

# Constitution

Pilbara ISOCo Limited

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## CONSTITUTION OF PILBARA ISOCO LIMITED

### GENERAL

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

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

**Act** means the *Electricity Industry Act 2004 (WA)*, and the instruments made under it, including the Pilbara Networks Access Code, Pilbara Networks Rules and Harmonised Technical Rules.

**Advisory Committee** means a committee established and governed by clauses 14.6 and 14.7.

**Associate Member** means a person for the time admitted to the membership of the Company under clause 6.2 as meeting the Eligibility requirements under clause 6.6, until their membership ceases under clause 8.

**Auditor** means the auditor, if any, of the Company appointed in accordance with clause 23.

**Bankrupt** means, in relation to a person, the state of being “insolvent under administration” as defined in the Corporations Act or having signed an authority under section 188 of the *Bankruptcy Act 1966 (Cth)*.

**Business Day** means a day on which is not a Saturday, Sunday, public holiday or bank holiday in the city of Perth, Western Australia.

**Chair** means the person appointed as the Independent Director to be the chair of the Board.

**chairperson** means either the Chair or the Government Appointed Director (as the context requires).

**Company** means Pilbara ISOCo Limited.

**Conflict of Interest** means:

- (a) a material personal interest which arises when a personal interest, fiduciary or otherwise; or
- (b) where a fiduciary or other duty (including a duty as an employee to an employer, an NSP Member appointed Director’s duty to the NSP Member and the Government Appointed Director’s duty to the Minister for Energy) to another person,

conflicts with, or has the potential to conflict with, a Director’s duty as a member of the Board.

**Constitution** means this constitution and any amendments or substitutions to it.

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

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

**Defaulting Member** means a Member who wilfully refuses to comply with the provisions of this Constitution as determined in accordance with a relevant Policy.

**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 6.4 or clause 6.6 (as the case may be).

**Financial Year** means the financial year of the Company, as described in clause 22.3.

**Government Appointed Director** means the person appointed a Director by the Minister for Energy under this Constitution.

**Independent** means with respect to the Chair, or a nominee for appointment as the Chair, at the relevant time, a person who:

- (a) is not, and has not been within 3 years, an employee, Officer, executive or consultant of the Company, or any Member or related body corporate of a Member;
- (b) at the time of nomination for appointment, does not have a material personal interest that would give rise to a Conflict of Interest;
- (c) is free from any business or other relationship that could materially interfere with the independent exercise of the Director's judgement;
- (d) is suitably qualified for the position and has the skills and experience necessary to carry out the responsibilities and functions of an independent Director; and
- (e) otherwise meets any other criteria set out in a Policy.

**Initial Member** means a person specified in the application to register the Company under the Corporations Act.

**Insolvent** means, in relation to a corporation, the state of being "insolvent under Administration" as defined in the Corporations Act.

**Member** means a person for the time admitted to membership of the Company, being the NSP Members and Associate Members.

**Minister for Energy** means the Minister responsible for administering the Act.

**Nominations Committee** means a committee established and governed by clauses 14.6 and 14.7.

**NSP Member** means:

- (a) an Initial Member; and
- (b) a person for the time admitted to the membership of the Company under clause 6.2 as meeting the Eligibility requirements under clause 6.4,

until their membership ceases under clause 8.

**Objects** means the objects set out in clause 2.

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

**Policy** means a policy determined and approved by the Board setting out in more detail, as prescribed by this Constitution, criteria, requirements or processes to be observed and complied with by the Board, the Members and the Company.

**Register** means the register of Members kept as required by the Corporations Act.

**Secretary** means a 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.

**Voting NSP Member** means an NSP Member who has paid its annual Membership subscription fee in full in accordance with clause 7.

## 1.2 Interpretation

In this Constitution, unless the context requires otherwise:

- (a) A reference to writing and written includes printing, electronic documents and other ways of representing or reproducing words in a visible form.
- (b) If a word or phrase is defined, then its other grammatical forms have a corresponding meaning.
- (c) The singular (including defined terms) includes the plural and vice versa.
- (d) The word includes and similar words are not words of limitation and do not restrict the interpretation of a word or phrase in this Constitution.
- (e) A reference to a gender includes any gender.
- (f) A reference to a document includes a variation or replacement of it.
- (g) A reference to a statute includes its subordinate legislation and instruments, codes, rules made under it and a modification, replacement or re-enactment of any of them.
- (h) A reference to a person includes a reference to an individual, company, body corporate, trust, partnership, incorporated association, unincorporated body, joint venture, organisation and any other form of entity.
- (i) A reference to a body, whether statutory or not, that ceases to exist or has its powers or functions transferred to another body is a reference to the body that replaces it or substantially succeeds to its powers or functions.

- (j) A reference to a Member present at a general meeting is a reference to a Member present in person, by technology, by attorney, by Corporate Representative or by proxy.
- (k) A reference to a Director present at a Board meeting is a reference to a Director present in person, by technology or by their alternate nominated under clause 15.
- (l) If the date on which a thing must be done is not a Business Day, then that thing must be done on the next Business Day.
- (m) If a period of time runs from a given date, act or event, then the time is calculated exclusive of the date, act or event.
- (n) Headings are used for convenience only and do not affect the interpretation of this Constitution.

### **1.3 Application of Corporations Act**

- (a) Except as provided by clause 1.4:
  - (i) nothing in this Constitution is intended to derogate from the operation of the Corporations Act; and
  - (ii) where the Corporations Act and this Constitution deal with the same or similar topic differently, the Corporations Act prevails over the provisions of this Constitution to the extent of that difference.
- (b) In this Constitution, unless the contrary intention appears:
  - (i) A word or expression defined or given a meaning in the Corporations Act has the same meaning when used in this Constitution in a similar context; and
  - (ii) References to sections, items, Parts and Schedules in this Constitution are to sections, items, Parts and Schedules in the Corporations Act.

### **1.4 Replaceable Rules**

The replaceable rules contained in the Corporations Act do not apply to the Company and are displaced in full by the provisions of this Constitution.

### **1.5 Electricity Industry Act Definitions**

For the purposes of this Constitution, Pilbara Networks Access Code, Pilbara Networks Rules, Harmonised Technical Rules and NWIS have the meaning given to those terms in the Act.

## **2. OBJECTS**

The objects of the Company are:

- (a) to perform the functions given to it under the Act; and
- (b) to undertake any other thing or activity which is incidental or ancillary to the attainment of the above object.

### **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.

### **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**

Each 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 dollar (\$1.00).

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

#### **5.1 Application of income and property**

- (a) The entire income and property of the Company shall be applied solely towards the promotion of the Objects and no part shall be paid or transferred directly or indirectly to Members by way of dividend, bonus or otherwise.
- (b) The Company is not required to promote all of the Objects at the same time or in any particular order and may, in its absolute discretion, determine the level and amount of promotion, funding or any other support which should be applied to any of the Objects at any given time.

#### **5.2 Certain payments allowed**

Nothing in clause 5.1 of this Constitution prevents the payment in good faith in promotion of the Objects with the prior approval of the Board:

- (a) subject to clause 12.9, of remuneration to an Officer or employee of the Company;
- (b) for a good or service supplied to the Company by a Director (other than in the capacity as a Director of the Company) or Member, where the amount payable is a commercially reasonable payment for the supply;

- (c) of interest at prevailing market rates on money borrowed from any Member;
- (d) of commercially reasonable and proper rent for premises let by any Member to the Company;
- (e) for indemnification or payment of premiums on contracts of insurance for any Member to the extent permitted by law and this Constitution; or
- (f) made in accordance with clause 25.

## **6. MEMBERSHIP**

### **6.1 Members of the Company**

The Members of the Company shall consist of:

- (a) NSP Members; and
- (b) Associate Members.

### **6.2 Application for membership**

- (a) A person wishing to become a Member must complete a Membership application in the form prescribed by the Board and submit the application to the Company.
- (b) The Board must accept an application for Membership if the applicant is Eligible.
- (c) If the Board is not satisfied an applicant is Eligible, it may reject or defer consideration of an application by that applicant, and may request further information from an applicant before it makes a determination.
- (d) If the Board rejects an application for Membership, it must provide to the applicant written reasons for that rejection.
- (e) If a person's application for Membership is accepted, the applicant is a Member from the date of acceptance.

### **6.3 Rights non-transferable**

The rights and privileges of a Member are not transferable.

### **6.4 NSP Membership Eligibility**

- (a) Subject to clause 6.4(b), a person shall be eligible to be an NSP Member only if the person:
  - (i) is a *registered NSP* as defined under the Pilbara Network Rules; and
  - (ii) agrees in writing to become an NSP Member of the Company and to be bound by the Constitution by completing an application for NSP Membership in the form prescribed by the Board.

- (b) If more than one person within a group of two or more related bodies corporate is eligible under clause 6.4(a), only one related body corporate within the group is entitled to become an NSP Member.

## **6.5 Rights of an NSP Member**

An NSP Member is entitled to:

- (a) receive notices of, attend, be heard at a general meeting;
- (b) provided it has paid its annual Membership subscription fee in full in accordance with clause 7, and subject to clause 8.3(c), vote at a general meeting;
- (c) receive a copy of the annual financial report, directors report or Auditor's report (if any) of the Company within the time frame specified in the Corporations Act; and
- (d) appoint a Director.

## **6.6 Associate Membership Eligibility**

A person shall be eligible to be an Associate Member only if the person:

- (a) has an interest in the NWIS, wishes to further the Objects; and
- (b) agrees in writing to become an Associate Member of the Company and to be bound by the Constitution by completing an application for Associate Membership in the form prescribed by the Board.

## **6.7 Rights of an Associate Member**

An Associate Member does not have the right to vote at a general meeting, but is entitled to:

- (a) receive notices of, attend and be heard at a general meeting; and
- (b) receive a copy of the annual financial report, directors report or Auditor's report (if any) of the Company within the time frame specified in the Corporations Act.

## **7. MEMBERSHIP SUBSCRIPTION FEE**

- (a) The annual Membership subscription fee is the amount determined by the Board from time to time.
- (b) Unless the Board determines a different payment date, the annual Membership subscription fee must be paid:
  - (i) in the case of an applicant to become a Member, within 5 Business Days of being accepted as a Member; or
  - (ii) in the case of an existing Member, within 1 month of the end of each 12 month anniversary of their Membership.
- (c) The Board may, in its absolute discretion, waive the requirement for a Member or an applicant to become a Member to pay their annual Membership subscription fee.

## **8. CESSATION OF MEMBERSHIP**

### **8.1 Resigning as a Member**

A Member may withdraw from the Company by giving the Secretary not less than one month's notice of its resignation and its Membership shall cease on expiry of such notice.

### **8.2 Automatic cessation**

A person ceases to be a Member if the Member:

- (a) being an individual, dies, is or becomes Bankrupt, is or becomes of unsound mind or is or becomes a person whose property is liable to be dealt with in any way under a law relating to mental health;
- (b) being a corporation, trust or association, is wound up or is or becomes Insolvent;
- (c) is no longer Eligible;
- (d) fails to pay their annual Membership subscription fee (if any) by the date determined under clause 7(b); or
- (e) is expelled under clause 8.3 by the passing of a Members' resolution.

### **8.3 Expelling a Member**

- (a) In accordance with any relevant Policy, the Directors may pass a resolution recommending the expulsion of a Defaulting Member from the Company.
- (b) The Directors must, within 21 days of a resolution being passed under clause 8.3(a), convene a meeting of Members to determine whether or not to adopt the Directors' recommendation and expel the Defaulting Member.
- (c) A special resolution of Voting NSP Members in general meeting is required to expel a Defaulting Member, and the Defaulting Member (if a Voting NSP Member) is not entitled to, and is excluded from the, vote on the resolution.
- (d) Membership ceases on the passing of the Voting NSP Members' resolution under clause 8.3(c).
- (e) A person expelled under this clause, even if otherwise Eligible, may not become a Member again unless the Voting NSP Members resolve by special resolution to accept an application from that person.

### **8.4 Ceasing to be a Member**

A 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, by reason of their Membership only, 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; and
- (d) continue to be bound by (and shall discharge) any determination of the Board made in respect of any complaint unresolved or outstanding at the date of cessation of Membership.

## **9. REGISTER OF MEMBERS**

- (a) The Company must set up and maintain a Register to reflect the appointment or cessation of a person as a Member, as soon as practicable after the appointment or cessation occurs.
- (b) The Register must contain the information required by the Corporations Act and the class of Membership of each Member (if applicable).

## **10. MEETINGS OF MEMBERS**

### **10.1 Annual general meeting**

- (a) Annual general meetings of the Company shall be held in accordance with the provisions of the Corporations Act.
- (b) The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:
  - (i) confirmation of the minutes of the previous general meeting, except at the first annual general meeting;
  - (ii) the consideration of the reports that under any applicable legislation (if any) are required to be presented at the annual general meeting;
  - (iii) the appointment and remuneration of the Auditor (if any); and
  - (iv) asking questions about the management of the Company and asking questions of the Auditor (if any).

### **10.2 General meetings**

General meetings may be convened by the Board whenever and wherever it thinks fit or by requisition of Voting NSP Members as provided by the Corporations Act.

### **10.3 Notice of meeting**

- (a) Subject to the provisions of the Corporations Act 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) must be given for general meetings.
- (b) A notice of general meeting must specify:

- (i) the place, the day and the time of meeting;
- (ii) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the meeting;
- (iii) the general nature of the business to be transacted at the meeting; and
- (iv) any other matters as are required by the Corporations Act.

#### **10.4 Meeting not invalidated and waiving notice**

- (a) A person may waive notice of a general meeting by written notice to the Company or by attendance at the general meeting.
- (b) Subject to the Corporations Act, the non-receipt of notice of a general meeting by, or an accidental omission to give notice of a general meeting to, any person entitled to receive notice of a general meeting does not invalidate the general meeting or any proceeding at the general meeting.

#### **10.5 Postponement or cancellation**

- (a) Subject to the Corporations Act, the Board may change the venue for, postpone or cancel a general meeting at its own discretion, by written notice given individually to each person entitled to be given notice of the meeting.
- (b) If a general meeting is called and arranged to be held by the Voting NSP Members under clause 10.2, the Board may not cancel it without the consent of the Voting NSP Members by ordinary resolution.
- (c) If a meeting of Members is postponed or adjourned for one month or more, the Company must give new notice of the resumed meeting.

#### **10.6 Technology**

- (a) The Company may hold a meeting of Members at two or more venues using any technology that gives the Members entitled to be heard at a general meeting of Members, a reasonable opportunity to participate.
- (b) The Members may only withdraw their consent to the use of technology by a resolution of the Company at a general meeting.

### **11. PROCEEDINGS AT GENERAL MEETINGS**

#### **11.1 Quorum**

- (a) No business shall be transacted at a general meeting unless a quorum of Voting NSP Members is present at the time when the meeting proceeds to business.
- (b) Except as otherwise provided in this Constitution, Voting NSP Members entitled to cast one half of the votes at that meeting, which must include at least two Voting NSP Members, shall constitute a quorum at a general meeting.
- (c) 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 Voting NSP Members.

## **11.2 If Quorum is Not Present**

- (a) If a quorum of Voting NSP Members is not present within 30 minutes of the time appointed for a general meeting, the meeting shall, if convened upon the requisition of Voting NSP 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 chairperson may determine (being a day which is not more than 30 days after the originally scheduled date).
- (b) If a quorum of Voting NSP Members is not present within 30 minutes of the time appointed for the adjourned meeting then the general meeting shall be dissolved.

## **11.3 Chair**

- (a) The Chair of the Board shall preside as chairperson 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 Government Appointed Director shall be the chairperson of the general meeting. If the Government Appointed Director is not present within 30 minutes of the time appointed for holding the general meeting, or is unable or unwilling to act as chairperson of the meeting, then the meeting is adjourned to the same day in the next week at the same time and place. If neither the Chair or the Government Appointed Director are present within 30 minutes of the time appointed for holding the adjourned general meeting, or neither the Chair or the Government Appointed Director are able or willing to act, then the general meeting shall be dissolved.
- (b) Subject to the terms of this Constitution dealing with the adjournment of meetings, the ruling of the chairperson on all matters relating to the order of business, procedure and conduct of the general meeting is final.
- (c) The chairperson may expel any Member or Director from a general meeting if the chairperson reasonably considers that the Member or Director's conduct is inappropriate.

## **11.4 Attendance at meetings**

- (a) Subject to clause 8.3(c), each Voting NSP Member has the right to attend, speak and vote at all meetings of Members.
- (b) Each 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 be heard on any part of the business of the meeting which concerns the Auditor in the capacity of Auditor.

## **11.5 Adjourned Meetings**

- (a) The chairperson of any general meeting may, with the consent of the majority of those Voting NSP Members present at the general meeting (being a meeting at which the quorum is present), 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) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

## 11.6 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 Voting NSP Member present. The demand for a poll may be withdrawn.
- (b) Unless a poll is so demanded, a declaration by the chairperson 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) Except where stipulated by law or this Constitution, a resolution put to a vote at a general meeting is to be decided by an ordinary resolution of the votes cast by the Voting NSP Members present.
- (d) Each Voting NSP Member has one vote on a show of hands.
- (e) Before a vote is taken, the chairperson must inform the meeting whether any proxy votes have been received and how the proxy votes are cast.
- (f) A challenge to a right to vote at a general meeting:
  - (i) may only be made at the general meeting; and
  - (ii) must be determined by the chairperson, whose decision is final.
- (g) A vote not disallowed by the chairperson of a meeting under this clause is valid for all purposes.
- (h) Neither the chairperson nor the minutes need to state the number or proportion of the votes recorded for or against a resolution.
- (i) If a poll is duly demanded at a general meeting, it shall be carried out as the chairperson of the meeting directs
- (j) Each Voting NSP Member has one vote on a poll.
- (k) A demand for a poll does not prevent a general meeting continuing for the transaction of any business except:
  - (i) the question on which the poll has been demanded; or
  - (ii) on a question of adjournment, which must be taken immediately.
- (l) The result of the poll shall be the resolution of the meeting at which the poll was demanded.
- (m) Clauses 11.6(c), 11.6(e) and 11.6(f) apply to any vote undertaken by a poll.
- (n) A Voting NSP Member may vote by proxy, by attorney or by its Corporate Representative.

## 11.7 Proxies and Other Authorities

- (a) A Member may appoint proxy.
- (b) A proxy may, but need not be a Member of the Company.
- (c) A proxy may be appointed for:
  - (i) all general meetings;
  - (ii) a number of general meetings; or
  - (iii) a particular general meeting.
- (d) Unless otherwise provided in the instrument, an instrument appointing a proxy is taken to confer authority:
  - (i) to agree to a meeting being convened by shorter notice than is required by the Corporations Act or by this Constitution;
  - (ii) to speak to any proposed resolution on which the proxy may vote;
  - (iii) to demand or join in demanding a poll on any resolution on which the proxy may vote;
  - (iv) if the proxy has voting rights, to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put, or any procedural motion, including any motion to adjourn the meeting;
  - (v) to act generally at the meeting; and
  - (vi) even though the instrument may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re-scheduled or adjourned meeting or at the new venue.
- (e) The instrument appointing a proxy shall:
  - (i) be in writing and signed by the appointor or their duly authorised attorney; or
  - (ii) if the appointor is a corporation, executed in accordance with section 127 of the Corporations Act.
- (f) A Voting NSP 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.
- (g) The instrument appointing a proxy may be in any common or usual form acceptable to the Directors.
- (h) 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.

- (i) 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.
- (j) Subject to any other clause in this Constitution, a proxy is entitled to a separate vote for each Voting NSP Member the person represents.
- (k) The appointment of a proxy is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on a resolution, the proxy is not entitled to vote, and must not vote, as the appointer's proxy on the resolution.
- (l) A 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.

#### **11.8 Matters Required to be Dealt with by Members**

- (a) Subject to this Constitution and as otherwise required by law, a special resolution of the Voting NSP Members in general meeting is required for:
  - (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) acquiring or commencing any undertaking other than in furtherance of the Objects;
    - (C) entering into any partnership, joint venture or merger; or
    - (D) being wound up.

- (b) Amendments to clauses 2, 6, 8.3, 11.1(b), 11.8, 12.3(b), 12.5, 12.8, 14.4 and 14.7 of this Constitution require the prior written consent of each NSP Member.
- (c) As required by law, the guarantee amount specified in clause 4.2 cannot be amended.
- (d) Amendments to clause 12.9 in respect of the remuneration of the Government Appointed Director, requires the prior written consent of the Minister for Energy.

## **12. APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS**

### **12.1 Number of Directors**

The Board shall consist of at least 3 Directors, and a maximum number of Directors determined by Voting NSP Members in general meeting, who must be appointed in accordance with this clause 12.

### **12.2 No membership qualification**

- (a) A Director need not be a Member.
- (b) Neither the Auditor nor any partner or employee of the Auditor is eligible to act as a Director.

### **12.3 Board Composition**

- (a) The composition of the Board will be determined as set out in this clause 12.
- (b) Subject to clause 12.5(b) and the right of the Board to fill vacancies on the Board under this Constitution, the composition of the Board shall be as follows:
  - (i) 1 Director appointed by each NSP Member;
  - (ii) 1 Independent Director appointed as the Chair by the Voting NSP Members; and
  - (iii) 1 Government Appointed Director appointed by the Minister for Energy who meets the criteria in clause 12.4(b).

### **12.4 Qualifications of Directors**

- (a) Subject to clauses 12.4(d) and 12.4(e), the Board may determine the particular qualifications and experience (if any) a person must hold in order to be appointed as the Chair or the Government Appointed Director.
- (b) A Government Appointed Director must be:
  - (i) suitably qualified for the position and have the skills and experience necessary to carry out the responsibilities and functions of a director of the Company and the role of a Government Appointed Director under this Constitution;
  - (ii) free from any business or other relationship that could materially interfere with the independent exercise of the Director's judgement; and

- (iii) a person who is not an employee, executive, Officer or consultant of a Member or a related body corporate of a Member.
- (c) In assessing whether a person satisfies the criteria determined by the Board under clause 12.4(a) (if any), regard may be had to any information supplied by that person and any information obtained from other sources.
- (d) A person is prohibited from being a Director if that person is disqualified from being a director under the Corporations Act.
- (e) A person may only be appointed as the Chair if the person is Independent.
- (f) The Board, through the Nominations Committee, must regularly assess the Independence of the Independent Director in light of the interests disclosed by them or through other information that may come to the Board's attention. The Independent Director must provide the Board with all relevant information for this purpose. The Board must disclose to Members, in a timely fashion, any matter or circumstance which may affect an Independent Director's status.

## **12.5 Appointment of Directors**

- (a) Subject to this Constitution:
  - (i) each NSP Member has the right to appoint one Director (and remove and replace that Director under clause 12.8(a));
  - (ii) the Voting NSP Members shall by ordinary resolution have the right to appoint, remove under clause 12.8(c) and replace the Independent Director, who is also the Chair; and
  - (iii) the first Government Appointed Director appointed by the Minister for Energy (taking into account the criteria listed in clause 12.4(b)), is the person specified in the application to register the Company under the Corporations Act, and otherwise, the Minister for Energy may (taking into account the criteria listed in clause 12.4(b)) remove and replace that person under clause 12.8(b), and appoint the Government Appointed Director, by written notice to the Company.
- (b) If an NSP Member does not appoint a Director under clause 12.5(a)(i), the Voting NSP Members may nominate, and in general meeting may elect, a person to fill that vacancy on the Board only to the extent required to ensure the minimum number of directors is maintained for the purposes of clause 12.1.
- (c) The NSP Members must cause the Board to take all action necessary to ensure that the Board comprises the persons nominated by each NSP Member from time to time and in accordance with the provisions of this clause 12.5.
- (d) A Director, the Board or an NSP Member may nominate a person to be the Chair for the purposes of clause 12.5(a)(ii) in accordance with any relevant Policy.
- (e) The Nominations Committee must consider and assess all nominations received for the position of the Chair in accordance with the relevant Policy and determine if the nominee is Independent and make a recommendation to the Board to either accept or reject the nomination.

- (f) If there is more than one accepted nominee for the position of the Chair, the nominee with the highest vote at the general meeting is elected.
- (g) If, by reason of nominees for the position of Chair not receiving the votes required for an ordinary resolution to be passed there remains a vacancy in the position of Chair, 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 a person to fill the vacancy. A previously unsuccessful nominee may be nominated again.
- (h) The Board may determine the rules which govern the appointment of a Director to fill a vacancy.
- (i) Subject to this Constitution, to ensure that the minimum number of Directors is maintained for the purposes of clause 12.1 and to meet the quorum requirements under clause 14.4 only, the Board may appoint a Director to fill a vacant position on the Board and that new Director holds office only until the conclusion of the next general meeting.

## **12.6 Term of Directors**

- (a) The Chair and the Government Appointed Director shall hold office from the date of their appointment until the end of the fourth annual general meeting following the Director's appointment.
- (b) The Chair and the Government Appointed Director is deemed, upon the passing of the service period determined under clause 12.6(a), to have retired from their office of Director and they are eligible to be re-appointed to the Board.
- (c) The Chair and the Government Appointed Director must not hold office for a continuous period of more than 12 years.
- (d) A Director appointed by an NSP Member holds office until they cease to be a Director under clause 12.7.

## **12.7 Vacation of Office**

The office of a Director becomes vacant if the Director:

- (a) dies;
- (b) becomes prohibited from holding the office of a Director under the Corporations Act;
- (c) 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;
- (d) resigns or retires by notice in writing to the Company;
- (e) is absent from 3 meetings of the Board without the permission of the Board and the Directors resolve that the office of that Director be vacated;
- (f) has been appointed by an NSP Member and the NSP Member ceases to be an NSP Member;
- (g) is removed by the Members in general meeting under clause 12.8(c);

- (h) has been appointed by an NSP Member, and the NSP Member serves a notice on the Company stating that the Director's office is vacated under clause 12.8(a); or
- (i) has been appointed by the Minister for Energy, and the Minister for Energy serves a notice on the Company stating that the Director's office is vacated under clause 12.8(b).

## **12.8 Removal of Directors**

- (a) An NSP Member may, by written notice to the Company and the Director appointed by the NSP Member, 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.
- (b) The Minister for Energy may, by written notice to the Company and the Director appointed by the Minister for Energy remove the Government Appointed Director and (subject to this Constitution) replace that Director, or replace the Government Appointed Director appointed by it who ceases for any other reason to be a Director.
- (c) Subject to clauses 12.8(a) and 12.8(b), a Director may be removed by the Voting NSP Members in general meeting in accordance with section 203D of the Corporations Act.

## **12.9 Remuneration**

- (a) The Independent Director and the Government Appointed Director are entitled to be, and the Government Appointed Director must be, paid out of the funds of the Company, as remuneration for their ordinary services as an Independent Director and the Government Appointed Director (as the case may be) in accordance with this Constitution.
- (b) The Voting NSP Members must in a general meeting approve a total annual figure for the remuneration of the:
  - (i) Independent Director, on recommendation of a resolution of the Board of Directors; and
  - (ii) the Government Appointed Director, on recommendation of a resolution of the Board of Directors and with the approval of the Minister for Energy.
- (c) Remuneration fixed by the Board for the Independent Director's and the Government Appointed Director's ordinary services must not exceed the applicable total annual figure approved by the Voting NSP Members in general meeting under clause 12.9(b).
- (d) 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.

## **13. POWERS AND DUTIES OF THE DIRECTORS**

### **13.1 Powers generally**

Subject to:

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

### **13.2 Nominee directors**

The Government Appointed Director and a Director appointed by an NSP Member may do each of the following (provided that in doing so a person in the position of that Director acting reasonably and honestly could form the view that he or she was acting in good faith and in the best interests of the Company as a whole):

- (a) have regard to and represent the interests of their appointor; and
- (b) act on the wishes of their appointor in performing any of his or her Director's duties or exercising any power, right or discretion as a Director.

### **13.3 Power to borrow**

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

### **13.4 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.

### **13.5 Attorney**

The Board may by power of attorney appoint any person to be the attorney or attorneys of the Company for such purposes, with such powers, authorities, and discretions (not exceeding those vested in or exercisable by the Board under this Constitution) for such period and subject to such conditions as the Board determines.

### **13.6 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 chairperson of the meeting at which the proceedings are held or the chairperson of the next succeeding meeting shall sign the minutes.

## **14. PROCEEDINGS OF THE BOARD**

### **14.1 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.

### **14.2 Notice of Board meetings**

- (a) Subject to this Constitution, notice of a Board meeting must be given to each Director.
- (b) The date, time or place of the Board meeting must not unreasonably prevent a Director from attending.
- (c) Subject to the Corporations Act, the non-receipt of notice of a Board meeting by, or an accidental omission to give notice of a Board meeting to, any person entitled to receive notice of a Board meeting does not invalidate the Board meeting or any proceeding at the Board meeting.

### **14.3 Voting**

- (a) 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.
- (b) In the case of an equality of votes, the chairperson of the Board meeting shall be entitled to a second or casting vote.

### **14.4 Quorum**

- (a) Subject to this Constitution, the number of Directors necessary for a quorum is 3 Directors and must include:
  - (i) the Independent Chair or Government Appointed Director; and
  - (ii) at least 2 Directors appointed by NSP Members.
- (b) If a quorum is not present within 30 minutes after the scheduled commencement time of a properly convened meeting of the Board, the meeting is adjourned to the same day the following week and will be held at the same time and place on that date.
- (c) A notice of an adjourned meeting must be given to the Directors. No business may be conducted at an adjourned meeting except the business that was meant to be conducted at the meeting that was adjourned. The quorum necessary before an adjourned meeting of the Board can take place is the same quorum that was necessary under clause 14.4(a) for the original meeting of the Board. If a quorum is not present within 30 minutes after the scheduled

commencement time of a further adjourned meeting, then the meeting is dissolved.

- (d) 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 12.5(i) or for calling a general meeting to enable sufficient Directors to be appointed to constitute a quorum.

#### **14.5 Chair**

If there is no Chair, or if the Chair is not present within 30 minutes after the time appointed for holding a meeting of the Board or if the Chair is present but is not willing to act as chairperson of the meeting, then the Government Appointed Director must be the chairperson of the meeting. If the Government Appointed Director is not present within 30 minutes after the time appointed for holding a meeting of the Board, or is present but is not willing to act as chairperson of the meeting, then the meeting is adjourned to the same day the following week and will be held at the same time and place on that date and clause 14.4(c) applies.

#### **14.6 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 or Policy 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.
- (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.

#### **14.7 Nominations Committee and Advisory Committee**

- (a) The Board must establish a Nominations Committee, comprising of the Government Appointed Director, Chief Executive Officer and Secretary.
- (b) The Nominations Committee must:

- (i) consider and assess nominees for the Independent Director position in accordance with the relevant Policy;
  - (ii) make inquiries and conduct interviews to confirm the eligibility of candidates for the Independent Director position; and
  - (iii) make recommendations to the Board for the appointment of the Independent Director.
- (c) The Board must establish an Advisory Committee, comprising of the Government Appointed Director and the Independent Director.
- (d) The Advisory Committee must:
- (i) provide advice to the Chief Executive Officer when requested by the Chief Executive Officer in respect of the performance of the Company's functions, including in relation to the management of Conflicts of Interest and competition law compliance matters; and
  - (ii) perform any functions that are delegated to it by the Board.

#### **14.8 Resolutions in Writing**

- (a) A circular 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.
- (b) Any such circular resolution may consist of several identical documents each signed by one or more Directors.
- (c) The Company may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- (d) A circular resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in clause 14.8(b) or 14.8(c).
- (e) A resolution in writing may consist of several documents in like form, each signed by one or more Directors and if so signed, it takes effect on the latest date on which a Director signs one of the documents.
- (f) A document generated by electronic means which purports to be a facsimile or e-mail of a resolution of Directors is to be treated as a resolution in writing.
- (g) A document bearing a facsimile or e-mail of a signature is to be treated as signed and an e-mail approving a resolution is also to be treated as a signature.

#### **14.9 Validity of acts**

An act done by a person acting as a Director or at a Board meeting attended by a person acting as a Director, is not invalidated merely because of:

- (a) a defect in the appointment of the person as a Director;
- (b) the person being disqualified to be a Director or having vacated office; or

- (c) the person not being entitled to vote,
- (d) if that circumstance was not known by the person or the Board (as applicable) when the act was done.

#### **14.10 Meetings by Technology**

- (a) If:
  - (i) the Directors confer by telephone, video conferencing 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 their means of communication or otherwise cease to take part in the conference unless the Director makes known to all other Directors taking part that the Director is ceasing to take part in the conference. Until a Director makes it known that they is ceasing to take part in the conference the Director shall be deemed to continue to be present and to continue to form part of the quorum.

#### **14.11 Declarations of Interest**

- (a) A Director who has a Conflict of Interest in a matter being considered or about to be considered by the Board must:
  - (i) disclose the nature of that interest at Board meeting as soon as possible after the relevant facts have come to his or her knowledge, and record of that disclosure must be made in the minutes of that meeting; and
  - (ii) not be present while the Board is considering the matter nor cast any vote in relation to that matter, unless otherwise authorised by the Board or at law.
- (b) The Board may make regulations and Policies requiring the disclosure of Conflicts of Interest that a Director, and any person considered by the Board to be related to or associated with a Director, may have in relation to any matter concerning the Company or a related corporation.

#### **14.12 Obligation of secrecy**

- (a) Subject to clause 14.12(b), each Director, the Secretary, Chief Executive Officer and observer must keep the transactions and affairs of the Company and the state of its financial reports confidential, unless otherwise authorised by Policy to disclose such confidential information to an NSP Member, and unless required to disclose them:
  - (i) in the course of duties as an Officer of the Company;
  - (ii) by the Board or the Company in general meeting; or
  - (iii) by law.
- (b) The Government Appointed Director is authorised to disclose information regarding the transactions and affairs of the Company, including its financial records, to the Minister for Energy and the Coordinator of Energy (as defined under the Act).
- (c) The Company may require a Director, Secretary, Chief Executive Officer, Auditor, Member, observer or other person engaged by it to sign a confidentiality undertaking consistent with this Clause. An Officer must do so if required by the Company.

### **15. ALTERNATE DIRECTORS**

#### **15.1 Appointment of Alternates**

A Director appointed by an NSP Member may appoint:

- (a) any person or another Director to be an alternate or substitute Director in his or her place during such period as she or 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 she or he is unable or unwilling to act.

#### **15.2 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 the appointor's 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 15.2 shall be effected by notice in writing signed by the appointor and delivered to the registered office addressed to the Secretary.

#### **15.3 Entitlements of Alternates**

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

#### **15.4 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 12.7 if the alternate were a Director.

#### **15.5 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.

#### **16. APPOINTMENT OF OBSERVER**

The Board may at its discretion invite observers to attend Board meetings.

#### **17. COMPLIANCE WITH PILBARA NETWORK RULES**

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

#### **18. SECRETARY**

##### **18.1 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.

##### **18.2 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.

##### **18.3 Cessation of Secretary's appointment**

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

- (a) is not permitted under the Corporations Act (or an order made under the Corporations Act) to be a secretary of a company;
- (b) becomes disqualified from managing corporations under the Corporations Act and is not given permission or leave to manage the Company under the Corporations Act;

- (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 18.4.

#### **18.4 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.

#### **18.5 Powers**

The Secretary may carry out any act or deed required by this Constitution, the Corporations Act or by any other statute to be carried out by the Secretary of the Company.

### **19. CHIEF EXECUTIVE OFFICER**

- (a) The Board must appoint a Chief Executive Officer who is responsible for the day to day management of the business and affairs of the Company and has the powers and undertakes the responsibilities as determined and in the manner determined by the Board.
- (b) The Chief Executive Officer will be remunerated in the manner and amounts as the Board determines.

### **20. MINUTES**

#### **20.1 Minutes as evidence**

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

#### **20.2 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.

### **21. SEAL**

#### **21.1 Common Seal**

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

#### **21.2 Use of Common Seal**

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

### **21.3 Fixing Seals to documents**

Every instrument to which the common 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.

### **21.4 Execution without Common Seal**

This clause does not limit the ways in which the Company may execute a document, including as permitted under the Corporations Act.

## **22. ACCOUNTS**

### **22.1 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.

### **22.2 Inspection of records**

Subject to the Corporations Act, 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.

### **22.3 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).

## **23. AUDIT**

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

## **24. NOTICES**

### **24.1 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) by delivery in person, by prepaid post, by facsimile transmission or by electronic mail sent to the Member's street address, facsimile number or electronic mail address (as the case may be) in the Register.

### **24.2 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 3 Business Days after the date of posting. Where a notice is sent by facsimile transmission when the sender of the facsimile receives a confirmation report that all pages of the fax have been transmitted to the recipient's fax number, but if transmission or receipt is after 5.00pm WST, it is taken as received on the next Business Day, or electronic mail which shall be deemed to have been effected 5 hours after the time sent (as recorded on the device which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

### **24.3 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.

### **24.4 Address for giving notices to the Company**

The postal address of the Company is its registered office. The fax number or e-mail address of the Company is the number or e-mail address which the Company may specify by written notice to a Member as the fax number or e-mail address to which notices may be sent to the Company.

### **24.5 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.

### **24.6 Notices of General Meeting**

- (a) Notice of every general meeting shall be given in the manner authorised by this clause 24 to every Member entitled to receive notice, Director and Auditor (if any), except those Members and Directors 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.

## **25. WINDING UP**

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

## **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 against a liability incurred as such an Officer 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 in defending an action for a liability incurred as such an Officer or employee 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 11.8, this Constitution may only be amended by special resolution of the Voting NSP Members.

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

### **28.1 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.

### **28.2 Interpretation**

For the purposes of clause 28.1 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.

### **28.3 Policies**

In the event of an inconsistency between this Constitution and any Policy, regulation or by-law determined by the Board, this Constitution shall prevail.

## **29. REVIEW OF THIS CONSTITUTION**

In the event that:

- (a) a person becomes Eligible to become a new NSP Member;
- (b) there is a resignation of an NSP Member; or
- (c) the functions given to the Company under the Act materially change ,

the Board must, as soon as practicable following such event occurring:

- (i) undertake a review of this Constitution;
- (ii) prepare a report to Members regarding the outcome of that review; and
- (iii) 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.

We, being the members of PILBARA ISOCO LIMITED hereby agree to the terms of the Constitution.

Signed Sealed and Delivered for and on behalf )  
of Alinta DEWAP Pty Ltd )  
ACN 058 070 689 )  
by authority of the Director(s) )  
in the presence of: )

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Name)  
Director/Sole Director & Secretary

\_\_\_\_\_  
(Name)  
Director or Secretary

Signed Sealed and Delivered for and on behalf )  
of Pilbara Iron Pty Ltd )  
ACN 107 216 535 )  
by authority of the Director(s) )  
in the presence of: )

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Name)  
Director/Sole Director & Secretary

\_\_\_\_\_  
(Name)  
Director or Secretary

Signed Sealed and Delivered for and on behalf )  
of Regional Power Corporation )  
by authority of the Director(s) )  
in the presence of: )  
)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Name)  
Director

\_\_\_\_\_  
(Name)  
Director

Dated [Insert]