

# Application for Retailer Authorisation



by

**Powershop Australia Pty Ltd (ABN 41 154 914 075)**

**Tuesday the 24<sup>th</sup> of April 2012**

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# 1. Introduction

## 1.1 Application

Powershop Australia Pty Ltd, ABN 41 154 914 075 (**Powershop**) operates an electricity retailing business in Victoria. Powershop provides the following application details in accordance with the “Retailer authorisation guideline” issued by the Australian Energy Regulator (the **AER**) in July 2011.

Powershop seeks an authorisation effective 1 July 2012.

## 1.2 Commercial in confidence

Powershop’s business plan, and its arrangements for energy supply are commercial in confidence. Please see Schedule 1, Schedule 3, Schedule 5, Schedule 6, Schedule 7, Schedule 8, Schedule 9, Schedule 10, Schedule 11 and Schedule 12.

## 1.3 Document structure

This document is structured such that:

- Sections 3.1 to 3.20 reflect items 1 to 20 of the “Information Requirements – organisational and technical capability”;
- Sections 4.1 to 4.9 reflect items 1 to 9 of the “Information Requirements – financial resources”; and
- Sections 5.1 to 5.8 reflect items 1 to 8 of the “Information Requirements – suitability”,

in the AER’s *Retailer Authorisation Guideline*.

# 2. Application details

## 2.1 Applicant details

### (a) Applicant name

The applicant is Powershop Australia Pty Ltd, ABN 41 154 914 075 (**Powershop**).

### (b) Registered address

As at the date of this application Powershop’s registered address is:

Powershop Australia Pty Ltd  
Level 29, 530 Collins Street  
Melbourne VIC 3000

### (c) Contact person

James Gerraty  
Manager – Legal & Regulatory  
Powershop Australia Pty Ltd  
9 Queen Street  
Melbourne VIC 3000  
Phone: 03 8370 2132

## 2.2 Scope of application

### (a) Date of commencement of retail operations

The authorisation sought pursuant to this application would apply to energy retailing activities from 1 July 2012.

Powershop is currently licensed by the Essential Services Commission of Victoria to retail electricity, pursuant to a licence granted 11 April 2012.

### (b) Form of energy

Powershop seeks authorisation in relation to electricity retailing.

### (c) Jurisdictions

Powershop's business plan focuses attention on Victoria in the initial stages of development, with expansion into other states in future years. As such, Powershop seeks authorisation to retail electricity in:

- Victoria;
- Queensland;
- New South Wales;
- South Australia; and
- Tasmania.

**(d) Customer types**

Powershop intends to supply energy to all customer types in the jurisdictions referred to in section 2.1.

The Powershop model is based around enabling online purchase of electricity and providing the ability to monitor usage and purchase in advance of requirements to maximise savings.

### 3. Organisational and technical capacity

#### 3.1 Details of previous experience in energy retail or the energy market more generally

##### (a) Retail licensee in Victoria

Powershop was granted an electricity retail licence by the Essential Services Commission of Victoria on 11 April 2012 and has been operating as a retailer since that date.

##### (b) Other energy market experience

Powershop and its related bodies corporate are heavily involved in the electricity industry both in Victoria and South Australia, as well as overseas.

Powershop's ultimate parent – Meridian Energy Limited – is the largest electricity generator in New Zealand, is an exclusively renewable generator, and has one of the world's largest renewable-only generation portfolios. Meridian Energy Limited has over 2,700MW of existing renewable generation capacity and 2,100MW planned or in construction – in total more than triple the level of Victoria's current installed renewable capacity.

In Australia, the Meridian Energy Group owns:

- Mt Millar Wind Farm (a 70MW generation facility in South Australia);
- half of the Macarthur Wind Farm (currently under construction, being developed pursuant to a joint venture with AGL, Macarthur will be the largest wind farm in the Southern Hemisphere once complete); and

- development rights in a number of wind farm sites including at Mt Mercer in Victoria.

As it already owns licensed businesses within Australia, the Meridian Energy Group already holds electricity industry licences – including a generation licence issued by the Essential Services Commission of South Australia for Mt Millar Wind Farm, and a generation licence issued by the Essential Services Commission of Victoria for Mt Mercer Wind Farm.

The Meridian Energy Group currently includes two retail businesses, both based in New Zealand – Meridian (since 2001), and Powershop New Zealand (since 2008). Together they serve approximately 300,000 customers.

Powershop New Zealand's business model does not rely on outsourcing for any material part of its business – its customer service model is based on an integrated team of direct employees.

In the last 12 months, Powershop New Zealand has:

- been awarded first place in the 2011 Deloitte Fast 50, a ranking of businesses achieving outstanding growth;
- been awarded the Most Satisfied Customers award for electricity providers by Canstar Blue;
- been rated first in various consumer satisfaction surveys including a poll by television programme Fair Go; and
- achieved first place in Consumer New Zealand's 2011 energy provider survey, with 96% customer satisfaction compared to an average 75%, following first place in the previous such survey with 92% compared to an average 73%.

##### (c) Relevance of experience

Given the substantial similarities between the New Zealand electricity market and the NEM, Meridian Energy Limited and Powershop New Zealand’s energy retailing experience is directly relevant to Powershop’s retail authorisation application. This is especially so as Powershop will be implementing similar systems, strategies and processes to Powershop New Zealand, with appropriate adjustments to reflect the differences between the two markets.

**3.2 Details of any other relevant retail experience**

As a newly incorporated special purpose vehicle established to apply Meridian Energy Limited’s significant energy retailing experience, Powershop Australia Pty Ltd has no other retailing experience.

**3.3 Details of experience of an entity with a 20% relevant interest**

Refer to section 3.1.

**3.4 Organisation chart**

**(a) Corporate structure**

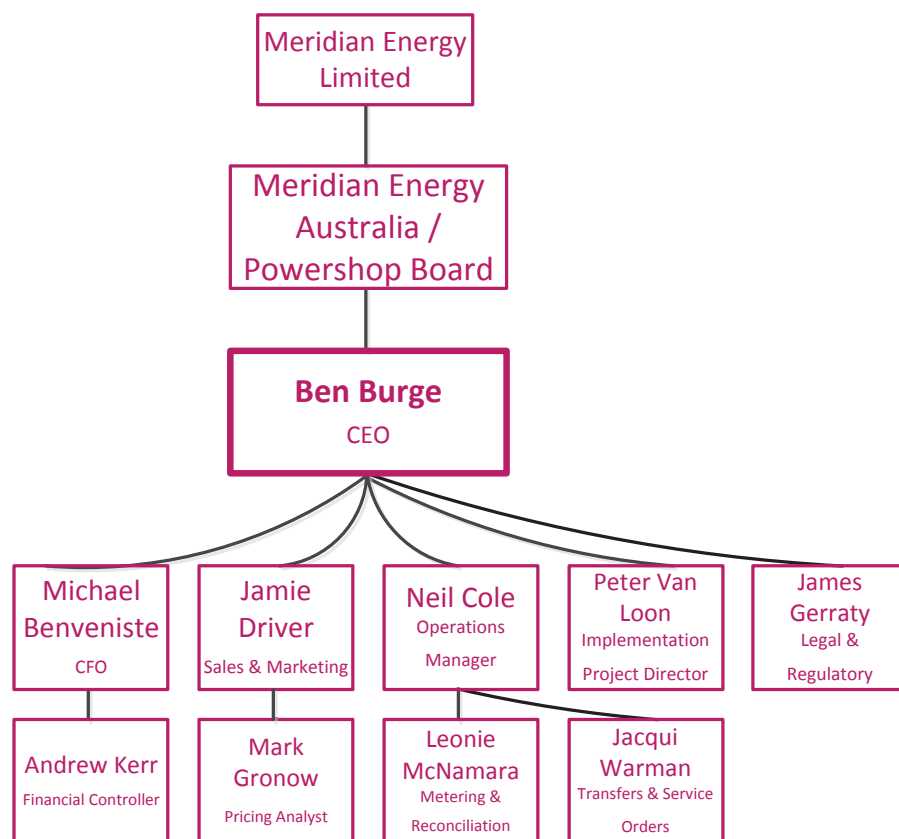
See diagram at right.



**(b) Personnel**

See diagram below.





**(c) Meridian Energy Limited**

As a Meridian Energy Group company, Powershop is ultimately owned (and supported) by Meridian Energy Limited Board and management.

**(d) Powershop Australia Board**

Powershop's Directors are Peter Scott Lowe, Andrew Dixon Robertson and Paul Thomas Chambers. Peter Lowe is currently a

Director of: retailer Aurora Energy Pty Ltd; Snowy Hydro Limited (parent company of retailer Red Energy Pty Ltd); United Energy Distribution Holdings Pty Ltd; Multinet Group Holdings Pty Ltd; and twelve companies within the Meridian Energy Group. Peter has previously been a Director of retailer Pulse Energy Pty Ltd.

**3.5 Number of employees with classification**

| Business unit          | Employees |
|------------------------|-----------|
| Finance                | 2         |
| Operations             | 4         |
| Marketing & Sales      | 2         |
| Corporate & compliance | 3         |

**3.6 Qualifications, skills & experience of officers**

**(a) Officers of Powershop**

**(i) Benjamin Burge**

*Chief Executive Officer, Powershop*  
*Chief Executive Officer, Meridian Energy Australia*

Ben has held various roles in the electricity industry. Ben was the Executive Chairman of Secure Energy Pty Ltd (an AEMO-registered distributed energy generation business registered generation assets within Australia). Ben was formerly the Chief Executive and partner of Melbourne-based boutique investment bank (and Australian Financial Services Licensee) JT Campbell & Co Pty Ltd. In 2005, JT Campbell & Co Pty Ltd was awarded "Principal Deal of the Year" by the Australia Venture Capital Association.

Ben is a solicitor and has worked in commercial law, venture capital and corporate finance for more than 17 years, with exposure to financial services, media and resources. Ben was the founding CEO of ASX-listed digital media company emitch Limited from 1999 to 2001. He is a former Director of PWC and a former Partner of IBM Business Consulting, and has direct experience with the risk departments of Australia's leading retail banks.

**(ii) Peter Lowe**

*Chairman, Powershop*

*Chairman, Meridian Energy Australia*

Peter Lowe is currently a Director of: retailer Aurora Energy Pty Ltd; Snowy Hydro Limited (parent company of retailer Red Energy Pty Ltd); United Energy Distribution Holdings Pty Ltd; Multinet Group Holdings Pty Ltd; and twelve companies within the Meridian Energy Group. Peter has previously been a Director of retailer Pulse Energy Pty Ltd.

**(iii) Paul Chambers**

*Director, Powershop*

*Director, Meridian Energy Australia*

*Chief Financial Officer, Meridian Energy Limited*

Before taking up his role at Meridian in 2009, Paul was Chief Financial Officer of Transfield Services New Zealand. Paul has extensive senior finance experience in a variety of industries, including ports, manufacturing and retail, both in the UK and France. Paul is a chartered accountant (NZICA and ICAEW). Paul's team has responsibility for strategy coordination, performance measurement, external reporting, funding, risk management coordination, procurement and financial transaction services.

**(b) Other available resources**

In addition to the Officers of Powershop described above, Powershop will have access to the expertise of the Meridian Energy Australia, Powershop, Powershop New Zealand and Meridian Energy Limited teams.

**(i) Peter Van Loon**

*Implementation Project Director, Powershop*

*Manager Operations, Meridian Energy Australia*

Peter has an extensive background in electrical and electronics engineering, as well as IT systems and local and wide area networking. He has had over ten years' experience with the State Electricity Commission of Victoria in a field capacity involving power station/terminal and substation testing and commissioning and over ten years' experience in project managing major IT infrastructure projects.

For the 10 years preceding his joining the Meridian Energy team, Peter was Managing Director of VLE Consulting, where he delivered project and change management solutions relating to specialised areas of the National Electricity Market Full Retail Competition rules and processes and procedures for retail and distribution clients operating in the National Electricity Market, as well as AEMO.

Peter was previously Chief Operating Officer of Secure Energy Pty Ltd.

**(ii) Michael Benveniste**

*CFO, Powershop*

*Financial Controller, Meridian Energy Australia*

Michael is an accountant with over fifteen years' experience working in accounting, finance and management reporting. He initially worked in accounting practice, prior to various accountant and IT roles within Visy Industries, one of the largest Australian private companies. Michael has had financial and reporting exposure within large multinationals, government bodies and listed Australian companies. Michael was previously an associate and financial controller of J T Campbell & Co Pty Ltd and was Chief Financial Officer of (AEMO and Austraclear registered) Secure Energy Pty Ltd.

Michael is currently responsible for all market settlement activities associated with Meridian Energy Australia's energy markets activities.

**(iii) James Waldren**

*Manager Energy Markets, Meridian Energy Australia*

James has over 15 years of electricity trading and risk management experience. James began his career as an energy analyst with the Sydney Futures Exchange, listing the original Australian electricity futures contracts. James' first power trading role was with Southern Hydro Pty Ltd, working there for eight years until the company was sold by Meridian Energy to AGL. He then joined investment bank Goldman Sachs to develop an electricity trading business and provide expert advice on the sale of Snowy Hydro. James subsequently joined Commonwealth Bank of Australia as the Head of Electricity Trading and developed its energy trading business. In addition to electricity trading

experience James also has experience in trading renewable energy certificates and carbon credits with his own trading business Ipsos Renewables Pty Ltd and with Ecofund Queensland Pty Ltd (a Queensland government business trading in carbon credits and renewable energy certificates) where he was General Manager Trading and Advisory.

**(iv) Christopher Murphy**

*Manager Regulatory & Commercial, Meridian Energy Australia*

Chris Murphy has extensive experience in electricity and financial markets. Chris was the Chief Executive Officer of (AEMO registered) Secure Energy Pty Ltd from 2007 until 2011 when he joined Meridian Energy. From 1997 to 2004 Chris was General Manager – Strategy & Planning, and General Manager – Network Commercial at United Energy Limited. In these roles he was responsible for distribution revenue, system-wide load forecasting, tariff development, regulatory affairs, corporate strategy and the establishment & eventual sale of UECOMM Limited (a telecommunications subsidiary of United Energy), Pulse Energy Pty Ltd (an electricity retail business) and EdgeCap Pty Ltd (energy trading).

From 1993 to 1996, Chris was an Executive Director of JT Campbell & Co Pty Ltd. From 1994 to 1996, Chris was a director of Moldflow International Pty Ltd and from 1997 to 1998 a director of The Preston Group Ltd, both international software development companies, and has additionally formally been a non-executive Director of a number of ASX-listed companies. In 1987, Chris was the Communications

Officer for Elders IXL, where he was responsible for all corporate data communications activities.

**(v) Ari Sargent**

*Chief Executive Officer, Powershop Limited*

Ari is a veteran of the New Zealand electricity industry with over 20 years of experience in senior roles. As Head of Strategy for Meridian Energy Limited, Ari identified an opportunity to create a new electricity retailing paradigm. He went on to found and spear-head the development of Powershop New Zealand Limited as a fully owned subsidiary of Meridian Energy Limited. Launched in February 2009 as the world's first online electricity store, Powershop has been growing exponentially and is recognised by Deloitte as New Zealand's fastest growing business in 2011. As dedicated advocate for customers Ari has led Powershop to set unprecedented industry benchmarks in customer satisfaction and service.

**(vi) Jim Barrett**

*Head of Operations, Powershop Limited*

Previously with Contact Energy Limited (New Zealand's second largest electricity retailer) and with 13 years' experience in the electricity retail industry, Jim maintains and develops the engine of the Powershop business - the Powershop application. Focusing on the customer experience, excellence in process and processing, Jim has created a technology platform that exceeds all regulatory requirements, is user-friendly and places customer understanding and self-service at its heart.

**(vii) Hamish Wilkie**

*Sales and Marketing, Powershop Limited*

With 17 years' experience working with New Zealand's leading brands Hamish brings a new perspective to the electricity industry. With Powershop he has successfully developed and articulated customer value propositions centred on its customer needs. Hamish has helped Powershop in the identification and prioritisation of key opportunities and in building the organisation's capability to harness these opportunities and access new customer segments.

**(viii) Bill Highet**

*General Manager Retail, Meridian Energy Limited*

Bill was Chief Operating Officer of Whisper Tech Limited from 2001 to 2008, having previously helped to establish the company while New Ventures Manager at Southpower (now Orion) in 1995. Prior to joining Southpower in 1993, Bill held engineering, project management, commercial and business development roles, all in the electricity industry. He has also filled general manager roles at Enerco (a natural gas company) and at Telecom NZ. Bill is a past director of Whisper Tech Limited, Network Waitaki Limited, Pulse Business Solutions Limited, CallSouth Limited and Connetics Limited. He was also a non-executive director of Meridian subsidiary, Arc Innovations, from its establishment in 2006 until early 2008. Bill was CEO of Flight Experience Group Limited prior to taking up his appointment as General Manager for Retail, Meridian Energy in October 2009. Bill's

team is focused upon delivering a profitable and differentiated offer and service to our customers.

**(ix) Neal Barclay**

*General Manager Markets and Production, Meridian Energy Limited*

Neal has headed up Markets and Production since October 2009. He joined Meridian in July 2008 as Chief Financial Officer. Prior to joining Meridian Neal, a chartered accountant (NZICA), held a number of general manager roles in a 13-year career with Telecom New Zealand. Neal is accountable for the Company's New Zealand asset portfolio, comprising nine hydro power stations and three wind farms that deliver around 30% of New Zealand's electricity generation, and for the company's wholesale trading and risk position.

**(c) Other personnel**

Powershop has engaged qualified personnel with experience in a range of disciplines, including:

- MSATS settlements;
- Customer support;
- Service orders;
- Metering reconciliation;
- Energy markets risk management;
- Sales & marketing;
- Financial analysis & management;

- Contract negotiation; and
- Regulatory compliance.

**3.7 Human Resources Policy**

**(a) Experience and technical qualifications of employees for the operations they will carry out**

It is Powershop's policy to ensure that it has employees who are capable of delivering outstanding customer service. This can only be achieved if employees have the personal qualities, commitment to the company's values and vision, experience and qualifications to enable the business to operate effectively.

In order to achieve this, Powershop has a Recruitment & Selection Policy, which requires that:

- A Position Description must be developed prior to the appointment of a new employee, clearly articulating:
  - the activities that are required to be undertaken by the new employee;
  - the objectives of the new role;
  - the regulatory and commercial requirements of the role that must be fulfilled;
  - the qualifications, experience and skills that the new employee should have;
- A candidate for the proposed role must submit a resume outlining those aspects of the candidate's education and work history that are relevant to the skills, qualifications and experience that will be required for the effective discharge of the role;

- Prior to appointment:
  - a candidate is interviewed by relevant Officers within Powershop to determine whether the candidate's skills, qualifications and experience will be adequate for the effective performance of the role;
  - a candidate's references are checked to confirm the accuracy of their resume.

**(b) Relevant industry licenses or qualifications**

Powershop's:

- legal team is made up of practitioners who qualify as Australian Lawyers (within the meaning of the *Legal Profession Act 2004*);
- CFO is a Certified Practicing Accountant;
- CEO is an Australian Lawyer and a former Responsible Manager of an Australian Financial Services Licensee, and is about to be appointed a Responsible Manager under Meridian Energy Australia's AFSL.

### 3.8 Training programs & policies

**(a) Policy**

Powershop has a Learning & Development Policy, which provides that:

- Each person will have an Individual Learning and Development Plan, which will be reviewed regularly as part of the performance review process.

- In addition, meetings and discussions on learning and development needs may take place more often when appropriate such as taking on a new role, new responsibilities or extra workload.
- If an individual is uncertain how best to address their development needs, they consult with their manager on the fit with the overall business plan for the business unit or team.
- The individual's manager or team leader complete annual development plans for both individuals and teams.

Some learning is well suited to a 'training environment', but wherever possible Powershop seeks to provide creative and appropriate alternative ways of addressing development needs.

**(a) Programmes**

Powershop has implemented a comprehensive training programme for all business units, aligned to the technical, commercial and regulatory requirements of each of those business units. A summary of topics included in the training programme is provided below.

| Unit              | Training   |
|-------------------|--|
| Finance           | AEMO Settlements Managers Workshop<br>CPA Programme / CPA Continuing Professional Development<br>AEMO / Austraclear settlements<br>Powershop settlements training in New Zealand<br>Consumer protection and Australian competition & consumer law compliance |
| Operations        | Technical & Safety Training<br>AEMO / Austraclear settlements<br>Consumer protection and Australian competition & consumer law compliance  |
| Marketing & Sales | Powershop customer service training in New Zealand<br>Ethics<br>Consumer protection and Australian competition & consumer law compliance   |
| Corporate         | Legal Practitioners Certificate Continuing Professional Development<br>Consumer protection & trade practices, and Ethics<br>Consumer protection and Australian competition & consumer law compliance   |
| All staff         | Health & Safety Training<br>Introduction to Australian energy markets<br>Fundamentals of electricity, National Electricity Market Overview<br>Introduction to Transmission & Distributions Networks<br>Personal coaching and Ethics                          |

**3.9 Business Plan**

Refer to Schedule 8.

### **3.10 Quality Assurance accreditations**

As a newly incorporated special purpose vehicle established to apply Meridian Energy Limited's significant energy retailing experience, Powershop Australia Pty Ltd has not yet independently obtained quality assurance accreditations.

### **3.11 Compliance strategy**

Refer to Schedule 9.

### **3.12 Risk Management Strategy**

Refer to Schedule 9.

### **3.13 Declaration as to risk management and compliance strategies**

Refer to Schedule 9.

### **3.14 Additional risk management information**

Refer to section 3.20.

### **3.15 Details of insurance arrangements**

Powershop holds all insurances necessary to comply with statutory obligations, and will otherwise take out insurance as necessary to comply with its Risk Management Strategy and support its business plan.

Meridian Energy Limited has obtained a comprehensive suite of insurances policies, insuring itself and any subsidiary company. The summary of insurances and coverage is as follows:

- Material Damage / Business Interruption – \$940.0 million;
- Motor Vehicle – \$10.0 million;
- General Third Party Liability - \$100.0 million;

- Directors and Officers / Company Reimbursement - \$80.0 million;
- Professional Indemnity – \$10.0 million;
- Marine Cargo – \$1.0 million; and
- Travel – \$5.0 million.

### **3.16 Third party arrangements**

Powershop's business plan does not contemplate outsourcing any of the key activities to third parties. The resource structure of the Powershop business is provided in sections 3.4-3.6 of this application.

### **3.17 Ombudsman scheme**

Powershop has initiated an application to become a member of the Energy and Water Ombudsman of Victoria scheme (**EWOV**). EWOV has indicated that it will admit Powershop to membership as part of its normal process at its next Board meeting.

### **3.18 Arrangements with other participants**

Powershop:

- has entered into Use of System Agreements with all Victorian Distribution businesses;
- is registered as a Market Customer with AEMO;
- is registered with the Clean Energy Regulator for the surrender of STCs and LGCs;
- has commenced the development of arrangements with the Department of Human Services for the handling of concession arrangements;



- has established arrangements with related bodies corporate within the Meridian Energy Group to provide access to over-the-counter and exchange traded energy markets products.

### **3.19 RoLR or other regulatory incidents**

Powershop's parent – Meridian Energy Limited – has been a major energy retailer since 2001 – without any significant regulatory incidents.

### **3.20 Additional information**

#### **(a) Experience**

Refer to section 3.1.

To support the Powershop business and its other Australian business activities, Meridian Energy Australia has invested in systems, processes and people. This includes:

- Establishing an Energy Markets Management team headed by an experienced energy trader and supported by fully developed trading systems and sophisticated trading policies and risk management systems;
- Commencing participation in wholesale energy markets and establishing necessary systems and arrangements including ISDA agreements, AFSL and settlements processes and systems;
- Employing senior staff with experience establishing and operating energy retail businesses and systems (including managing customer contracts, account establishment and billing and collection);

Powershop's compliance with regulatory requirements will be supervised by the Meridian Energy Australia regulatory team which is headed by Manager – Commercial and Regulatory (Chris Murphy)

who has over 10 years' experience in managing and participating in energy industry regulatory arrangements. The team is supported by two legal practitioners fully versed in energy law.

In addition the Powershop business will have access to the skills and systems of the wider Meridian Energy Group including the Powershop platform, appropriately adjusted to meet the regulatory and operation requirements of the Australian retail energy market.

#### **(b) Systems**

To ensure appropriate compliance with regulatory obligations (including provision of information to distributors, meter reading, provision of information to customers, privacy and confidentiality management) Powershop is modifying its base platform to facilitate all such activities in a compliant and automated manner.

The Powershop platform is a fully developed customer information management system that is specifically designed to ensure appropriate management of energy retail transactions. The system includes:

- the management of supplier and customer contracts;
- accurate and secure maintenance of customers' accounts;
- provision of customer service to a standard in excess of all relevant codes and guidelines;
- management and undertaking of customer billing and collection;
- appropriate management, governance and reporting consistent with codes and guidelines and any applicable Australian Standards (AS-3806, AS – 8000); and

- maintenance and appropriate record management.

**(c) Internal controls, policies and procedures**

Meridian Energy Limited, as the largest Electricity Generator and a significant electricity retailer in New Zealand, has an extensive suite of well-developed policies to ensure that the business has people, processes and systems to deliver its full range of services in a manner which is compliant with all industry, regulatory, legislative and best practice requirements.

Powershop and Meridian Energy Australia are subject to the Meridian Energy Limited policies and procedures (with amendments to suit Australian requirements where applicable). Copies of the relevant policies and procedures are set out in Schedule 9 of this application.

**(d) Demonstration of billing and management systems**

The Powershop platform is already in use in New Zealand, serving over 40,000 customers. Powershop will utilise this platform to serve its Australian customers. While minor changes have been made to the platform to accommodate specific elements of the Australian market, the system has been proven over a number of years. It handles all automatable billing and customer management functions of the retailing process. Schedule 10 delves further into the Powershop platform.

**(e) Complaints register and procedures**

Powershop is developing a detailed customer management procedure which includes complaints handling procedures. The procedures include:

- Recording, tracking and monitoring of all customer complaints and comments;

- Weekly reporting of status, disposition and trends in complaints to Senior Powershop management;
- Full support of EWOV obligations including information provision, complaint reassessment and escalation;
- Monthly reporting, at a board level, of summary complaint details, all outstanding matters and trends and corresponding mitigations identified; and
- Specific accountability within the company's regulatory team for managing, monitoring and supporting the company's complaints procedures and obligations.

Customer complaints are recorded and handled in the first instance by customer service representatives with the ability to immediately escalate to supervisors. If complaints are unable to be resolved at this level a direct escalation path exists to senior Powershop management, the Manager Legal & Regulatory and ultimately to the CEO of Powershop.

Any complaint involving EWOV will be immediately notified to the Manager Legal & Regulatory to ensure it receives appropriate resource and attention.

**(f) Privacy statements**

Powershop is developing systems and procedures to ensure the maintenance of the confidentiality of customer information and to maintain the privacy of all customer information. These systems and procedures include the following elements:

- Detailed system user access control including limiting access to authorised personnel only and tracking and recording all access for audit and control purposes;

- Full training in privacy and confidentiality management obligations is provided to all users before access is granted;
- An architecture having several robust security mechanisms; and
- Clear and simple information about customer's privacy rights and the company's obligations made available to all staff and customer.

The system leverages existing security and privacy protection capability currently utilised in the Powershop New Zealand business which is subject to equivalent privacy obligations.

**(g) Document Retention policies**

Powershop will utilise systems that have already been developed for the Powershop New Zealand business which is subject to the Meridian Energy Limited document retention policies and standards. As a wholly owned government organisation Meridian Energy Limited is subject to and has developed extensive document retention processes, systems and standards which include full redundant backups, archiving and tracking.

**(h) Industry submissions and research**

Powershop NZ has developed a retail platform which has demonstrated significant customer acceptance and support. Attached as Schedule 12 are Canstar Blue and Consumer New Zealand reports demonstrating that Powershop New Zealand has achieved the highest customer satisfaction of all NZ retailers in 2011. Furthermore, in 2011 Powershop NZ obtained the number one ranking in the 2011 Deloitte Fast 50 which measures and rewards businesses with significant growth.

**(i) Promoting the long term interests of consumers**

Powershop will promote the long term interests of consumers by providing an alternative. The move to full retail contestability is intended to give all electricity customers the right to choose a retailer, and more retailers means more choice for consumers. Long term, this benefit will best be achieved through the introduction of retailers with sustainable business models and appropriate financial capability – such as Powershop.

**(j) The price of essential services**

In a market with the optimal number of retailers, competition will be optimal. Increased competition promotes efficient pricing. Powershop's desire to enter the electricity retail market is based on analysis that suggests the market environment supports the addition of new entrant retailers. Additionally, the Powershop model allows for large discounts on electricity. Powershop can provide discounted prices to consumers in a sustainable manner.

**(k) The quality of essential services**

The quality of the Powershop experience is clearly demonstrated by New Zealand consumers' satisfaction with Powershop. This year Powershop was rated "good" or "very good" by 96% of customers surveyed by Consumer New Zealand, compared to an average 75% for all New Zealand electricity retailers. Consumers are the ultimate judge of a service's quality, and have evidently judged Powershop to be a high quality offering.

**(l) The reliability of essential services**

Powershop intends to foster and focus on its relationships with distribution network service providers to ensure a high level of communication, and as a result, timely resolution of network issues. Powershop also intends to adopt a model that allows consumers to

be better informed about their electricity connection and any impacts thereon.

**(m) Promoting the development of full retail competition**

Full retail competition requires consumers being given adequate choice in the market, and granting a licence to Powershop promotes this objective.

## 4. Financial resources

### 4.1 Copies of three years' financial reports

As a newly incorporated special purpose vehicle established to apply Meridian Energy Limited's significant energy retailing experience, Powershop Australia Pty Ltd does not have historical audited financial statements.

Refer to Schedule 4.

### 4.2 ASIC lodgements

As a newly incorporated special purpose vehicle established to apply Meridian Energy Limited's significant energy retailing experience, Powershop Australia Pty Ltd has not yet been required to lodge any documents pursuant to Chapter 2M of the *Corporations Act*.

### 4.3 Credit rating

Powershop has procured a Dunn and Bradstreet risk report, which found that Powershop:

- was regarded as having a **Low** credit risk with a 0.14% probability of experiencing financial distress within the next 12 months; and
- had a score that is the same as or better than 60% of all records in the Dun & Bradstreet database.

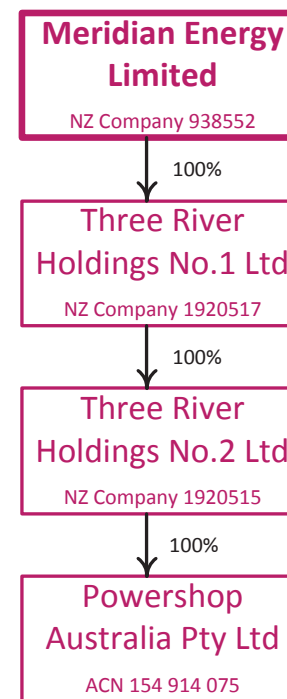
A copy of this Dunn and Bradstreet risk report is contained at Schedule 6.

Additionally, Powershop's parent company – Meridian Energy Limited – is rated by BBB+ by Standard & Poors, and a copy of its S&P credit rating report is contained at Schedule 6. While Powershop will not rely on Meridian Energy Limited's financial resources, it will have the full support of Meridian Energy Limited.

## 4.4 Corporate structure

### (a) Structure

Powershop's position in the Meridian Energy Group corporate structure is represented in the diagram below.



### (b) Arrangements

Arrangements are in place by which Powershop has access to the full resources of the Meridian Energy Australia Group. This includes access to:

- Policies, procedures and compliance support;
- Administrative support;

- Personnel;
- Financial support;
- Risk management.

**(c) Financial statements**

See section 4.1.

**4.5 Forecasts**

Refer to Schedule 8.

**4.6 Auditor declaration**

Refer to Schedule 5.

**4.7 CFO declaration**

Refer to Schedule 5.

**4.8 Bank guarantees**

Powershop has made arrangements for the provision of bank guarantees in those cases where such are required. For example, Powershop has established a bank guarantee in favour of AEMO in the amount of \$100,000. This is well in excess of the level of prudential cover that will be required to service the forecast number of customers in the next 12 months (see section 4.9(e)).

**4.9 Additional information**

**(a) Details of incorporation**

A copy of Powershop's Certificate of Registration is provided at Schedule 2, and a copy of Powershop's constitution is provided at Schedule 3.

**(b) Shareholder**

Powershop is not publically listed. Meridian Energy Limited, Powershop's ultimate shareholder, is 100% owned by the New Zealand Government.

Meridian Energy Limited is New Zealand's largest energy utility and one of the largest companies in New Zealand. In the year to 30 June 2011, based on approximate current exchange rates, Meridian Energy Limited had revenues exceeding A\$1.5B, EBITDAF of over A\$500m, net profit after tax of A\$230m, assets valued at over A\$6.4B, and total equity of A\$3.75B. Meridian Energy Limited's Annual Results Announcement for the year ended 30 June 2011 is contained at Schedule 4.

**(c) Australian Financial Services Licence**

Meridian Energy Limited currently holds Australian Financial Services Licence (AFSL) number 409423, and Powershop will undertake any contracting requiring an AFSL through an intermediary authorisation agreement (pursuant to s.911A(2)(b) of the *Corporations Act 2001* (Cth)) with either Meridian Energy Limited or with another related body corporate. Powershop is therefore satisfied it can comply with AFSL requirements.

**(d) Distribution arrangements**

Powershop has entered distribution use of system agreements with all five Victorian Distribution Network Service Providers. Powershop has not yet been required and will not initially be required to provide any credit support to Distribution Network Service Providers, given its low initial customer numbers and abovementioned Dunn & Bradstreet risk score. It is not anticipated that Powershop will have to provide credit support to Distribution Network Service Providers at any time within the next 18 months – but Powershop would nevertheless be confident in its ability to

provide credit support if necessary given its strong financial position.

**(e) AEMO credit support requirements**

AEMO have calculated the initial credit support obligation, the Maximum Credit Limit (**MCL**) as \$10,000. Powershop has provided a bank guarantee for \$100,000. Powershop has analysed this amount of credit support against forecast customer acquisition and expects this to be more than adequate for the next 12 months. Powershop has also analysed likely AEMO prudential requirements for future years and is confident that throughout the duration of the term of its authorisation Powershop will be able to meet AEMO's credit support requirements.

**(f) Business plan**

Powershop has a detailed business plan and financial model for the next five years and beyond, and an executive extract of this business plan setting out key financial assumptions and analysis is contained at Schedule 8 – **Commercial in Confidence**.

The business plan analyses the expected level of bank guarantees and other forms of credit support that will be required to support the growth of the business. Provision for funding has been made accordingly.

## 5. Suitability

### 5.1 Failures, revocations etc

Powershop confirms that neither it, its associates or any other businesses where its officers have held positions nor any other entity that exerts controls over its business activities has been the subject of:

- any material failure to comply with regulatory requirements, laws or other obligations over the previous 10 years, including all circumstances that resulted in an infringement notice or other enforcement action (including undertakings) being taken by a regulatory body.
- any previously revoked authorisations, authorities or licences held in any industry and the reason/s for the revocation.
- any failed authorisation, authority or licence applications in any industry and the reason/s the application was unsuccessful.
- any past or present administrative or legal actions in relation to an authorisation, authority or licence in any industry.

### 5.2 Offences and prosecutions

Please see Schedule 7, which contains declarations from each of Powershp's officers. Powershop confirms that none of its directors, nor any other person that exerts control over its business activities have been the subject of any offences or successful prosecutions under any territory, state, Commonwealth or foreign legislation that are relevant to your capacity as an energy retailer.

### 5.3 Criminal history checks

Available upon request where necessary.

### 5.4 Corporate disqualification

No directors or members of management of Powershop are disqualified from the management of corporations.

Refer to Schedule 7.

### 5.5 Record of bankruptcy in overseas jurisdictions

The CFO has provided a written declaration (Schedule 5) confirming that neither Powershop nor any of its related bodies corporate have been involved in any bankruptcy proceedings in Australia or in any overseas jurisdiction.

### 5.6 Names and addresses of officers

Please see Schedule 7, which contains details of Powershop's officers.

### 5.7 Policies and procedures relating to probity

Powershop is committed to building a business that operates ethically and is the subject of robust governance frameworks and processes. Among other measures, Powershop seeks to achieve these outcomes by:

- Rigorously screening candidates for Board or executive positions, including extensive reference checks;
- Prioritising ethics as a key focus in training and development (see section 3.8);
- The recognition and support of a definitive whistle-blowing policy;
- Requiring regular negative and positive assurances from directors, senior executives and other key managers in relation to probity matters;
- Committing to a culture of accurate and meaningful minute-taking for all key executive and Board meetings;



- Conducting regular reviews of executive and Board activities and decisions; and
- The inclusion of key executives in the management team who are continuing legal practitioners with professional obligations relating to ethical conduct.

## **5.8 Additional information**

As a wholly owned subsidiary of a New Zealand Government owned enterprise, and one of the largest companies in New Zealand, Powershop is subjected to probity requirements and procedures that are reviewed on a regular basis and subject to Parliamentary oversight, external audit and public exposure.

## **Schedule 1 – Powershop New Zealand organisation structure chart (Commercial in Confidence)**

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Schedule 1 contains Powershop New Zealand’s organisation structure chart. It is provided on a commercial in confidence basis given that it details Powershop New Zealand Limited’s staffing levels and structures in a manner that would be of commercial value to competitors, and contains information not otherwise available to the public. This Schedule is specifically relevant to section 3.4.

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## Schedule 2 – Certificate of Registration

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Schedule 2 contains Powershop’s certificate of registration, which the Commission may make available to the public. This Schedule is specifically relevant to section 4.2.

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# Certificate of Registration of a Company

This is to certify that

**POWERSHOP AUSTRALIA PTY LIMITED**

**Australian Company Number 154 914 075**

is a registered company under the Corporations Act 2001 and  
is taken to be registered in Victoria.

The company is **limited by shares**.

The company is a **proprietary** company.

The day of commencement of registration is  
the **twenty-second day of December 2011**.

Issued by the  
Australian Securities and Investments Commission  
on this twenty-second day of December, 2011.

Greg Medcraft  
Chairman

CERTIFICATE

### **Schedule 3 – Constitution (Commercial in Confidence)**

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Schedule 3 contains Powershop's constitution, which the Commission may make available to the public.

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# Constitution of Powershop Australia Pty Limited

The Corporations Act  
A proprietary company limited by shares  
Registered in Victoria



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## General

### 1. Definitions

The following definitions apply in this Constitution unless the context requires otherwise:

**Chair** means the person occupying the position of Chair or acting Chair of the Directors under rule 57.

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

**Director** means a person appointed or elected to the office of Director of the company in accordance with this Constitution and includes any alternate Director acting as a Director and, where the context permits, a sole Director.

**Dividend** includes an interim dividend.

**Employee Member** means a member of the company who:

- (a) is an employee of the company or one of its subsidiaries; or
- (b) was an employee of the company or one of its subsidiaries when they became a member of the company.

**person** and words importing persons means any person including partnerships, associations and bodies corporate, unincorporated bodies and all other entities or associations recognised by law as well as individuals.

**Secretary** means a person appointed as, or to perform the duties of, secretary of the company.

**Securities** includes shares, rights to shares, options to acquire shares and other securities with rights of conversion to equity.

**Shareholder Present** means, in connection with a meeting, the shareholder present at the venue or venues for the meeting, in person or by proxy, by attorney or, where the shareholder is a body corporate, by representative.

### 2. Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless any contrary intention appears in this Constitution or the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.

- (d) A word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution.

### 3. Replaceable Rules

The replaceable rules contained in the Corporations Act do not apply to the company.

### 4. Proprietary Company Provisions

- (a) The company is a proprietary company.
- (b) The number of members of the company is limited to 50 non-Employee Members.

## Capital

### 5. Issue of Securities

Without affecting any special rights conferred on the holders of any Securities, any Securities may be issued with preferred, deferred or other special rights, obligations or restrictions, whether in regard to dividends, voting, return of share capital, payment of calls or otherwise, as the Directors may determine and on any terms the Directors consider appropriate.

### 6. Directors' Power to Issue Shares

Except as provided by contract or this Constitution to the contrary, all unissued shares are under the control of the Directors who may grant options on the shares, issue or otherwise dispose of the shares on the terms and conditions and for the consideration it thinks fit. An issue of shares of the same class as an existing class of shares is not to be considered to constitute a variation of the rights of the holders of shares in the existing class. Any Director or any person who is an associate of a Director may participate in any issue by the company of Securities.

### 7. Recognition of Third Party Interests

- (a) Except as required by law, the company is not bound to recognise a person as holding a Security on any trust.
- (b) Whether or not it has notice of the rights or interests concerned, the company is not bound to recognise:
- (i) any equitable, contingent, future or partial claim to, or interest in, any Security or unit of a Security; or
- (ii) any other right in respect of a Security, except an absolute right of ownership of the Security holder or as otherwise provided by this Constitution or by law.

### 8. Surrender of Securities

In their discretion, the Directors may accept a surrender of Securities by way of compromise of any question as to whether or not those Securities have been validly issued or in any other case where the surrender is within the powers of the company. Any Securities surrendered may be sold or re-issued in the same manner as forfeited shares.

### 9. Joint Holders

Where two or more persons are registered as the holders of any Securities, they are considered to hold the Securities as joint tenants with benefits of survivorship subject to the following provisions:

- (a) the company is not bound to register more than three persons as the holders of the Securities (except in the case of personal representatives of a deceased Security holder);
- (b) the joint holders of the Securities are liable severally as well as jointly in respect of all payments which ought to be made in respect of the Securities;
- (c) on the death of any one of the joint holders, the remaining joint holders are the only persons recognised by the company as having any title to the Securities but the Directors may require evidence of death and the estate of the deceased joint holder is not released from any liability in respect of the Securities;
- (d) any one of the joint holders may give a receipt for any Dividend, bonus or return of capital payable to the joint holders in respect of the Securities;
- (e) only the person whose name stands first in the Securities register as one of the joint holders of the Securities is entitled, if the company determines to issue certificates for Securities, to delivery of a certificate relating to the Securities or to receive notices from the company and any notice given to that person is considered notice to all the joint holders; and
- (f) any one of the joint holders may vote at any meeting of the company either personally or by properly authorised representative, proxy or attorney, in respect of the Securities as if that joint holder was solely entitled to the Securities. If more than one of the joint holders are present personally or by properly authorised representative, proxy or attorney, only the vote of the joint holder whose name appears first in the Securities register counts.

## Certificates for Securities

### 10. Certificates

Directors may determine to issue certificates for Securities of the company and to cancel any certificates on issue and to replace lost destroyed or defaced certificates on issue on the basis and in the form they determine from time to time.



## Forfeiture and Lien

### 11. Liability to Forfeiture

- (a) If a shareholder fails to pay any sum payable in respect of any shares, either for money payable on issue, calls or instalments, on or before the day for payment, the Directors may serve a notice on the shareholder requiring payment of the unpaid sum, together with interest accrued and all expenses of the company incurred by reason of the non-payment.
- (b) The notice must:
  - (i) specify a day (not earlier than 14 days after the date of service of the notice) on or before which and a place where the payment required by the notice is to be made; and
  - (ii) state that, if payment is not made by the time and at the place specified, the shares in respect of which the call was made are liable to be forfeited.

### 12. Power to Forfeit

If the requirements of a notice served under rule 11 are not complied with, any share in respect of which the notice has been given may at any time afterwards, but before the payment required by the notice has been made, be forfeited by a resolution of the Directors in their discretion to that effect. The forfeiture includes all Dividends, interest and other money payable by the company in respect of the forfeited shares and not paid before the forfeiture.

### 13. Consequences of Forfeiture

A person whose shares have been forfeited:

- (a) ceases to be a shareholder in respect of the forfeited shares at the time and on the date of the passing of the Directors' resolution approving the forfeiture;
- (b) has no claims or demands against the company in respect of those shares;
- (c) has no other rights incident to the shares except the rights that are provided by the Corporations Act or saved by this Constitution; and
- (d) remains liable to pay to the company all money that, at the date of forfeiture, was payable by the person to the company in respect of the shares (including, if the Directors determine, interest from the date of forfeiture at the rate the Directors determine). The Directors may enforce the payment of the money or any part of the money for which the shareholder is liable as they determine.

## 14. Lien on Shares

- (a) Subject to Rule 14(g), the company has a first and paramount lien on every share and on the proceeds of sale of every share for:
  - (i) any amount due and unpaid in respect of the share which has been called or is payable at a fixed time;
  - (ii) any amounts which remain outstanding on loans made by the company to acquire the share under an employee incentive scheme;
  - (iii) all amounts that the company may be called on by law to pay in respect of the share; and
  - (iv) reasonable interest and expenses incurred by the company in respect of the unpaid amounts.
- (b) The Directors may at any time exempt a share wholly or in part from the provisions of this rule.
- (c) The lien extends to all Dividends and entitlements declared in respect of the shares but, if the company registers a transfer of any shares on which it has a lien or charge without giving the transferee notice of any claim it may have at that time, the shares are freed and discharged from the lien or charge of the company in respect of that claim. The Directors may retain those Dividends or entitlements and may apply them in or towards satisfaction of all amounts due to the company in respect of which the lien exists.
- (d) No person is entitled to exercise any rights or privileges as a shareholder until the shareholder has paid all calls and instalments of calls and other moneys (including interest) for the time being payable in respect of every share held by the shareholder.
- (e) If any money is paid or payable by the company under any law, the company may refuse to register a transfer of any Securities by the shareholder or the shareholder's personal representative until the money and interest is set off or deducted or, in case the money and interest exceeds the amount of any Dividend, bonus or other money then due or payable by the company to the shareholder, until the excess is paid to the company.
- (f) Nothing in this rule affects any right or remedy which any law confers on the company and any right or remedy is enforceable by the company whether against the shareholder or the shareholder's personal representative.
- (g) Despite any other provision of this constitution, the directors exempt a share from Rule 14(a) where a member of the company has granted over that share a mortgage, charge, lien, pledge or other security for the payment of a monetary obligation or the observance of any other obligation for the benefit of any person.

## 15. Notice of Forfeiture

When any share is forfeited, notice of the resolution of the Directors must be given to the shareholder in whose name the share was registered immediately prior to the forfeiture, and an entry of the forfeiture and the date of forfeiture must be made in the Securities register. Failure to give notice or make the entry as required by this rule does not invalidate the forfeiture. At any time before any forfeited share is sold or otherwise disposed of, the Directors may annul the forfeiture of the share on any condition they determine.

## 16. Disposal of Forfeited Shares

Any forfeited share is considered the property of the company and the Directors may sell or otherwise dispose of or deal with the share in any manner they determine and with or without any money paid on the share by any former holder being credited as paid up.

## 17. Sale of Shares to Enforce Lien

- (a) For the purpose of enforcing a lien, the Directors may sell the shares which are subject to the lien in any manner they determine and with or without giving any notice to the shareholder in whose names the shares are registered. The Directors may authorise a person to do everything necessary to transfer the shares sold to the purchaser of the shares.
- (b) The validity of the sale of the shares may not be impeached by any person after the transfer has been registered, and the purchaser is not bound to see to the application of the purchase money.
- (c) The title of the purchaser to the shares is not affected by any irregularity or invalidity in connection with the sale.
- (d) The purchaser is discharged from liability for any calls which may have been due before the purchase of those shares, unless otherwise agreed.
- (e) The remedy of any person aggrieved by the sale is in damages only and against the company exclusively.

## 18. Application of Proceeds of Sale

The proceeds of a sale made under a lien may be applied by the company in payment of:

- (a) first, the expenses of the sale; and
- (b) second, that part of the amount in respect of which the lien exists as is presently payable.

Any residue is to be paid to the person entitled to the shares immediately prior to the sale, on delivery by that person of the certificate, if any, for the shares that have been sold.

## 19. Transfers After Forfeiture and Sale

- (a) The company may:
  - (i) receive the consideration (if any) given for a forfeited share on any sale or disposition of the share; and
  - (ii) effect a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (b) On the completion of the transfer, the transferee is to be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.

## Call on Shares

## 20. Directors' Power to Make Calls

- (a) Subject to the terms of issue of any shares, the Directors may make calls on the shareholders in respect of any money unpaid on the shares.
- (b) The Directors may revoke or postpone a call.
- (c) A call may be required to be paid by instalments.
- (d) A call is made at the time of or as specified in the resolution of the Directors authorising the call.
- (e) The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any shareholder does not invalidate the call.

## 21. Interest on Unpaid Amounts

- (a) If a sum called or otherwise payable to the company in respect of a share is not paid before or on the day for payment, the person from whom the sum is due must pay:
  - (i) interest on the sum from the due date to the time of actual payment at the rate determined by the Directors; and
  - (ii) any costs and expenses incurred by the company by reason of non-payment or late payment of the sum.
- (b) The Directors may waive payment of some or all of the interest, costs and expenses under rule 21(a).

## 22. Differentiation Between Holders

The Directors may differentiate on the issue of shares between the holders as to the amount of calls to be paid and the times of payment.

## Transfer of Securities

### 23. Transfers

- (a) No transfer of any Securities may be registered unless a proper instrument of transfer, in writing in the usual or common form or in any form the Directors may prescribe or in a particular case accept, signed by the transferor and the transferee and properly stamped (if necessary) is delivered to the company (but the Directors may dispense with the execution of the instrument by the transferee if the Directors think fit).
- (b) The transferor is considered to remain the holder of the Securities transferred until the name of the transferee is entered on the Securities register.

### 24. Directors may Refuse to Register

- (a) Subject to Rule 24A, the Directors may in their discretion refuse to register any transfer of Securities and may decline to give their reasons and grounds for doing so.
- (b) Where the Directors resolve to refuse to register a transfer of Securities, the Directors must notify the transferee within two months of the date of lodgement of the transfer with the company.

### 24A Transfer of Shares upon Enforcement of Mortgage or Charge

- (a) Despite any other provision of this constitution, where a member of the company has granted over all or any of its shares in the company a mortgage, charge, lien, pledge or other security for the payment of a monetary obligation or the observance of any other obligation (a **Security Interest**) the directors must register any transfer of shares left for registration in accordance with Rule 23 and Rule 25 where the transfer is:
  - (i) in favour of a person entitled to the benefit of any Security Interest or a person acting as any receiver, receiver and manager, trustee, nominee, agent or attorney of that person (each a **Mortgagee**); or
  - (ii) by or on behalf of a Mortgagee to any third party upon disposal or realisation of any share or shares following the Mortgagee becoming entitled to exercise or enforce its right under any such Security Interest.

The directors may rely on the certificate of that person that the shares were so secured and/or that the Security Interest has become enforceable as conclusive evidence of that fact.

- (b) Rule 24 will not apply to any transfer of shares under paragraph (a).

## 25. Transfer and Certificate (if any)

- (a) Every transfer must be left for registration at the registered office of the company or any other place the Directors determine. Unless the Directors otherwise determine either generally or in a particular case, the transfer is to be accompanied by the certificate for the Securities to be transferred. In addition, the transfer is to be accompanied by any other evidence which the Directors may require to prove the title of the transferor, the transferor's right to transfer the Securities, execution of the transfer or compliance with the provisions of any law relating to stamp duty.
- (b) Subject to rule 25(a), on each application to register the transfer of any Securities or to register any person as the holder in respect of any Securities transmitted to that person by operation of law or otherwise, the certificate specifying the Securities in respect of which registration is required must be delivered to the company for cancellation and on registration the certificate is considered to have been cancelled.
- (c) Each transfer which is registered may be retained by the company for any period determined by the Directors after which the company may destroy it.

## Transmission of Securities

### 26. Transmission on Death

- (a) Where a Security holder dies:
  - (i) the legal personal representatives of the deceased, where the Security holder was a sole holder or a joint holder holding as a tenant in common; and
  - (ii) the survivor or survivors, where the Security holder was a joint holder, are the only persons recognised by the company as having any title to the Security holder's interest in the Securities of the company (as the case may be).
- (b) Subject to the Corporations Act, the Directors may require evidence of a Security holder's death as they determine.
- (c) This rule does not release the estate of a deceased joint holder from any liability in respect of any Security that had been jointly held by the holder with other persons.

### 27. Transmission by Operation of Law

A person (a **transmittee**) who establishes to the satisfaction of the Directors that the right to any Securities has devolved on the transmittee by will or by operation of law may be registered as a holder in respect of the Securities or may (subject to the provisions in this Constitution relating to transfers) transfer the Securities. The Directors have the same right to refuse to register the transmittee as if the transmittee was the transferee named in a transfer presented for registration.

## Alteration of Capital

### 28. Power to Alter Share Capital

The company may reduce or alter its share capital in any manner provided for by the Corporations Act. The Directors may do anything which is required to give effect to any resolution authorising reduction or alteration of the share capital of the company and, without limitation, may make provision for the issue of fractional certificates or sale of fractions of shares and the distribution of net proceeds as they think fit.

## General Meetings

### 29. General Meetings

- (a) A Director may convene a general meeting of the company whenever the Director thinks fit.
- (b) Any Director may cancel any meeting convened by that Director by notice in writing to all persons who were entitled to receive notice of that meeting, except where the cancellation or postponement would be contrary to the Corporations Act. Any failure to give notice of cancellation or postponement does not invalidate the cancellation or postponement or any resolution passed at a postponed meeting.

### 30. Notice of General Meetings

A notice of a general meeting is to specify the place and time of the meeting, the general nature of the business to be transacted at the meeting and any other matters required by the Corporations Act. The non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to receive notice does not invalidate any resolution passed at the meeting.

### 31. Quorum

- (a) No business may be transacted at any general meeting except, subject to rule 32, the election of the Chair unless a quorum of shareholders is present at the time when the meeting proceeds to business.
- (b) Except as otherwise provided in this Constitution, two Shareholders Present constitutes a quorum.
- (c) If there is not a quorum at a general meeting within 30 minutes after the time specified in the notice of the meeting, the meeting is dissolved unless the Chair or the Directors adjourn the meeting to a date, time and place determined by the Chair or the Directors. If no quorum is present at any adjourned meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

## 32. Conduct of Meetings

- (a) Subject to rule 32(b), the Chair of Directors or, in the Chair's absence, the deputy Chair is entitled to preside as Chair at every general meeting.
- (b) Where a general meeting is held and:
  - (i) there is no Chair or deputy Chair; or
  - (ii) the Chair or deputy Chair is not present within 15 minutes after the time appointed for the meeting or does not wish to act as Chair of the meeting,
 the Directors present may choose one of their number or, in the absence of all Directors or if none of the Directors present wish to act, the Shareholders Present may elect one of their number to be Chair of the meeting.
- (c) The general conduct of each general meeting of the company and the procedures to be adopted at the meeting are as determined at, during or prior to the meeting by the Chair.
- (d) The Chair may make rulings without putting the question (or any question) to the vote if the Chair considers action is required to ensure the orderly conduct of the meeting.
- (e) At any time the Chair considers it necessary or desirable for the proper and orderly conduct of the meeting, the Chair may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Shareholders Present.
- (f) Any determination by the Chair in relation to matters of procedure (including any procedural motions moved at, or put to, any meeting) or any other matter arising directly or indirectly from the business is final (including any procedural motions moved at, or put to, any meeting). Any challenge to a right to vote (whether on a show of hands or on a poll) or to a determination to allow or disregard to vote may only be made at the meeting and may be determined by the Chair whose decision is final.
- (g) If a person purports to cast a vote in contravention of the Corporations Act, the Chair may determine that the vote be disregarded and treated as not having been cast.
- (h) Nothing contained in this rule limits the powers conferred on a Chair by law.

## 33. Adjournments

During the course of the meeting the Chair may adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by the Chair. If the Chair exercises a right of adjournment of a meeting under this rule, the Chair has the sole discretion to decide whether to seek the approval of the Shareholders Present to the

adjournment and, unless the Chair exercises that discretion, no vote may be taken by the Shareholders Present in respect of the adjournment. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

### 34. Voting at General Meetings

- (a) Each question submitted to a general meeting is to be decided by a show of hands of the Shareholders Present and entitled to vote, unless a poll is demanded.
- (b) Unless a poll is demanded, a declaration by the Chair following a vote on a show of hands that a resolution has been passed or lost is conclusive.
- (c) A poll may be demanded by a shareholder in accordance with the Corporations Act (and not otherwise) or by the Chair. No poll may be demanded on the election of a Chair of a meeting or, unless the Chair otherwise determines, the adjournment of a meeting. A demand for a poll may be withdrawn.

### 35. Special Meetings

All the provisions of this Constitution as to general meetings apply to any special meeting of any class of shareholders which may be held under the operation of this Constitution or the Corporations Act.

### 36. Procedure for Polls

- (a) When demanded, a poll may be taken in the manner and at the time the Chair directs.
- (b) The result of a poll may be announced in the manner and at the time (whether during the relevant meeting or afterwards) as the Chair considers appropriate.
- (c) The result of the poll is the resolution of the meeting at which the poll was demanded.
- (d) The demand for a poll does not prevent a meeting from continuing for the transaction of any business other than that on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting and without adjournment.

### 37. Chair has Casting Vote

In the event of an equality of votes on a show of hands or on a poll, the Chair of the meeting has a casting vote in addition to any vote to which the Chair may be entitled as a shareholder or as a proxy, attorney or properly appointed representative of a shareholder.

### 38. Representation and Voting of Shareholders

Subject to this Constitution and any rights or restrictions for the time being attached to any class or classes of shares:

- (a) at meetings of shareholders or classes of shareholders each shareholder entitled to attend and vote may attend and vote in person or by proxy, by attorney or (where the shareholder is a body corporate) by representative;
- (b) on a show of hands:
  - (i) subject to rule 38(b)(ii) and (iii), each Shareholder Present has one vote;
  - (ii) where a shareholder has appointed more than one person as representative, proxy or attorney for the shareholder, none of the representatives, proxies or attorneys is entitled to vote; and
  - (iii) where a person is entitled to vote because of rule 38(b)(i) in more than 1 capacity, that person is entitled only to one vote; and
- (c) on a poll, only Shareholders Present may vote and every Shareholder Present having the right to vote on the resolution has:
  - (i) one vote for each fully paid share they hold; and
  - (ii) in the case of a partly paid share, that fraction of a vote equivalent to the proportion which the amount paid up (not credited) on that shareholder's share bears to the total amount paid and payable for that share (excluding amounts credited). Amounts paid in advance of a call are ignored when calculating the proportion.

### 39. Restriction on Voting Rights

A shareholder is not entitled to attend or vote at a general meeting unless all calls and other sums presently payable by the shareholder in respect of shares have been paid.

### 40. Form of Proxy

- (a) A shareholder who is entitled to attend and vote at a meeting of the company may appoint a person as a proxy to attend and vote for the shareholder in accordance with the Corporations Act but not otherwise. A proxy appointed in accordance with the Corporations Act to attend and vote may exercise the rights of the shareholder on the basis and subject to the restrictions provided in the Corporations Act but not otherwise.
- (b) A form of appointment of a proxy is valid if it is in accordance with the Corporations Act or in any form (including electronic) which the Directors may prescribe or accept.
- (c) Any appointment of proxy under this rule 40 which is incomplete may be completed by the Secretary on the authority of the Directors and the Directors may authorise

completion of the proxy by the insertion of the name of any Director as the person in whose favour the proxy is given.

- (d) Where a notice of meeting provides for electronic lodgement of proxies, a proxy lodged at the electronic address specified in the notice is taken to have been received at the registered office and validated by the shareholder if there is compliance with the requirements set out in the notice.

#### 41. Number of Proxies

- (a) A shareholder may appoint not more than two proxies. A proxy need not be a shareholder.
- (b) If the Shareholder appoints two proxies and the appointment does not specify the proportion or number of the shareholder's votes each proxy may exercise, each proxy may exercise half of the votes.
- (c) If a shareholder appoints two proxies, neither proxy shall be entitled to vote on a show of hands. Otherwise, a proxy is entitled to vote on a show of hands.

#### 42. Validity of Proxies

- (a) A vote exercised in accordance with the terms of an instrument of proxy, a power of attorney or other relevant instrument of appointment is valid despite:
- (i) the previous death or unsoundness of mind of the principal;
  - (ii) the revocation of the instrument (or of the authority under which the instrument was executed) or the power; or
  - (iii) the transfer of the share in respect of which the instrument or power is given,
- if no notice in writing of the death, unsoundness of mind, revocation or transfer (as the case may be) has been received by the company at its registered office before the commencement of the meeting, or adjourned meeting at which the instrument is used or the power is exercised.
- (b) A proxy is not revoked by the principal attending and taking part in the meeting unless the principal actually votes at the meeting on a resolution for which the proxy is proposed to be used.
- (c) Voting instructions given by a shareholder to a Director or employee of the company who is appointed as proxy (**Company Proxy**) are valid only if contained in the form of appointment of the Company Proxy or, in the case of new instructions or variations to earlier instructions, the new or varied instructions are only valid if either they are received at the registered office of the company before the meeting or adjourned meeting by a notice in writing signed by the shareholder or they are otherwise validated by the shareholder in a manner acceptable to the Directors in their discretion prior to the commencement of the meeting.

#### 43. Single member and circulating resolutions

- (a) Nothing in this Constitution limits the company's power under the Corporations Act to pass a resolution as a circulating resolution or, while the company has only one member, by recording the resolution and signing the record.
- (b) Where the company has one member only, a document signed by that member which records a decision of the member:
- (i) constitutes a decision of the company and is valid and effective as if it were a resolution duly passed at a meeting of members; and
  - (ii) has effect as a minute of that decision.

#### Directors

#### 44. Number of Directors

The number of Directors (not including alternate Directors) must be not less than one. Each Director is to be a natural person.

#### 45. Appointment and Removal

- (a) The first Director or Directors of a company are the persons specified in the application to register a company lodged under the Corporations Act and who have consented to become Directors of the company.
- (b) The holder or holders of a majority of the issued shares in the capital of the company conferring the right to vote at all general meetings of the company may appoint any person to be a Director to fill a vacancy or as an addition to the existing Directors or remove a Director from office.
- (c) The Directors (or, where there is only one Director in office at the relevant time, that Director) may appoint any person to be a Director to fill a vacancy or as an addition to the existing Directors.
- (d) Any appointment or removal of a Director by the members must be in writing signed by or on behalf of the holder or holders of a majority of the issued shares in the capital of the company conferring the right to vote at all general meetings of the company. Any such appointment or removal will take effect immediately on delivery of the instrument of appointment or removal to the registered office of the company.

#### 46. No Share Qualification

Directors are not required to hold shares in the capital of the company.

#### 47. Remuneration

- (a) The Directors are to be paid for their services as Directors.



- (b) As remuneration for services, each Director is to be paid out of the funds of the company a sum per annum (accruing from day to day) determined by the company in general meeting. The Directors may determine to suspend, reduce or postpone payment of any remuneration if it thinks fit. The expression **remuneration** in this rule does not include any amount which may be paid by the company under any of rules 47(e), 47(f), 49 and 75.
- (c) A Director who is remunerated as an executive Director shall not be paid fees under rule 47(a).
- (d) The remuneration to be paid or provided under rule 47(a) is to be divided among the Directors in the proportions as they may agree or, if they cannot agree, equally among them.
- (e) The Directors are also entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any meeting of the Directors, committee of the Directors, general meeting of the company or otherwise in connection with the business or affairs of the company.
- (f) If any Director, with the approval of the Directors, performs extra services or makes any special exertions for the benefit of the company, the Directors may approve the payment to that Director of special and additional remuneration as the Directors determine having regard to the value to the company of the extra services or special exertions. Any special or additional remuneration must not include a commission on or percentage of profits or operating revenue or turnover.
- (g) A Director may be engaged by the company in any other capacity (other than auditor) and may be appointed on terms as to remuneration, tenure of office and otherwise as may be agreed by the Directors.

#### 48. Vacation of Office

- (a) In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:
  - (i) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (ii) resigns by notice in writing to the company;
  - (iii) is absent without the consent of the Directors from meetings of the Directors held during a continuous period of six months; or
  - (iv) dies.
- (b) The office of a Director who is an employee of the company or any of its subsidiaries is terminated on the Director ceasing to be employed but the person concerned is eligible for reappointment or re-election as a Director of the company.

#### 49. Retirement Allowance for Directors

- (a) The company may pay, provide or make any payment, pension, retiring allowance or other benefit (whether in the form of shares in the company, shares in any other corporations or otherwise) to any Director of the company or any other person in connection with the Director's retirement, resignation from or loss of office or death while in office.
- (b) Subject to rule 49(a) the Directors may:
  - (i) make contracts or arrangements with a Director or a person about to become a Director of the company under which the Director or any person nominated by the Director is paid or provided with a payment, pension, retiring allowance or other benefit (whether in the form of shares in the company, shares in any other corporation or otherwise) on or after the Director or person about to become a Director ceases to hold office for any reason; and
  - (ii) establish any fund or scheme to provide payments, pensions, retiring allowances or other benefits (whether in the form of shares in the company, shares in any other corporation or otherwise) for:
    - (A) Directors, on them ceasing to hold office; or
    - (B) any person including a person nominated by the Director, in the event of the Director's death while in office,
 and from time to time pay to the fund or scheme any sum as the company considers necessary to provide those benefits.
- (c) Without limiting rules 49(a) and 49(b), the company may pay superannuation contributions for each Director to the extent necessary for the avoidance or minimisation of any penalty, charge, tax, or other impost on the company under any applicable legislation which imposes a penalty, charge, tax or other impost on employers if a minimum level of superannuation contributions is not paid for an employee (within the meaning of the legislation).
- (d) The company may authorise any subsidiary to make a similar contract or arrangement with its Directors and maintain any fund or scheme, whether or not all or any of the Directors of the subsidiary are also Directors of the company.

#### 50. Directors May Lend to the Company

Any Director may lend money to the company at interest with or without security or may, for a commission or profit, guarantee the repayment of any money borrowed by the company and underwrite or guarantee the subscription of Securities of the company or of any corporation in which the company may be interested without being disqualified in respect of the office of Director and without being liable to account to the company for the commission or profit.

## 51. Alternate Directors

Subject to this Constitution, each Director may appoint any person (who, if there are other Directors, is approved by a majority of the other Directors) to act as an alternate Director in the Director's place, either for a stated period or until the happening of a specified event, whenever by absence or illness or otherwise the Director is unable to attend to duties as a Director. The appointment must be in writing and signed by the Director and a copy of the appointment must be given to the registered office or to a meeting of the Directors. The appointment takes effect on (if there are other Directors) approval by a majority of the other Directors or where the approval has been granted at any later time specified in the appointment. The following provisions apply to any alternate Director:

- (a) the appointment of the alternate Director is terminated or suspended on receipt at the registered office of notice in writing from the Director by whom the alternate Director was appointed;
- (b) the alternate Director is entitled to receive notice of meetings of the Directors and to attend and vote at the meetings if the Director by whom the alternate Director was appointed is not present;
- (c) the alternate Director is entitled to exercise all the powers (except the power to appoint an alternate Director) and perform all the duties of a Director, to the extent the Director by whom the alternate Director was appointed has not exercised or performed them or they have not been limited by the instrument appointing the alternate Director;
- (d) the alternate Director is not, unless the Directors otherwise determine, (without affecting the right to reimbursement for expenses under rule 47(e)) entitled to receive any remuneration as a Director from the company, and any remuneration (not including remuneration authorised by the Directors or reimbursement for expenses) paid to the alternate Director by the company is to be deducted from the remuneration of the Director by whom the alternate Director was appointed;
- (e) the office of the alternate Director is terminated on the death of, or termination of office by, the Director by whom the alternate Director was appointed;
- (f) the alternate Director is not to be taken into account in determining the number of Directors; and
- (g) the alternate Director is, while acting as a Director, responsible to the company for the alternate Director's own acts and defaults and is not the agent of the Director by whom the alternate Director was appointed.

## Managing Director and Powers of Directors

### 52. Appointment of a Managing Director

- (a) The Directors may appoint one or more Directors to the office of Managing Director for the period and on the terms as they determine. Subject to the terms of any

agreement entered into in a particular case, the Directors may at any time revoke any appointment, with or without cause.

- (b) A Managing Director's appointment automatically terminates if the Managing Director ceases for any reason to be a Director.

### 53. Powers of Directors and Managing Director

- (a) The business of the company is managed by the Directors, who may exercise all powers of the company which are not, by the law or this Constitution, required to be exercised by the company in general meeting.
- (b) The Directors may, on the terms and conditions and with any restrictions as they determine, delegate to a Managing Director any of the powers exercisable by them and may at any time withdraw, suspend or vary any of those powers conferred on the Managing Director.

### 54. Wholly Owned Subsidiary

At any time when the company is a wholly-owned subsidiary of a body corporate (the **Holding Company**), each Director is authorised to act in the best interests of the Holding Company.

## Proceedings of Directors

### 55. Proceedings

- (a) The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they determine.
- (b) Until otherwise determined by the Directors, two Directors form a quorum. A Director's meeting may be called by a Director giving reasonable notice to every other Director. A notice may be given by mail (electronic or otherwise), personal delivery or facsimile transmission to the usual place of business or residence of the Director or at any other address given to the Secretary by the Director or by any technology agreed by all the Directors.

### 56. Meetings by Technology

- (a) For the purposes of the Corporations Act, each Director, by consenting to be a Director (or by reason of the adoption of this Constitution), consents to the use of each of the following technologies for holding a Directors meeting:
  - (i) video;
  - (ii) telephone;
  - (iii) electronic mail;



- (iv) any other technology which permits each Director to communicate with every other Director; or
- (v) any combination of these technologies.

A Director may withdraw the consent given under this rule in accordance with the Corporations Act.

- (b) Where the Directors are not all in attendance at 1 place and are holding a meeting using technology and each Director can communicate with the other Directors:
  - (i) the participating Directors are, for the purpose of every provision of this Constitution concerning meetings of the Directors, taken to be assembled together at a meeting and to be present at that meeting; and
  - (ii) all proceedings of those Directors conducted in that manner are as valid and effective as if conducted at a meeting at which all of them were physically present in the 1 location.

## 57. Chair of Directors

- (a) The Directors may elect one of their number as their Chair and may decide the period for which the Chair is to hold office as Chair. References to the Chair in this Constitution include, in the absence of the Chair, the deputy Chair (unless the context otherwise requires).
- (b) Where a meeting of Directors is held and:
  - (i) a Chair has not been elected as provided by rule 57(a); or
  - (ii) the Chair is not present at the time appointed for the holding of the meeting or does not wish to Chair the meeting,

the deputy Chair is Chair of the meeting or, if rule 57(b)(i) or 57(b)(ii) applies to the deputy Chair, the Directors present may elect one of their number to be Chair of the meeting.

## 58. Directors' Voting Rights and Exercise of Powers

- (a) Subject to this Constitution, questions arising at a meeting of Directors are decided (where there is more than one Director of the company) by a majority of votes of Directors present and voting.
- (b) In the case of an equality of votes, the Chair of the meeting has a casting vote in addition to the Chair's deliberative vote.
- (c) Subject to rule 59 and the Corporations Act, a Director:
  - (i) who has an interest in a matter may vote in respect of that matter if it comes before the Directors and be counted as part of the quorum;
  - (ii) may enter into contracts with, or otherwise have dealings with, the company; and

- (iii) may hold other offices in the company.
- (d) A Director is not liable to account to the company for any profit realised by any contract or arrangement, by reason only of holding the office of Director or of the fiduciary relationship established by the office.
- (e) Subject to the Corporations Act, a Director or any person who is an associate of a Director may participate in any issue by the company of financial products.
- (f) Despite having an interest in any contract or arrangement a Director may participate in the execution of any document evidencing or connected with the contract or arrangement, whether by signing, sealing or otherwise.

## 59. Material Personal Interests

- (a) A Director is not disqualified from the Director's office by contracting with the company or any related body corporate of the company in any capacity by reason of holding of the office of Director.
- (b) In relation to a contract or arrangement in which a Director has a material personal interest:
  - (i) the fact that the Director signed the document evidencing the contract or arrangement will not in any way affect its validity;
  - (ii) a contract or arrangement made by the company or any related body corporate with a Director may not be avoided merely because the Director is a party to the contract or arrangement or otherwise interested in it; and
  - (iii) the Director will not be liable to account to the company for any profit derived in respect of the contract or arrangement merely because of the Director's office or the fiduciary relationship it entails.
- (c) If a Director has a material personal interest in a matter that relates to the affairs of the company and that interest has been disclosed in accordance with the Corporations Act or is of a type that does not require disclosure:
  - (i) the Director may vote on matters that relate to the interest; and
  - (ii) any transactions that relate to the interest may proceed; and
  - (iii) the Director can retain benefits from the transaction even though the Director has the interest; and
  - (iv) the company cannot avoid the transaction merely because of the existence of the interest.
- (d) If the material personal interest of a Director requires disclosure in accordance with the Corporations Act, rule 59(c)(iii) and rule 59(c)(iv) only apply if the disclosure is made before the transaction is entered into.
- (e) Nothing in the preceding provisions of this rule affects the duty of a Director who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Directors' duties or interests as a

Director, to declare at a meeting of Directors, the fact and the nature, character and extent of the conflict.

- (f) Rules 59(d) and (e) do not apply to a Director who is a sole Director of the company.

## 60. Committees

- (a) The Directors may delegate any of their powers to committees consisting of any one or more Directors or any other person or persons as the Directors think fit. In the exercise of delegated power, any committee formed or person or persons appointed to the committee must conform to any regulations that may be imposed by the Directors. A delegate of the Directors may be authorised to sub-delegate any of the powers for the time being vested in the delegate.
- (b) The meetings and proceedings of any committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Directors so far as they are applicable and are not in conflict with or superseded by, any regulations made by the Directors under rule 60(a).
- (c) Nothing in this rule 60 limits the power of the Directors to delegate.

## 61. Written Resolutions

A resolution in writing signed by all Directors or a resolution in writing which has been given to all Directors and which is signed by a majority of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of the Directors) is a valid resolution of the Directors and is effective when signed by the last of all the Directors or the last of the Directors constituting the majority, as required. The resolution may consist of several documents in the same form each signed by one or more of the Directors. For the purposes of this rule 61 the references to Directors include any alternate Director for the time being present in Australia who is appointed by a Director not for the time being present in Australia but do not include any other alternate Director. A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the Director's authority is considered a document in writing signed by the Director and is deemed to be signed when received in legible form.

## 62. Single Director Decisions

- (a) Where the Directors consist of one person only, nothing in this Constitution limits the powers of that person under the Corporations Act to:
- (i) pass a resolution; or
  - (ii) make a declaration,
- by recording it and signing the record.
- (b) Where the Directors or a committee consists of 1 person only, a document signed by that person which records a decision of the person:

- (i) constitutes a decision of the Directors or committee as the case may be, and is valid and effective as if it were a decision made at a meeting of Directors or the committee; and
- (ii) has effect as a minute of that decision.

## 63. Defects in Appointments

- (a) All actions at any meeting of the Directors or by a committee or by any person acting as a Director are, despite the fact that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been properly appointed and was qualified and continued to be a Director or a member of the committee.
- (b) If the number of Directors is reduced below the minimum number fixed under this Constitution, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of calling a general meeting of the company but for no other purpose.

## Secretaries and Other Officers

### 64. Secretaries

- (a) A Secretary of the company holds office on the terms and conditions, as to remuneration and otherwise, as the Directors decide.
- (b) The Directors may at any time terminate the appointment of a Secretary.
- (c) Where the company has one Director only and that Director is also the Secretary of the company, the members may terminate the appointment of the Secretary.

### 65. Other Officers

- (a) The Directors may from time to time:
- (i) create any other position or positions in the company with the powers and responsibilities as the Directors may from time to time confer; and
  - (ii) appoint any person, whether or not a Director, to any position or positions created under rule 65(a)(i).
- (b) The Directors may at any time terminate the appointment of a person holding a position created under rule 65(a)(i) and may abolish the position.

## Seals

### 66. Seals and their Use

- (a) The company may have a common seal and a duplicate common seal which are to be used by the company as determined by the Directors.
- (b) If the company has a sole Director and no Secretary, a document will be taken to be duly executed by the company if it is signed by that Director.

## Dividends, Interest and Reserves

### 67. Powers to Declare Dividends and Pay Interest

- (a) Subject to any special rights or restrictions attached to any shares, the Directors may determine that a Dividend is payable.
- (b) No Dividend bears interest against the company.

### 68. Crediting of Dividends

- (a) Subject to any special rights or restrictions attached to any shares, every Dividend is to be paid according to the amounts paid or credited as paid on the shares.
- (b) An amount paid or credited as paid on a share in advance of a call is not taken for the purposes of rule 68(a) to be paid or credited as paid on the share.
- (c) Subject to any special rights or restrictions attached to any shares, the Directors may from time to time resolve that Dividends are to be paid out of a particular source or particular sources, and in those circumstances the Directors may in their absolute discretion:
  - (i) allow each or any shareholder to elect from which specified sources that particular shareholder's Dividend may be paid by the company; and
  - (ii) where elections are permitted and any shareholder fails to make an election, identify the particular source from which Dividends are payable.

### 69. Deduction of Unpaid Amounts

The Directors may apply any part of any Dividend otherwise payable to a shareholder towards satisfaction of all sums of money presently payable by the shareholder to the company on account of calls or otherwise in relation to shares in the company.

### 70. Distributions in Kind

- (a) The Directors may, when declaring a Dividend, direct payment of the Dividend wholly or partly by the distribution of specific assets including paid up shares in or debentures of another body corporate.

- (b) Where a difficulty arises in regard to a distribution under rule 70(a), the Directors may:
  - (i) settle the matter as they determine and fix the value for distribution of the specific assets or any part of those assets;
  - (ii) decide that cash payments may be made, and make the payments to any shareholders on the basis of the value fixed by them in order to appropriately adjust the rights of all shareholders as the Directors determine in their discretion; or
  - (iii) vest any specific assets in trustees.

### 71. Payment of Distributions

- (a) Any Dividend, interest or other money payable in cash in respect of Securities may be paid by any of the following means, in the company's discretion, at the sole risk of the intended recipient:
  - (i) by cheque sent through the post directed to:
    - (A) the address of the Security holder as shown in the Securities register or, in the case of joint holders, to the address shown in the Securities register as the address of the joint holder first named in that Securities register; or
    - (B) to any other address as the Security holder or joint holders in writing directs or direct; or
  - (ii) by electronic funds transfer to an account with a bank or other financial institution nominated by the Security holder and acceptable to the company; or
  - (iii) by any other means determined by the Directors; or

otherwise be disposed of according to law.
- (b) Payments of Dividends and other distributions by the company may be made in Australian dollars or any other currency determined by the Directors in their discretion. Payments in different currencies may be made to different Security holders as determined by the Directors in their discretion. If a payment is made in a currency other than Australian dollars, the Directors may determine in their discretion the appropriate exchange rate and the time of calculation to calculate the amount payable in the relevant currency. The determinations of the Directors are, in the absence of manifest error, final.
- (c) Subject to law, all Dividends unclaimed may be invested or otherwise used by the Directors for the benefit of the company until claimed or otherwise disposed of according to law.

## Capitalisation of Profits

### 72. Capitalisation of Profits

- (a) The company in general meeting or the Directors may resolve:
  - (i) to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account, profit and loss account or otherwise available for distribution to Security holders; and
  - (ii) that the sum referred to in rule 72(a)(i) be applied, in any of the ways mentioned in rule 72(b), for the benefit of Security holders in full satisfaction of their interest in the capitalised sum, in the proportions to which those Security holders would have been entitled in a distribution of that sum by way of Dividend or if there is no proportional entitlement, as the Directors determine.
- (b) The ways in which a sum may be applied for the benefit of Security holders under rule 72(a) are:
  - (i) in paying up any amounts unpaid on Securities held by Security holders;
  - (ii) in paying up in full unissued Securities to be issued to Security holders as fully paid;
  - (iii) partly as mentioned in rule 72(b)(i) and partly as mentioned in rule 72(b)(ii); or
  - (iv) any other application permitted by law.
- (c) Where the conditions of issue of a partly paid Security provide, the holder is entitled to participate in any application of a sum under rule 72(b) to a greater extent than would have been the case had those funds been distributed by Dividend but not to any greater extent than permitted by the terms of issue.
- (d) The Directors may do all things they consider necessary to give effect to the resolution and, in particular, to the extent they consider necessary to adjust the rights of the Security holders amongst themselves, may:
  - (i) fix the value for distribution of the specific assets or any part of those assets;
  - (ii) issue fractional certificates or make cash payments in cases where Securities become issuable in fractions or determine that fractions may be disregarded or that any fractional entitlements are to be increased to the next whole number;
  - (iii) vest any cash or specific assets in trustees on trust for the persons entitled as they determine; and
  - (iv) authorise any person to make, on behalf of all the Security holders entitled to any further Securities on the capitalisation, an agreement with the company providing for the issue to them, credited as fully paid up, of any further Securities or for the payment by the company on their behalf the

amounts or any part of the amounts remaining unpaid on their existing Securities by the application of their respective proportions of the sum resolved to be capitalised and any agreement made under that authority is effective and binding on all the Security holders concerned.

## Notices

### 73. Notices Generally

- (a) Any Security holder who has not left at or sent to the registered office, a place of address or an electronic mail address (for registration in the register) at or to which all notices and documents of the company may be served or sent is not entitled to receive any notice.
- (b) A notice may be given by the company to any Security holder by, in its discretion:
  - (i) serving it on the Security holder personally;
  - (ii) sending it by post to the Security holder or leaving it at the Security holder's address as shown in the Securities register or the address supplied by the Security holder to the company for the giving of notices;
  - (iii) sending it to the fax number supplied by the Security holder to the company for the giving of notices;
  - (iv) sending it electronically to the electronic mail address given by the Security holder to the company for giving notices; or
  - (v) serving it in any manner contemplated in this rule 73(a) on a Security holder's attorney as specified by the Security holder in a notice given under rule 73(b).
- (c) By written notice to the Secretary left at or sent to the registered office or Securities registry, a Security holder may request that all notices to be given by the company or the Directors be served on the Security holder's attorney at an address specified in the notice and the company may do so in its discretion.
- (d) Notice to a Security holder whose address for notices is outside Australia may be sent by airmail, air courier, fax or electronic mail.
- (e) Any notice sent by post is considered to have been served at the expiration of 24 hours after the envelope containing the notice is posted and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted. Any notice served on a Security holder personally or left at the Security holder's registered address is considered to have been served when delivered. Any notice served on a Security holder by facsimile or other electronic transmission is considered to have been served when the transmission is sent.
- (f) Every person who, by operation of law, transfer or any other means, becomes entitled to be registered as the holder of any Securities is bound by every notice which, prior to the person's name and address being entered in the Securities

register in respect of the Securities, was properly given to the person from whom the person derived title to those Securities.

- (g) A notice served in accordance with this Constitution is (despite the fact that the Security holder is then dead and whether or not the company has notice of the Security holder's death) considered to have been properly served in respect of any registered Securities, whether held solely or jointly with other persons by the Security holder, until some other person is registered in the Security Holder's place as the holder or joint holder. The service is sufficient service of the notice or document on the Security holder's personal representative and any persons jointly interested with the Security holder in the Securities.

## Winding Up

### 74. Winding Up

- (a) If the company is wound up, whether voluntarily or otherwise, the liquidator may divide among all or any of the contributories as the liquidator thinks fit in kind any part of the assets of the company, and may vest any part of the assets of the company in trustees on any trusts for the benefit of all or any of the contributories as the liquidator thinks fit.
- (b) Any division may be otherwise than in accordance with the legal rights of the contributories and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part, but if any division otherwise than in accordance with the legal rights of the contributories is determined, any contributory who would be prejudiced by the division has a right to dissent and ancillary rights as if the determination were a special resolution passed under the Corporations Act relating to the sale or transfer of the company's assets by a liquidator in a voluntary winding up.
- (c) If any shares to be divided in accordance with rule 74(b) involve a liability to calls or otherwise, any person entitled under the division to any of the shares may, by notice in writing within 10 business days after the passing of the special resolution, direct the liquidator to sell the person's proportion and pay the person the net proceeds and the liquidator is to act accordingly, if practicable.

## Indemnity

### 75. Indemnity of Officers, Insurance and Access

- (a) The company is to indemnify each officer of the company out of the assets of the company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the company or in or arising out of the discharge of the duties of the officer.

- (b) Where the Directors consider it appropriate, the company may execute a documentary indemnity in any form in favour of any officer of the company or a subsidiary.
- (c) Where the Directors consider it appropriate, the company may:
- (i) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the company or a subsidiary against any liability incurred by the officer in or arising out of the conduct of the business of the company or in or arising out of the discharge of the duties of the officer; and
- (ii) bind itself in any contract or deed with any officer of the company to make the payments.
- (d) Where the Directors consider it appropriate, the company may:
- (i) give a former Director access to certain papers, including documents provided or available to the Directors and other papers referred to in those documents; and
- (ii) bind itself in any contract with a Director or former Director to give the access.
- (e) In this rule 75:
- (i) **officer** means:
- (A) a Director or Secretary, executive officer or employee; or
- (B) a person appointed as a trustee by, or acting as a trustee at the request of, the company,
- and includes a former officer.
- (ii) **duties of the officer** includes, in any particular case where the Directors consider it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the company or, where applicable, the subsidiary of the company to any other corporation.
- (iii) **to the relevant extent** means:
- (A) to the extent the company is not precluded by law from doing so;
- (B) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and
- (C) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.

- (iv) **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.

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## Schedule 4 – Annual Results Announcement

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Schedule 4 contains Meridian Energy Limited's Annual Results Announcement for the year ended 30 June 2011, and the full Annual Report can be found at "<http://www.meridianenergy.co.nz/assets/Uploads/Meridian-Annual-Report-2011.pdf>". Note that the following documents are not provided separately given that they are addressed within the full Annual Report: current balance sheet and financial data; statements from internal/external auditors; statements from consultants including accountants and legal advisors; statement of assets and liabilities; and shareholder register. The Commission may make the contents of this Schedule available to the public. This Schedule is specifically relevant to section 4.1.

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## Annual result announcement Meridian Energy Limited

### Reporting Period

Year ended 30 June 2011

### Previous reporting period

Year ended 30 June 2010

|   | AUDITED<br>YEAR ENDED<br>30 JUNE 2011 | AUDITED<br>YEAR ENDED<br>30 JUNE 2010 | PERCENTAGE<br>CHANGE (%) |
|---|---------------------------------------|---------------------------------------|--------------------------|
| Total Operating Revenue                                 | 2,053.0                               | 2,061.9                               |                          |
| EBITDAF <sup>1</sup>                                    | 659.9                                 | 641.7                                 | 3% increase              |
| Underlying Profit/(Loss) after Tax <sup>2</sup>         | 219.0                                 | 251.9                                 | 13% decrease             |
| Net Profit/(Loss) after Tax <sup>3</sup>                | 303.1                                 | 184.0                                 | 65% increase             |
| Underlying Return on Equity excl Reval (%) <sup>4</sup> | 18.5%                                 | 19.8%                                 | 7% decrease              |
| EBITDAF per MWh <sup>5</sup>                            | \$47.74 per MWh                       | \$46.25 per MWh                       | 3% increase              |
| Gearing (%) <sup>6</sup>                                | 19.3%                                 | 22.4%                                 | 14% increase             |
| EBITDAF Interest Cover (times) <sup>7</sup>             | 5.9                                   | 6.7                                   | 12% decrease             |

### OPERATING STATISTICS

|   | ACTUAL<br>YEAR ENDED<br>30 JUNE 2011 | ACTUAL<br>YEAR ENDED<br>30 JUNE 2010 | PERCENTAGE<br>CHANGE (%) |
|---|--------------------------------------|--------------------------------------|--------------------------|
| <b>Wholesale and International Generation</b>           |                                      |                                      |                          |
| Generation (GWh)  |                                      |                                      |                          |
| - Hydro generation                                      | 12,629                               | 12,857                               | 2% decrease              |
| - Wind generation                                       | 1,185                                | 1,015                                | 17% increase             |
| - Solar generation                                      | 10                                   | 2                                    | 400% increase            |
| <b>Total generation</b>                                 | <b>13,824</b>                        | <b>13,874</b>                        |                          |
| Wholesale Contracted Sales (GWh)                        | <b>5,529</b>                         | <b>4,832</b>                         | 14% increase             |
| Average price per MWh Generated (NZ)                    | \$41.57 per MWh                      | \$48.33 per MWh                      | 14% decrease             |
| <b>Retail</b>   |                                      |                                      |                          |
| - Meridian Retail                                       | 239,216                              | 238,822                              |                          |
| - Powershop   | 33,560                               | 16,420                               | 104% increase            |
| <b>Total Retail ICP Numbers</b>                         | <b>272,776</b>                       | <b>255,242</b>                       | 7% increase              |
| Fixed Price Retail Electricity Sales (GWh) <sup>8</sup> | 6,074                                | 5,906                                | 3% increase              |
| Spot Retail Electricity Sales (GWh)                     | 1,796                                | 1,835                                | 2% decrease              |
| Average Electricity Purchase Price                      | \$51.65 per MWh                      | \$58.05 per MWh                      | 11% decrease             |

<sup>1</sup> EBITDAF – earnings before interest, taxation, depreciation, amortisation and financial instruments.

- <sup>2</sup> Underlying Profit/(Loss) after Tax – represents profit after tax and excludes earnings from unrealised fair value movements on financial instruments and other one-off items net of tax.
- <sup>3</sup> Net Profit/ (Loss) after Tax – includes unrealised gains/(losses) on financial instruments.
- <sup>4</sup> Calculated on an annual average basis as Underlying Profit divided by Average Equity excluding Revaluations.
- <sup>5</sup> Group EBITDAF divided by NZ generation volumes.
- <sup>6</sup> Gearing calculated as Net Debt / (Net Debt+Equity).
- <sup>7</sup> Calculated on an annual average basis.
- <sup>8</sup> Retail sales include Powershop volumes and exclude volumes sold to Wholesale customers.

The financial statements will be available on Meridian's website [www.meridianenergy.co.nz](http://www.meridianenergy.co.nz) from 23 August 2011. The full version of the annual report will also be available on our website immediately after it has been tabled in Parliament, –which is expected early October 2011.



## **Schedule 5 – Financial declarations (Commercial in Confidence)**

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Schedule 5 contains declarations from Powershop's auditors and its CFO relating to Powershop's financial position. This Schedule is specifically relevant to sections 4.6 and 4.7.

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## **Schedule 6 – Credit rating reports (Commercial in Confidence)**

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Schedule 6 contains a Dunn & Bradstreet risk report relating to Powershop, and Meridian Energy Limited's S&P credit rating report. It is provided on a commercial in confidence basis given that it details the basis for S&P's assessment of Meridian Energy Limited's creditworthiness and Dunn & Bradstreet's assessment of Powershop, and contains information not otherwise available to the public. This Schedule is specifically relevant to section 4.3.

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## **Schedule 7– Disqualification declarations (Commercial in Confidence)**

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Schedule 7 contains declarations relating to corporate disqualification and criminal history from each of Powershop’s officers. It is provided on a commercial in confidence basis given that it contains sensitive personal details relating to Powershop personnel. This Schedule is specifically relevant to section 5.

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## **Schedule 8 – Business Plan (Commercial in Confidence)**

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Schedule 8 contains Powershop's business plan. It is provided on a commercial in confidence basis given that it steps out in great detail various market analysis, financial assumptions and Powershop's projected cash-flows. This Schedule is specifically relevant to section 3.9.

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## **Schedule 9 – Policy and procedure documents (Commercial in Confidence)**

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Schedule 9 contains a selection of Meridian Energy Limited's relevant policy and procedure documents. It is provided on a commercial in confidence basis given that the documents provided set out inter alia many business practices, risk limits and operational procedures in detail. Policy documents provided include those relating to: Delegation of Authority; Anti-Fraud; Compliance; Risk Management; Health Safety & Wellness; Document Management, Training and Recordkeeping; and Whistleblowing. This Schedule is specifically relevant to sections O.

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## **Schedule 10 – The Powershop platform (Commercial in Confidence)**

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Schedule 10 contains screenshots of the Powershop platform in use (both those parts of the system as used by customers, and parts of the system seen only by Powershop team members). Schedule 9 is provided on a commercial in confidence basis given that the screenshots provided include screenshots of parts of the system which portray its inner-workings in a manner that would be of commercial value to Powershop's competitors (the disclosure of which would be counter to the Meridian Energy Group's intellectual property rights).

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## **Schedule 11 – Energy supply arrangements (Commercial in Confidence)**

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Schedule 11 contains a summary of Powershop's energy supply strategy. In the first instance Powershop notes that it shall be registered as a customer in the National Electricity Market, but this Schedule provides further detail on energy supply arrangements. Schedule 10 is provided on a commercial in confidence basis given that information on Powershop's intentions for energy supply would be of huge commercial value to Powershop's competitors.

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## **Schedule 12 – Demonstrated Significant Customer Acceptance and Support (Commercial in Confidence)**

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Schedule 12 contains copies of Canstar Blue and Consumer New Zealand reports demonstrating that Powershop NZ has achieved the highest customer satisfaction of all NZ retailers in 2011. Schedule 11 also contains a copy of Powershop's number one ranking in the 2011 Deloitte fast 50 which measures and rewards businesses with significant growth. Schedule 11 is provided on a commercial in confidence basis given that some of the information contained in this Schedule would not normally be available publically.

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