the Directors receive notice of the conference and have access to the means by which the conference is to take place; and
 - (iii) each of the Directors taking part in the conference is able to hear each of the other Directors taking part in the conference,

then all the provisions of this Constitution relating to meetings of the Board shall apply to the conference as if such conference were a meeting of the Board and as if the Directors taking part in the conference were physically present together at a meeting, and any resolution passed by such conference shall be deemed to have been passed at a meeting of the Board held on the day on which and at the time at which the conference was held.

- (b) The fact that a Director is taking part in the conference shall be made known to all the other Directors taking part, and no Director may disconnect or cease to have access to his means of communication or otherwise cease to take part in the conference unless he makes known to all other Directors taking part that he is ceasing to take part in the conference. Until a Director makes it known that he is

ceasing to take part in the conference he shall be deemed to continue to be present and to continue to form part of the quorum.

13.8 **Declarations of Interest**

- (a) A Director may not be counted in any quorum considering any contract or proposed contract with the Company in which he is interested nor vote in respect of any such contract or proposed contract unless the Director discloses the existence and nature of that interest to the Board prior to voting and if he does so vote without making disclosure, his vote shall not be counted. Such Director may (whether or not the disclosure is made) attest the affixation of the seal to such a contract.
- (b) In addition to the requirements of clause 13.8(a), if a Director has a material personal interest in a matter being considered by the Board, the requirements of the *Corporations Act 2001* must be satisfied.

13.9 **Obligation of secrecy**

Every Director, Secretary and Government observer must keep the transaction and affairs of the Company and the state of its financial reports confidential unless required to disclose them:

- (a) in the course of duties as an Officer of the Company;
- (b) in the course of duties as a Government observer;
- (c) by the Board or the Company in general meeting; or
- (d) by law.

The Company may require a Director, Secretary, auditor, trustee, Member or other person engaged by it to sign a confidentiality undertaking consistent with this clause. A Director or Secretary must do so if required by the Company.

14. **ALTERNATE DIRECTORS**

14.1 **Appointment of Alternates**

Any Director may appoint:

- (a) any person or another Director to be an alternate or substitute Director in his place during such period as he thinks fit; and
- (b) a second person or Director to be an alternate or substitute Director to replace the first appointed alternate or substitute Director if he is unable or unwilling to act.

14.2 **Notice of Board meetings**

Any alternate or substitute Director shall be entitled to notice of meetings of Directors, to attend and vote at such meetings and to exercise all the powers of the appointor in his place. An alternate or substitute Director immediately vacates office if the appointor

vacates or is removed from office. Any appointment or removal under this clause 14.2 shall be effected by notice in writing signed by the appointor and delivered to the registered office addressed to the Secretary.

14.3 Entitlements of Alternates

An alternate Director who is also a Director in his own right shall be entitled to vote in his own capacity as Director and again for each alternate directorship held.

14.4 Alternate as chair

An alternate for a Director who is the chair is not by that reason alone to act as chair.

14.5 Termination of appointment

The appointer of an alternate Director may at any time revoke the appointment of a person as an alternate whether or not that appointment is for a specified period. Any appointment of an alternate Director immediately ceases if:

- (a) the appointer ceases to be a Director; or
- (b) an event occurs which would cause the alternate to cease to be a Director under clause 11.4 if the alternate were a Director.

14.6 Appointment and revocations in writing

The Director appointing the alternate must appoint and revoke the appointment of any alternate in writing. The application or revocation is not effective until a copy is provided to the Company.

15. APPOINTMENT OF OBSERVER

The Board will allow a Government observer to have the right to attend all Board meetings and to receive all Board papers for a term of two years from the incorporation of the Company. Such appointment may be extended at the discretion of the Board. The provisions of clause 11 relating to the nomination and election of Directors shall not apply to the appointment of Government observers.

16. RETAIL MARKET RULES

16.1 Compliance with Retail Market Rules

The Company shall operate in accordance with and observe the roles, function, powers and obligations set out in the respective Retail Market Rules as amended from time to time.

16.2 Members to abide by Retail Market Rules

In becoming a Member of the Company, each Member agrees:

- (a) to be bound by and observe the terms of the Retail Market Rules (to the extent they are consistent with this Constitution);

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- (b) that any amendments to the Retail Market Rules shall be made in accordance with the terms of the Retail Market Rules for the time being in force; and
 - (c) to abide by any determination made by the Panel in a matter to which the Member is a party.

17. **SECRETARY**

17.1 **Appointment of Secretary**

The Board:

- (a) must appoint at least 1 individual; and
- (b) may appoint more than 1 individual,

to be a Secretary either for a specified term or without specifying a term.

17.2 **Terms and conditions of office**

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

17.3 **Cessation of Secretary's appointment**

The person automatically ceases to be a Secretary if the person:

- (a) is not permitted under the *Corporations Act 2001* (or an order made under the *Corporations Act 2001*) to be a secretary of a Company;
- (b) becomes disqualified from managing corporations under the *Corporations Act 2001* and is not given permission or leave to manage the Company under the *Corporations Act 2001*;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under clause 17.4.

17.4 **Removal from office**

The Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

18. **MINUTES**

18.1 **Minutes as evidence**

A minute recorded and signed in accordance with section 251A of the *Corporations Act* 2001 is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

18.2 **Inspection of minute books**

The Company must allow Members to inspect, and provide copies of, the minute books for the meetings of Members in accordance with the *Corporations Act* 2001.

19. **SEAL**

19.1 **Common Seal**

The Company may have a common seal. If the Company has a common seal, it may also have a duplicate common seal.

19.2 **Use of Seal**

A Seal shall only be used with the authority of the Board or a committee of Directors authorised by the Board for that purpose.

19.3 **Fixing Seals to documents**

Every instrument to which the Seal is affixed must be signed either by:

- (a) two Directors;
- (b) a Director and the Secretary; or
- (c) some other person appointed by the Board for that purpose.

19.4 **Execution without Seal**

This clause does not limit the ways in which the Company may execute a document.

20. **[Deleted]**

21. **ACCOUNTS**

21.1 **Company must keep financial records**

The Board shall cause the Company to keep proper accounts and other records to be kept and shall distribute copies of financial statements and related documents as required by law.

21.2 **Inspection of records**

Subject to the *Corporations Act 2001*, the Board shall determine the times and places, and the conditions and regulations, upon which the accounting and other records of the Company shall be open for inspection by the Members.

21.3 **Financial Year**

The first Financial Year of the Company shall be the period from the date of incorporation to 30 June next following and thereafter from 1 July in each year to the following 30 June (both inclusive).

22. **AUDIT**

The Board shall appoint a duly qualified auditor in accordance with the *Corporations Act 2001*. Each report of the auditor shall be submitted to the Members as required by law.

23. **NOTICES**

23.1 **Notices by Company**

Any notice required by law or by or under these clauses to be duly given to any Member shall be given (where permitted by the *Corporations Act 2001*) by delivery in person, by prepaid post, by facsimile transmission or by electronic mail sent to his street address, facsimile number or electronic mail address (as the case may be) in the register of Members.

23.2 **Notices by facsimile etc.**

In the case of notice given by facsimile transmission or electronic mail, such notice must be confirmed by sending the notice by prepaid post to the Member's street address in the register of Members, the confirmation being sent within one day after the sending of the facsimile transmission or electronic mail.

23.3 **Deemed receipt**

Where a notice is sent by post from within Australia, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected 2 days after the date of posting. Where a notice is sent by facsimile transmission or electronic mail prior to 5.00 pm Western Standard Time its delivery shall be deemed to have been effected on the day of the sending of the facsimile transmission or electronic mail, otherwise it is deemed to have been sent the next day.

23.4 **Counting days**

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

23.5 Notices to "Lost" Members

If:

- (a) on two or more consecutive occasions a notice served on a Member in accordance with this clause is returned unclaimed or with an indication that the Member is not known at the address to which it was sent; or
- (b) the Board believes on other reasonable grounds that a Member is not at the address shown in the Register or notified to the Company, the Company may give effective notice to that Member by exhibiting the notice at the Company's registered office for at least 48 hours. This clause ceases to apply if the Member gives the Company notice of a new address.

23.6 Notices of General Meeting

- (a) Notice of every general meeting shall be given in the manner authorised by this clause 23 to every Member Director and observer, except those Member Directors and observer who have not supplied an address to the Company for the giving of notices, and the auditor of the Company, if required by law.
- (b) No other person shall be entitled to receive notice of general meetings.

24. REGISTER OF MEMBERS

The Company must set up and maintain a register of Members.

In accordance with the *Corporations Act 2001*, the Register must contain the following information:

- (a) the name and address of each Member;
- (b) the date on which the entry of the Member's name in the Register is made;
- (c) the name and details of each person who stopped being a Member within the last 7 years;
- (d) the date on which the person stopped being a Member; and
- (e) an index of Members' names if the Company has more than 50 Members and the Register itself is not kept in a form that operates effectively as an index.

25. WINDING UP

If upon the winding up or dissolution of the Company in accordance with the *Corporations Act 2001* and after satisfaction of all the Company's debts and liabilities, there remains surplus assets available for distribution, they must be divided among the Members in proportion to each Member's total contribution to the Company's fee income that has been paid in the manner set out in the Retail Market Rules.

26. OFFICERS' INDEMNITY AND INSURANCE

26.1 Indemnity

To the extent permitted by law:

- (a) the Company must, to the extent the person is not otherwise indemnified, indemnify every Officer of the Company and its wholly owned subsidiaries and may indemnify its auditor against a liability incurred as such an Officer or auditor to a person (other than the Company or a related body corporate) including a liability incurred as a result of appointment or nomination by the Company or subsidiary as a trustee or as an Officer of another corporation, unless the liability arises out of conduct involving a lack of good faith; and
- (b) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an Officer or employee or auditor in defending an action for a liability incurred as such an Officer, employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

In this rule, "**Liability**" means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

26.2 Insurance

To the extent permitted by law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

26.3 Former officers

The indemnity in favour of Officers under clause 26.1 is a continuing indemnity. It applies in respect of all acts done by a person while an Officer of the Company or one of its wholly owned subsidiaries even though the person is not an Officer at the time the claim is made.

26.4 Deeds

To the extent permitted by law, without limiting a person's rights under this clause 26, the Company may enter into an agreement with a person who is or has been an Officer of the Company or any of the Company's subsidiaries, to give effect to the rights of the person under this clause 26 on any terms and conditions that the Board thinks fit.

27. AMENDMENTS

Subject to clause 10.8, this Constitution may only be amended in accordance with the *Corporations Act 2001*.

28. **INCONSISTENCY BETWEEN THIS CONSTITUTION AND LEGISLATION AND OTHER REGULATORY REQUIREMENTS**

28.1 [DELETED]

28.2 [DELETED]

28.3 **Western Australian Legislation prevails in certain circumstances**

In the event of an inconsistency between this Constitution and any Act or Regulation of Western Australia, that Act or Regulation shall prevail.

28.4 **Clause 28.3 - Interpretation**

For the purposes of Clause 28.3 of this Constitution, each of the terms:

- (a) Act; and
- (b) Regulation;

has the same meaning as is respectively ascribed to those terms by the Interpretation Act 1984 (WA), as amended from time to time

29. **REVIEW OF THIS CONSTITUTION**

In the event that the Company has 6 or more Members, not including Associate Members, for a continuous period of 3 months or more, the Board must, as soon as practicable after the end of the 3 month period following the admission of the sixth Member:

- (a) undertake a review of this Constitution;
- (b) prepare a report to Members regarding the outcome of that review; and
- (c) propose any changes to the Constitution resulting from the review to a general meeting of the Members, to be voted on in accordance with this Constitution.

SCHEDULE 1 [Deleted]

SCHEDULE 2 [Deleted]

SCHEDULE 3 [Deleted]