



CRC for  
Water Sensitive Cities

## CRCWSC Constitution August 2014

### Variation 1, Aug14

**Purpose: to change the number of directors from 9 to 11; the further two directors being board appointees.**



An Australian Government Initiative



Conformed Constitution as amended pursuant to Special  
Resolution of Essential Participants of 20 August 2013 and  
Members Resolution of 17 September 2013

## Constitution

CRC for Water Sensitive Cities Ltd

ABN 19 158 409 137



An Australian Government Initiative



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## PRELIMINARY

### 1 Definitions

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- 1.1 Except where the context otherwise requires, the words and phrases used in this Constitution have the meanings as set out at Schedule 1.
- 1.2 In this Constitution, except where defined under clause 1.1 or the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

### 2 Interpretation

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In this Constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency; and
- (f) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.

### 3 Replaceable rules

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To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

## OBJECTS

### 4 Objects

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- 4.1 The objects for which the Company is established are to:
- (a) establish and operate the Cooperative Research Centre for Water Sensitive Cities (Centre) in accordance with the conditions outlined in the Commonwealth Agreement and Essential Participants Agreement, recognising that a core premise of the CRC Program is to form research collaborations that develop outcomes that are intended for the benefit of Australia and its citizens;
  - (b) facilitate the undertaking of research to deliver socio-technical systems, education and training programs and small and medium enterprise (SME) engagement needed to transition cities and towns to Water Sensitive

Cities for the betterment and benefit of Australians generally. The research is to be focussed to address the challenges in urban water management confronting Australia, a systemic issue of both national and international significance and priority. The research will ultimately provide a positive impact upon the liveability, productivity and sustainability of cities and the health of their residents whilst preserving, enhancing and restoring the characteristics valued and of benefit to citizens living in Australian cities and towns;

- (c) develop programs that aim to *inter alia*:
  - (i) revolutionise urban water management strategies in Australia;
  - (ii) deliver the social transformations needed to support Water Sensitive Cities, including community attitude and behavioural change, planning and development practices, management systems and technology innovations;
  - (iii) apply new paradigms of climate responsive design and green infrastructure that promotes synergistic relationships between constructed and natural environments;
  - (iv) harness the potential of a portfolio of water sources in cities and towns including recycled wastewater, stormwater and groundwater integrated at a range of scales for context-specific, fit-for-purpose uses; and
  - (v) develop an enduring partnership between government, industry, the water sector, and the community that is informed by the evidence drawn from the research programs;
- (d) actively support Centre Essential Participants and Other Participants involved in reforms of the water systems and services through providing and/or facilitating the required research relevant to supporting future population trends and responding to economic and climate change and uncertainty through collaborative efforts, thereby ensuring the outcomes of the Centre are greater than those that would be achieved by the Essential Participants and Other Participants working alone, with the ultimate aim of leveraging the benefit of the same for Australians generally through the development of Water Sensitive Cities;
- (e) co-ordinate, engage and bring together the inter-disciplinary research expertise and thought-leadership of our participating organisations in Australia and internationally so as to address the challenges in urban water management now facing Australia's town and cities;
- (f) ensure the outcomes of the activities in (a) to (e) are utilised in the best interests of Australia to maximise the benefit to the Australian economy, environment and population and to deliver those outcomes for Utilisation on a global scale;
- (g) develop and implement a long term strategy for continuing to carry out the activities in (a) to (f) after the expiry of the initial term of the Centre for the enduring benefit of Australians generally; and
- (h) to do all such other things necessary, incidental or conducive to achieving the above objects.

4.2 The Company may only exercise the powers in section 124(1) of the Corporations Act to:

- (a) carry out the objects in this clause 4; and

- (b) do all things incidental or convenient in relation to the exercise of power under clause 4.2(a).

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

### **5 Income and property of Company**

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- 5.1 The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in clause 4.1.
- 5.2 No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company.

## **MEMBERSHIP**

### **6 Admission**

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- 6.1 The initial number of Members with which the Company proposes to be registered is two.
- 6.2 The initial Members of the Company are:
  - (a) the Chief Executive Officer;
  - (b) the Chairperson.
- 6.3 The Independent Director appointed under clause 23.4(c) will become a Member of the Company simultaneously with his or her appointment as an Independent Director, and must provide the Secretary with a signed Member's consent for this purpose.
- 6.4 If a Member ceases for whatever reason to hold their position referred to in clause 6.2, they must immediately, upon request from the Secretary, provide the Secretary with written notice of resignation. The Member's membership will cease when a replacement is appointed to their vacated position and that person takes up membership of the Company.
- 6.5 Applications for membership of the Company must be in writing, signed by the applicant and in a form approved by the Directors in their absolute discretion.
- 6.6 The Directors will consider each application for membership at the next Directors' meeting after the application is received. In considering an application for membership, the Directors may:
  - (a) accept or reject the application; or
  - (b) ask the applicant to give more evidence of eligibility for membership.
- 6.7 If the Directors ask for more evidence under clause 6.6, the Directors' determination of the application for membership is deferred until the evidence is given.
- 6.8 The Directors do not have to give any reason for rejecting an application for membership.
- 6.9 As soon as practicable following acceptance of an application for membership, the Secretary will send the applicant written notice of the acceptance or rejection (as applicable) of membership.

## **7 Ceasing to be a Member**

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- 7.1 A Member's membership of the Company will cease:
- (a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
  - (b) if the Member is no longer eligible to be a Member in accordance with clause 6.2, subject to clause 6.4;
  - (c) if a majority of three-quarters of the Directors present and voting at a Directors' meeting resolve to terminate the membership of a Member:
    - (i) whose conduct in their opinion renders it undesirable that that Member continue to be a Member of the Company;
    - (ii) only after the Member has been given at least 21 days' notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed;
  - (d) if the Member:
    - (i) dies;
    - (ii) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
    - (iii) is convicted of an indictable offence.
- 7.2 Any Member ceasing to be a Member:
- (a) will not be entitled to have any claim upon any portion of the property or assets of the Company;
  - (b) will remain liable for and will pay to the Company all moneys which were due at the date of ceasing to be a Member; and
  - (c) is not permitted to:
    - (i) use any of the Company's property; or
    - (ii) participate in any of the Activities.

## **8 Powers of attorney**

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- 8.1 If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the attorney to the Company for notation.
- 8.2 If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.
- 8.3 The Company may ask for whatever evidence it thinks appropriate to show that the power of attorney is effective and continues to be in force.

## **GENERAL MEETINGS**

### **9 Calling general meeting**

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- 9.1 The Directors may, at any time, call a general meeting.
- 9.2 A Member may:



- (a) only request the Directors to call a general meeting in accordance with section 249D of the Corporations Act; and
- (b) not request or call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.

## 10 Notice of general meeting

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- 10.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day on which notice is given) must be given to Members of any general meeting.
- 10.2 A notice calling a general meeting:
- (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
  - (b) must state the general nature of the business to be transacted at the meeting;
  - (c) if a special resolution is to be proposed at the meeting, must set out an intention to propose the special resolution and state the resolution; and
  - (d) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.
- 10.3 A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:
- (a) the consideration of the annual financial report, Directors' report and the Auditor's report;
  - (b) the election of directors; or
  - (c) the appointment of the Auditor to fill a vacancy.
- 10.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 9.2).
- 10.5 The Directors must give notice of the postponement or cancellation of a general meeting to all persons referred to in clause 45.1 entitled to receive notices from the Company.
- 10.6 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

## PROCEEDINGS AT GENERAL MEETINGS

### 11 Member

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- 11.1 In clauses 11.2, 12, 14 and 17, **Member** includes a Member present in person or by proxy or attorney.
- 11.2 **Quorum**
- (a) No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.

- (b) A quorum of Members is two Members, or at least 65% of the Members if there are more than two.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
  - (i) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
  - (ii) in any other case:
    - A. it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
    - B. if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the start of the general meeting, the general meeting is automatically dissolved.

## **12 Chairperson**

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- 12.1 The Chairperson, or in the Chairperson's absence the deputy chairperson, of Directors' meetings will be the chairperson at every general meeting.
- 12.2 The directors present may elect a chairperson of a general meeting if:
  - (a) there is no Chairperson or deputy chairperson;
  - (b) neither the Chairperson nor deputy chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
  - (c) the Chairperson and deputy chairperson are unwilling to act as chairperson of the general meeting.
- 12.3 If no election is made under clause 12.2, then for that meeting:
  - (a) the Members may elect one Director present at the meeting as chairperson; or
  - (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members or the proxy of one of the Members present as chairperson.
- 12.4 If there is a dispute at a general meeting about a question of procedure, the chairperson of the meeting may determine the question.
- 12.5 The chairperson of a general meeting does not have a casting vote in addition to his or her deliberative vote.

## **13 Adjournment**

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- 13.1 The chairperson of a general meeting at which a quorum is present:
  - (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
  - (b) must adjourn the general meeting if the meeting directs him or her to do so.
- 13.2 An adjourned general meeting may take place at a different venue to the initial general meeting.

- 13.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 13.4 Notice of an adjourned general meeting must only be given in accordance with clause 10.1 if a general meeting has been adjourned for more than 21 days.

## **14 Decision on questions**

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- 14.1 Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes of Members cast on the resolution are in favour of the resolution.
- 14.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.
- 14.3 Unless a poll is demanded:
- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
  - (b) an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 14.4 The demand for a poll may be withdrawn.
- 14.5 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

## **15 Taking a poll**

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- 15.1 A poll will be taken when and in the manner that the chairperson of the meeting directs.
- 15.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 15.3 The chairperson may determine any dispute about the admission or rejection of a vote.
- 15.4 The chairperson's determination, if made in good faith, will be final and conclusive.
- 15.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.
- 15.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

## **16 Offensive material**

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A person may be refused admission to, or required to leave and not return to, a meeting if the person engages in any conduct or is in possession of any:

- (a) electronic or recording device;
- (b) placard or banner; or
- (c) other article,

which the chairperson considers to be dangerous, offensive or liable to cause disruption.

## VOTES OF MEMBERS

### 17 Entitlement to vote

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A Member entitled to vote has one vote.

### 18 Objections

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- 18.1 An objection to the qualification of a Member to vote may only be raised at the general meeting or adjourned general meeting at which the Member tendered his or her vote.
- 18.2 An objection must be referred to the chairperson of the general meeting, whose decision is final.
- 18.3 A vote that the chairperson allows is valid for all purposes unless it is disqualified by the chairperson under clause 18.2.

### 19 Votes by proxy

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- 19.1 If a Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may vote on a show of hands.
- 19.2 A proxy need not be a Member.
- 19.3 A proxy may demand or join in demanding a poll.
- 19.4 A proxy or attorney may vote on a poll.
- 19.5 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.

### 20 Document appointing proxy

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- 20.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by subsection 250A(1) of the Corporations Act. The Directors may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 20.2 For the purposes of clause 20.1, an appointment received at an electronic address will be taken to be signed by the Member if:
- (a) a personal identification code allocated by the Company to the Member has been input into the appointment; or
  - (b) the appointment has been verified in another manner approved by the Directors.
- 20.3 A proxy's appointment is valid at an adjourned general meeting.
- 20.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 20.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
- (a) to vote on:

- (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
  - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting, even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
- (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.
- 20.6 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either exercise the proxy or complete the appointment by inserting the name or names of one or more directors of the Company or the Secretary.

## **21 Lodgement of proxy**

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- 21.1 The written appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless otherwise specified in the notice of meeting to which the appointment relates) before:
- (a) the time for holding the general meeting or adjourned general meeting at which the appointee proposes to vote; or
  - (b) the taking of a poll on which the appointee proposes to vote.
- 21.2 The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:
- (a) the Company's registered office;
  - (b) a facsimile number at the Company's registered office; or
  - (c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

## **22 Validity**

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A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became mentally incapacitated; or
- (c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

## **APPOINTMENT AND REMOVAL OF DIRECTORS**

### **23 Number and election of directors**

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23.1 There will not be less than six nor more than eleven directors of the Company.

23.2 The initial directors of the Company will be:

- (a) the Chairperson;

- (b) two directors nominated by Non-Research Essential Participants;
  - (c) two directors nominated by Research Essential Participants;
  - (d) one Independent Director nominated by the Essential Participants;
  - (e) one director from, or with extensive experience in, the local government sector nominated by Other Participants; and
  - (f) two directors nominated by Other Participants,
- as referred to in clause 6.3 of the Essential Participants Agreement.

23.3 The initial directors referred to in clause 23.2 will operate as the first board of Directors of the Company. The Board may appoint two further directors in accordance with clause 23.4(f).

23.4 The term and appointment of each Director is determined as follows:

- (a) Two directors nominated by Non-Research Essential Participants.
  - (i) The initial directors appointed under clause 23.2(b) are appointed for an initial term ending on 30 June 2013, and will be eligible for re-election.
  - (ii) After the initial term, the two directors nominated by Non-Research Essential Participants will be elected by the Essential Participants under clause 23.13(a). One Director appointed will have a term of 3 years, and be eligible for re-election for further terms of 3 years and 2 years respectively (**Position A**). The other Director appointed will have a term of 2 years, and be eligible for re-election for two further terms of 3 years each (**Position B**).
- (b) Two directors nominated by Research Essential Participants.
  - (i) The initial directors appointed under clause 23.2(c) are appointed for an initial term ending on 30 June 2013, and will be eligible for re-election.
  - (ii) After the initial term, the two directors nominated by Research Essential Participants will be elected by the Essential Participants under clause 23.13(a). One Director appointed will have a term of 3 years, and be eligible for re-election for further terms of 3 years and 2 years respectively (**Position A**). The other Director appointed will have a term of 2 years, and be eligible for re-election for two further terms of 3 years each (**Position B**).
- (c) One Independent Director nominated by Essential Participants.
  - (i) The initial Independent Director appointed under clause 23.2(d) is appointed for an initial term of 2 years, and will be eligible for re-election.
  - (ii) After the initial term, the Independent Director will be nominated and elected by the Essential Participants under clause 23.13(a). The Independent Director appointed will have a term of 2 years, and will be eligible for re-election for further terms of 3 years and 2 years respectively.
- (d) One director from, or with extensive experience in, the local government sector nominated by Other Participants.
  - (i) The initial Director appointed under clause 23.2(e) is appointed for an initial term of 3 years, and will be eligible for re-election.

- (ii) After the initial term, the local government Director will be elected by the Other Participants under clause 23.13(b). The local government Director appointed will have a term of 3 years, and will be eligible for re-election for a further term of 3 years.
  - (e) Two directors nominated by Other Participants.
    - (i) The initial directors appointed under clause 23.2(f) are appointed for an initial term of 3 years (**Position A**) and 2 years (**Position B**), and will be eligible for re-election.
    - (ii) After the initial term, the directors will be nominated and elected by the Other Participants under clause 23.13(b). One Director appointed will have a term of 3 years, and be eligible for re-election for a further term of 3 years (**Position A**). The other Director appointed will have an initial term of 3 years, and be eligible for re-election for two further terms of 2 years each (**Position B**).
  - (f) Up to two directors appointed at the discretion of the Board.
    - (i) The term of appointment of each Director is at the discretion of the board, up to a maximum of 3 years.
- 23.5 The Directors will establish a nominations sub-committee (**Nominations Committee**) comprising the Chairperson and 3 members elected by the Essential Participants voting on a preferential basis, from nominations received from the Essential Participants.
- 23.6 Membership of the Nominations Committee may include current directors of the Company, excluding a Director referred to in clause 23.7(a).
- 23.7 The term for Nominations Committee members (excluding the Chairperson) will be 3 years unless:
- (a) the member is a Director in the last year of his or her term and the member intends seeking re-election as a director; or
  - (b) the member is seeking election as a director,
- in which case these members will resign from the Nominations Committee prior to lodging their nomination or the Nominations Committee receiving any nominations for the position being sought by the member.
- 23.8 The Nominations Committee will oversee the nomination, selection of acceptable nominations and recommendation for appointment of the directors referred to in clause 23.4 in accordance with this clause.
- 23.9 The Nominations Committee will invite the relevant Essential Participants or Other Participants entitled to nominate a Director under clauses 23.4 (**Nominating Party**), to provide details of their nominee to the Nominations Committee together with the signed consent of the nominee, at least two months prior to:
- (a) the expiry of the term of the then current Director(s); or
  - (b) otherwise where a vacancy arises.
- 23.10 In seeking nominations, the Nominations Committee may identify particular skill sets required for the position available.
- 23.11 A Nominating Party will only be able to nominate the number of candidates required to fill the current vacancies in the relevant category.
- 23.12 The Nominations Committee:

- (a) must consider all nominations received from Nominating Parties and assess each nomination to ensure the proposed nominee possesses the qualifications, skills and experience required by the Company, excluding any nominations that do not meet those requirements;
- (b) may identify other suitable candidates to be appointed as director(s) having regard to the mix of skills identified in clause 23.15;
- (c) must identify at least the same number of candidates as the appointments or vacancies to be filled; and
- (d) if there are more acceptable nominations received than positions available, prepare and provide an overview report of the nominees' skill set and experience to the relevant Essential Participants or Other Participants to facilitate the election of director(s) in accordance with clause 23.13 to fill the appointment or vacancy.

23.13 For directors to be appointed under:

- (a) clauses 23.4(a)(ii), (b)(ii) or (c)(ii), if, having regard to the selection process in clause 23.12:
  - (i) the Nominations Committee receives the same number of acceptable nominations as positions available, the Nominations Committee will recommend the appointment of the nominated director(s) to the board of Directors; or
  - (ii) an election is required under clause 23.12(d), the Essential Participants will elect the Director to be appointed and notify the Nominations Committee;
- (b) clauses 23.4(d)(ii) or 23.4(e)(ii), if, having regard to the selection process in clause 23.12:
  - (i) the Nominations Committee receives the same number of acceptable nominations as positions available, the Nominations Committee will recommend the appointment of the nominated director(s) to the board of Directors; or
  - (ii) an election is required under clause 23.12(d), the Other Participants will elect the Director to be appointed and notify the Nominations Committee.

23.14 In the event that there are simultaneous vacancies for Position A and Position B from the same director category as outlined in clause 23.4, an election for Position A will be conducted first and the nominee with the most votes will be elected to Position A. An election for Position B will then be conducted and the nominee with the most votes will be elected to Position B. In the event of a tie, a second election amongst the tied candidates will be held.

23.15 When the Nominations Committee is considering the nomination of acceptable directors under this clause 23, the Nominations Committee must:

- (a) ensure the mix of directors complies with the requirements of the Commonwealth Agreement; and
- (b) have regard to the mix of skills and diversity desirable to properly govern and manage the Company's business. Examples of desired skills are set out below:
  - (i) urban water sector management, urban planning, design and development, urban water services and industry operations and marketing and legal skills relevant to those areas;



- (ii) local government;
- (iii) strategic planning, business and financial management and economics;
- (iv) corporate leadership and governance;
- (v) government policy, processes and structures;
- (vi) management of research and development; and
- (vii) education and training.

23.16 Without limiting any other obligation of the directors of the Company under this Constitution or at law, each Director agrees that they will exercise their powers and discharge their duties as an independent director who is not representative of any Essential Participant or Other Participant, in the best interests of the Company.

## **24 Removal of directors**

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- 24.1 The Company may in accordance with the Corporations Act, remove any Director before the end of the Director's period of office.
- 24.2 If a Director has been appointed under:
- (a) clauses 23.4(a)(ii) or (b)(ii), the Essential Participants may by majority;
  - (b) clauses 23.4(d)(ii) or (e)(ii), the Other Participants may by majority,
- remove that Director at any time and replace them with a Director to be appointed in accordance with the process set out in clauses 23.9 to 23.15.
- 24.3 If the conduct or position of any Director is such that continuance in office appears to the majority of the Directors to be prejudicial to the interests of the Company, a majority of Directors at a Directors' meeting specifically called for that purpose may suspend that Director.
- 24.4 Within 14 days of the suspension, the Company must provide notice of the suspension, together with reasons for the suspension to the Essential Participants. The Essential Participants, through a Special Resolution which must be provided to the Company within 14 days, may reject the suspension in which case the Director will be reinstated to his or her office immediately. If not reinstated, the Director must resign from office immediately, or within any other timeframe determined by the Essential Participants.

## **25 Additional and casual directors**

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- 25.1 Subject to clause 23.1, the Directors may appoint any person as a Director to fill a casual vacancy or as an addition to the existing directors.
- 25.2 A Director appointed under clause 25.1 will hold office until the next general meeting of the Company when the Director must retire from office and may be nominated for re-election by the Nominations Committee.
- 25.3 A Director appointed to replace a casual vacancy will hold office for the balance of the term of the Director he or she is appointed to replace.

## **26 Retirement**

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- 26.1 With the exception of the Chairperson, a Director must retire from office at the expiry of their maximum term, as set out in clause 23.

26.2 A retiring Director will be eligible for re-election in accordance with clause 23.

## **27 Vacation of office**

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The office of a Director immediately becomes vacant if the Director:

- (a) is prohibited by the Corporations Act from holding office or continuing as a Director;
- (b) cannot fully participate in the governance of the Company whether due to mental incapacity, physical infirmity, extended absence from the country or any other reason or cause which in the opinion of the Directors renders the Director incapable of performing his or her duties;
- (c) resigns by notice in writing to the Company;
- (d) is removed by a resolution of the Company;
- (e) is absent from Directors' meetings for three consecutive meetings without leave of absence from the Directors; or
- (f) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act.

## **POWERS AND DUTIES**

### **28 Powers and duties of directors**

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28.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in general meeting.

28.2 Without limiting the generality of clause 28.1, the Directors may exercise all the powers of the Company to:

- (a) borrow money;
- (b) charge any property or business of the Company;
- (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
- (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

## **PROCEEDINGS OF DIRECTORS**

### **29 Directors' meetings**

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29.1 The Directors will ensure that a minimum of four Directors' meetings are held each financial year.

29.2 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.

29.3 A Directors' meeting must be called on at least 48 hours written notice of a meeting to each Director.

29.4 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which

they are able to simultaneously hear each other and to participate in discussion.

- 29.5 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 29.6 Subject to clause 32, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 29.7 Clauses 29.4 to 29.5 apply to meetings of directors' committees as if all committee members were directors of the Company.
- 29.8 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 29.9 A quorum is a majority of directors of the Company for the time being.
- 29.10 Where a quorum cannot be established at a meeting of Directors, the meeting will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Chairperson.
- 29.11 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the directors attending the meeting.

## **30 Decision on questions**

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- 30.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 32, each Director has one vote.
- 30.2 The chairperson of a Directors' meeting does not have a casting vote in addition to his or her deliberative vote.

## **PAYMENTS TO DIRECTORS**

### **31 Payments to directors**

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No payment will be made to any Director of the Company other than payment:

- (a) for services rendered to the Company by the Director in his or her capacity as Director, where the amount payable is commercially reasonable and does not exceed an amount previously approved by the Directors of the Company;
- (b) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors of the Company;
- (c) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors of the Company and where the amount payable is approved by the Directors of the Company and is not more than an amount which would commercially be reasonable payment for the service;
- (d) of any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Directors of the Company; and

- (e) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B.

## **32 Directors' interests**

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- 32.1 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 32.2 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 32.3 A Director is not disqualified from contracting with the Company in any respect, merely because of his or her role as a Director.
- 32.4 Subject to clause 31, a Director or a body or entity in which a Director has a direct or indirect interest may:
  - (a) enter into any agreement or arrangement with the Company;
  - (b) hold any office or place of profit other than as auditor in the Company; and
  - (c) act in a professional capacity other than as auditor for the Company, and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.
- 32.5 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
  - (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter,unless permitted by the Corporations Act to do so, in which case the Director may:
  - (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
  - (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
  - (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- 32.6 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

### **33 Remaining directors**

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- 33.1 The Directors may act even if there are vacancies on the board of Directors.
- 33.2 If the number of directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:
- (a) appoint a Director; or
  - (b) call a general meeting.

### **34 Delegation**

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- 34.1 The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to a committee or committees.
- 34.2 The Directors may at any time revoke any delegation of power to a committee.
- 34.3 At least one member of each committee must be a Director.
- 34.4 A committee must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 34.5 A committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.
- 34.6 Meetings of any committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each member was a Director.

### **35 Written resolutions**

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- 35.1 The Directors may pass a resolution without a Directors' meeting being held if all the directors of the Company entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs.
- 35.2 For the purposes of clause 35.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 35.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
- 35.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause 35.
- 35.5 This clause applies to meetings of directors' committees as if all members of the committee were directors of the Company.

### **36 Validity of acts of directors**

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If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or member of a directors' committee; or
- (b) a person appointed to one of those positions was disqualified,

all acts of any Director or the directors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

## **37 Minutes and Registers**

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- 37.1 The Directors must cause minutes to be made of:
- (a) the names of the directors present at all Directors' meetings and meetings of directors' committees;
  - (b) the names of the Members and their proxies present at all general meetings;
  - (c) all proceedings and resolutions of general meetings, Directors' meetings and meetings of directors' committees;
  - (d) all resolutions passed by Directors in accordance with clause 35;
  - (e) all appointments of officers;
  - (f) all orders made by the Directors and directors' committees; and
  - (g) all disclosures of interests made under clause 32.
- 37.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.
- 37.3 The Company must keep all registers required by this Constitution and the Corporations Act. The Essential Participants will be entitled to inspect the Company registers upon providing reasonable notice to the Secretary.
- 37.4 The Essential Participant Representatives will be entitled to receive a copy of minutes of Directors' meetings and directors' committee meetings, provided that the Directors may, in their discretion, omit any items from the minutes which are considered to be sensitive.

## **LOCAL MANAGEMENT**

### **38 Local management**

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- 38.1 The Directors may provide for the management and transaction of the affairs of the Company in any places and in such manner as they think fit.
- 38.2 Without limiting clause 38.1 the Directors may:
- (a) establish local boards or agencies for managing any of the affairs of the Company in a specified place and appoint any persons to be members of those local boards or agencies; and
  - (b) delegate to any person appointed under clause 38.2(a) any of the powers, authorities and discretions which may be exercised by the Directors under this Constitution,
- on any terms and subject to any conditions determined by the Directors.
- 38.3 The Directors may at any time revoke or vary any delegation under this clause.

### **39 Appointment of attorneys and agents**

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- 39.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the attorney or agent of the Company:

- (a) for the purposes;
  - (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
  - (c) for the period; and
  - (d) subject to the conditions,  
determined by the Directors.
- 39.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:
- (a) any member of any local board established under this Constitution;
  - (b) any company;
  - (c) any one or all of the members, directors, nominees or managers of any company or firm; or
  - (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 39.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 39.4 The Directors may appoint attorneys or agents by facsimile or electronic transmission to act for and on behalf of the Company.
- 39.5 An attorney or agent appointed under this clause may be authorised by the Directors to sub-delegate all or any of the powers, authorities and discretions for the time being vested in it.

## **CHAIRPERSON**

### **40 Chairperson**

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- 40.1 The Chairperson of the Company will be independent from Essential Participants and Other Participants.
- 40.2 The initial Chairperson of the Company will be Ms Cheryl Batagol.
- 40.3 Subject to clause 40.4, the initial Chairperson will hold office for five years from the date the Company is incorporated. The initial Chairperson will be eligible for re-election for a further term of 4 years.
- 40.4 Prior to the first anniversary of the Chairperson's appointment, a review of the Chairperson's performance will be undertaken and the assessment results provided to each Essential Participant Representative. As a result of the review, the Chairperson's appointment may be confirmed by a majority resolution of the Essential Participants. If not confirmed by a majority resolution, a replacement chairperson will be determined in accordance with clause 40.5.
- 40.5 The appointment of any chairperson after the initial Chairperson will be determined by an election of Essential Participants, from nominations received from the Essential Participants and assessed by the Nominations Committee in accordance with the requirements of clause 23.12.
- 40.6 The Directors will elect a Director as deputy chairperson to act as chairperson in the Chairperson's absence.

- 40.7 If the office of Chairperson becomes vacant, the Directors will appoint the deputy chairperson as acting Chairperson until a new chairperson is appointed.
- 40.8 The Chairperson will preside as chairperson at each general meeting and Directors' meeting, subject to the discretionary judgement of the Chairperson to delegate responsibility for chairing a given meeting to another Director where appropriate.

## **SECRETARY AND AUDITOR**

### **41 Secretary**

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- 41.1 If required by the Corporations Act, there must be at least one secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.
- 41.2 The initial Secretary is the person who has consented to act as secretary and who is named as the proposed secretary in the application for registration of the Company.
- 41.3 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.
- 41.4 The Directors may, subject to the terms of the Secretary's engagement contract, suspend, remove or dismiss the Secretary.

### **42 Auditor**

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- 42.1 If required by the Corporations Act, there must be at least one auditor of the Company, appointed in accordance with the Corporations Act.
- 42.2 The Auditor is entitled to attend and be heard on any matter at all general meetings.
- 42.3 The Auditor may only be removed in accordance with the Corporations Act.

## **INSPECTION OF RECORDS**

### **43 Inspection of records**

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- 43.1 Except as otherwise required by the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than directors of the Company.
- 43.2 Except as otherwise required by the Corporations Act, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

## **NOTICES**

### **44 Service of notices**

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- 44.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:
- (a) by serving it on the person; or



- (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- 44.2 A notice sent by post is taken to be served:
- (a) by properly addressing, prepaying and posting a letter containing the notice; and
  - (b) on the third day after the day on which it was posted.
- 44.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
  - (b) on the day after its despatch.
- 44.4 If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Company's registered office.
- 44.5 A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Member's address for the purposes of this clause.
- 44.6 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 44.7 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- 44.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

## **45 Persons entitled to notice**

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- 45.1 Notice of every general meeting must be given to:
- (a) every Member;
  - (b) every Director;
  - (c) the Secretary; and
  - (d) any Auditor.
- 45.2 No other person is entitled to receive notice of a general meeting.

## **AUDIT AND ACCOUNTS**

### **46 Audit and accounts**

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- 46.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act.
- 46.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act.

## WINDING UP

### 47 Winding up

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- 47.1 If the Company is wound up:
- (a) each Member; and
  - (b) each person who has ceased to be a Member in the preceding year, undertakes to contribute to the property of the Company for the:
    - (c) payment of debts and liabilities of the Company (in relation to clause 47.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
    - (d) adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding \$10.
- 47.2 If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another corporation which, by its constitution, is:
- (a) required to pursue charitable purposes only;
  - (b) required to apply its profits (if any) or other income in promoting its objects; and
  - (c) prohibited from making any distribution to its members, such corporation to be determined by the Members at or before the winding up and in default, by application to the Supreme Court of Victoria for determination.
- 47.3 The Company must not be voluntarily wound up or wound up in solvency, other than in accordance with:
- (a) the Corporations Act; and
  - (b) a special resolution of the Essential Participants in accordance with clause 5.5 of the Essential Participants Agreement.

## INDEMNITY AND INSURANCE

### 48 Indemnity and insurance

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- 48.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act the Company indemnifies every person who is or has been an officer of the Company against any liability (other than for legal costs) incurred by that person as such an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).
- 48.2 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an officer of the Company against reasonable legal costs incurred in defending an action for a liability incurred by that person as such an officer of the Company (including such legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

- 48.3 The amount of any indemnity payable under clauses 48.1 or 48.2 will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.
- 48.4 To the extent permitted by law and subject to the restrictions in section 199B of the Corporations Act, the Company will take out and maintain a contract of insurance for directors' and officers' liability on terms which are commercially reasonable to the Company. The Company must maintain the policy from the date of incorporation until the date the Company is wound up or otherwise ceases to operate.
- 48.5 For the purposes of this clause, **officer** means:
- (a) a Director;
  - (b) a Secretary;
  - (c) the Chief Executive Officer;
  - (d) the Chief Operations Officer; or
  - (e) the Chief Financial Officer.

## **49 Amendment to Constitution**

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- 49.1 This Constitution must not be amended other than in accordance with:
- (a) the Corporations Act; and
  - (b) a special resolution of the Essential Participants in accordance with clause 5.3 of the Essential Participants Agreement.
- 49.2 Subject to clause 49.1, the Directors may, by special resolution, revoke, add to or vary this Constitution provided that:
- (a) no part of the Company's funds or income is transferred to any institution, organisation, fund or authority that is not endorsed as a charitable organisation pursuant to Division 50 of the ITAA; and
  - (b) no part of the Company's funds or income becomes able to be used or applied for purposes that are inconsistent with the objects of the Company; and
  - (c) the revocation, addition or variation or amendment will not, in the opinion of the Directors, cause the Company to cease being endorsed as a charitable organisation pursuant to Division 50 of the ITAA.

## Schedule 1: Definitions

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|   |   |
|---|---|
| <b>Activities</b>                             | has the same meaning as the Essential Participants Agreement.   |
| <b>Auditor</b>                                | means the Company's auditor.  |
| <b>Centre</b>                                 | has the same meaning as the Essential Participants Agreement.   |
| <b>Chairperson</b>                            | means the person appointed as chairperson of the Company under clause 40 from time to time.   |
| <b>Chief Executive Officer</b>                | means the chief executive officer of the Centre from time to time.  |
| <b>Commonwealth Agreement</b>                 | has the meaning given to that term in the Essential Participants Agreement.   |
| <b>Company</b>                                | means CRC for Water Sensitive Cities Ltd.   |
| <b>Constitution</b>                           | means the constitution of the Company as amended from time to time.   |
| <b>Corporations Act</b>                       | means the <i>Corporations Act 2001</i> (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company. |
| <b>CRC Program</b>                            | has the meaning given to that term in the Essential Participants Agreement.   |
| <b>Director</b>                               | includes any person occupying the position of director of the Company.  |
| <b>Directors</b>                              | means all or some of the Directors acting as a board.   |
| <b>Essential Participants</b>                 | has the meaning given to that term in the Essential Participants Agreement.   |
| <b>Essential Participants Agreement</b>       | means the agreement between the Essential Participants for the establishment of the Centre dated on or about May 2012.  |
| <b>Essential Participants Reference Group</b> | has the meaning given to that term in the Essential Participants Agreement.   |
| <b>Essential Participants Representatives</b> | means each person appointed to represent an Essential Participant in the Essential Participants Reference Group.  |
| <b>GST</b>                                    | has the meaning given to that term by the GST Act.  |
| <b>GST Act</b>                                | means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) or any replacement or other relevant legislation and regulations.   |
| <b>GST Amount</b>                             | has the meaning given to that term in clause 48.3.  |
| <b>Indemnified Officer</b>                    | has the meaning given to that term in clause 48.3.  |
| <b>Independent Director</b>                   | means a person appointed as an independent director under clause 23.4(c).   |

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| <b>Member</b>                              | means a member under clause 6.2 and 6.3 and any other person admitted to membership of the Company under clause 6.   |
| <b>Nominations Committee</b>               | means the nominations committee established under clause 23.5.   |
| <b>Nominating Party</b>                    | has the meaning given to that term in clause 23.9.   |
| <b>Non-Research Essential Participants</b> | has the meaning given to that term in the Essential Participants Agreement.  |
| <b>Other Participants</b>                  | has the meaning given to that term in the Essential Participants Agreement.  |
| <b>Register</b>                            | means the register of Members of the Company.  |
| <b>Research Essential Participants</b>     | has the meaning given to that term in the Essential Participants Agreement.  |
| <b>Secretary</b>                           | means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of such joint secretaries.  |
| <b>Utilisation</b>                         | has the same meaning as the Essential Participants Agreement.  |
| <b>Water Sensitive Cities</b>              | <p>means cities and towns that are resilient, liveable, productive and sustainable cities that:</p> <ul style="list-style-type: none"> <li>(a) efficiently use the diversity of water resources available within towns and cities;</li> <li>(b) enhance and protect the health of urban waterways and wetlands; and</li> <li>(c) mitigate against flood risk and damage.</li> </ul> <p>They also create public spaces that harvest, clean and recycle water, increase biodiversity and reduce urban heat island effects. A water sensitive city interacts with the urban hydrological cycle in ways that: provide the water security essential for economic prosperity; enhance and protect the health of watercourses and wetlands; mitigate flood risk and damage; and create public spaces that harvest, clean and recycle water. Its strategies and systems for water management contribute to biodiversity, carbon sequestration and reduction of urban heat island effects. The twin challenges confronting Australian cities and towns of accommodating increasing population and the effects of climate change have implications for almost every aspect of water in our urban environments. Through the practice of Water Sensitive Urban Design, the planning and design of a “Water Sensitive City” responds to issues of water conservation and water security, risk of flooding, degradation of urban waterways and rising temperatures in a way that enhances the liveability of our cities and towns.</p> |

