

This and the following thirty-eight pages is the

**CONSTITUTION OF  
ARTS CAPITAL LIMITED  
ACN 639 255 815**

*Corporations Act 2001 (Cth)*

*A Company Limited by Guarantee*

**Dated 10<sup>th</sup> March 2020**

*As amended pursuant to resolution of members on 24 April 2023 and 03 June 2024*

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## 1. INTERPRETATION

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### 1.1 Definitions

In this Constitution, unless context otherwise requires or contrary intention appears:

- (a) **Act** means the *Corporations Act 2001* (Cth).
- (b) **ACNC** means Australian Charities and Not-for-profit Commission.
- (c) **ACNC Act** means the Australian Charities and Not-for-profits Commission Act 2012 (Cth).
- (d) **Advisory Group** means a group established under rule 8.1 for the primary purpose of advising the Board and the Company.
- (e) **Annual General Meeting** means the General Meeting held annually in accordance with rule 14.
- (f) **Board** means the Directors acting collectively under, and in accordance with, this Constitution.
- (g) **Board Meeting** means a meeting of the Board held in accordance with rule 17.
- (h) **Chairperson** means the Director who is appointed as the chairperson under rule 5.4.
- (i) **Charity** means an entity registered as a charity with the ACNC pursuant to the *Charities Act 2013* (Cth).
- (j) **Committee** means a group of people, whether or not including Members, established under rule 7.1.
- (k) **Company** means Arts Capital Limited ACN 639 255 815.
- (l) **Constitution** means this constitution of the Company, including all annexures, schedules and documents annexed hereto.
- (m) **Deductible Gift Recipient** means any entity or fund endorsed by the Australian Taxation Office as a deductible gift recipient at the relevant time.
- (n) **Deputy Chairperson** means the Director who is appointed as the deputy chairperson under rule 5.4.
- (o) **Director** means a natural person who is a director of the Company at any relevant time.
- (p) **Extraordinary General Meeting** means a meeting requisitioned in accordance with rule 14.3 and held in accordance with rule 15.
- (q) **Fund Committee** means the committee established and maintained in accordance with rule 7.2, from time to time and as necessary.
- (r) **General Meeting** means a meeting of Members held in accordance with rule 15, and includes the Annual General Meeting.
- (s) **Member** means any individual that is listed as a member of the Company in the Register from time to time, and all of those members together (as applicable).
- (t) **Membership Fee** means the fee payable in accordance with, and as determined by, rule 4.5.
- (u) **Objects** means the objects of the Company as specified in rule 2.4.

- (v) **Ordinary Resolution** means a resolution passed at a meeting by a majority of the votes cast by those present and entitled to vote on the resolution.
- (w) **Register** means the register of Members as required to be kept by sections 168 and 169 of the Act.
- (x) **Register of Cultural Organisations** means the register of cultural organisations established under subdivision 30-F of the *Income Tax Assessment Act 1997* (Cth).
- (y) **Secretary** means, during the term of the appointment, the person appointed as secretary in accordance with rule 6.
- (z) **Special Resolution** means a resolution of which notice has been given and that has been passed by at least seventy-five percent (75%) of the votes cast by those present and entitled to vote on the resolution.
- (aa) **Structurally Independent** means a person who is not in any relationship with the Company, including those arising out of employment, licences, agreements, contracts, arrangements, deeds, understanding, or any other relations established in the ordinary course of business of the Company, except those envisaged, required or authorised by:
  - (i) payments of good faith, as set out in rule 3.3;
  - (ii) holding the office of Directors, as set out in rules 3.3 and 5;
  - (iii) holding other offices, as set out in rule 13.3;
  - (iv) having a material personal interest in a transaction involving the Company where that interest has been disclosed, as set out in rules 13.2 and 13.3;
  - (v) obligations of confidentiality, as set out in rule 13.6;
  - (vi) officers' indemnities and insurances, as set out in rule 14; or
  - (vii) any other rule in this Constitution.

## 1.2 General

In this Constitution, subject always to the Act and unless the context otherwise requires:

- (a) words in singular includes the plural and vice versa;
- (b) each gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) the use of the word "including" (or any variation thereof) does not limit the generality of the subject matter which precedes it;
- (e) any covenants or obligations which bind two (2) or more persons bind them jointly and each of them severally;
- (f) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated or incorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person's executors, administrators, successors, substitutes and permitted assigns;
  - (iii) any thing (including any amount) includes either the whole or any part of that thing;

- (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (v) a right includes a benefit, remedy, discretion and power;
- (vi) time is to local time in the Australian Capital Territory;
- (vii) "\$" or "dollars" is a reference to Australian currency;
- (viii) this Constitution, or any other document referred to in this Constitution, includes the Constitution or document as novated, amended or varied from time to time;
- (ix) writing includes:
  - (x) any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmission; and
  - (xi) words created or stored in any electronic medium and retrievable in perceivable form;
  - (xii) a group of persons includes all of them together, any two (2) or more of them together and each of them separately;
  - (xiii) any rule means that rule in this Constitution;
- (g) where time is to be calculated by reference to a day or event, that day or the day of that event is included;
- (h) references to legislation include:
  - (i) any legislation passed in modification or amendment to that legislation;
  - (ii) any legislation made in substitution for that legislation; and
  - (iii) any subordinate legislation including any rules, regulations, or by-laws made under that legislation,  
from time to time;
- (i) where general expressions are used in connection with (including in conferring) powers, discretions or things, such general expressions are not limited to or restricted by the particular powers, discretions or things;
- (j) words and expressions denoting authority or permission are to be construed as words or expressions of authority merely, and are not to be construed as words or expressions denoting directions or compulsory trusts; and
- (k) the headings in this Constitution are for convenience only and do not in any way affect its interpretation or construction.

## **2. PRELIMINARY**

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### **2.1 Company Limited by Guarantee**

- (a) The Company is limited by guarantee and the liability of Members is limited as provided in this Constitution.

### **2.2 Company Name**

- (a) The name of the Company is Arts Capital Limited.



### **2.3 Exclusion of Replaceable Rules**

- (a) The replaceable rules referred to in the Act from time to time do not apply to the Company and are replaced by the rules set out in this Constitution.

### **2.4 Objects of the Company**

- (a) The Company is established for the charitable purpose of advancing culture through the operation and management of arts facilities which:
  - (i) provide accommodation, venues and facilities for artists, arts groups and organisations that are prepared actively to contribute to the achievement of the Objects;
  - (ii) facilitate and stimulate arts development;
  - (iii) effectively support creative practice and endeavour;
  - (iv) provide a focus for artistic cross-fertilisation, exploration and experimentation;
  - (v) facilitate and promote arts activities, programs and projects that contribute to the achieve of the Objects, particularly from among the artists and organisations based at the Company's arts facilities;
  - (vi) demonstrate and promote principles of diversity and inclusiveness in the community;
  - (vii) are perceived by the general public to be vital centres of arts activity;
  - (viii) respect and exemplify the architectural, social and cultural heritage of the sites they occupy;
  - (ix) are attractive to and visited by the general public; and
  - (x) achieve any of the Objects.
- (b) In furtherance of the Objects, the Company may;
  - (i) purchase, take on, lease, exchange, hire and acquire any rights, privilege, land, building, easement or property, whether real or personal, which may be requisite for the purposes of, or capable of being conveniently used in connection with, any of the Objects;
  - (ii) enter into any arrangements with any government authority, whether supreme, municipal, local or otherwise, that may seem conducive to the Objects, and to obtain from any such government authority any rights, privileges and concessions which the Company may think it desirable to obtain, and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;
  - (iii) appoint, employ, remove or suspend any manager, clerk, secretary, servant, agent, worker and any other person as may be necessary or convenient for the purposes of the Company and to remunerate other persons, organisations, companies or entities in return for services rendered to the Company;
  - (iv) establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or past employees of the Company (or the dependents or connections thereof) and to grant pensions and allowances and to make payments towards insurance;
  - (v) to subscribe or guarantee money for charitable or benevolent objects or for any public, general or useful objects;

- (vi) construct, improve, maintain, develop, work, manage, carry out, alter or control any house, building, site, works or conveniences which are calculated directly or indirectly to advance the Company's interests and to contribute to, subsidise, assist and take part in the construction, improvement, maintenance, development, working, management, carrying out, alteration or control of the same;
- (vii) invest and deal with the Company's money not immediately required in such manner as the Board may determine from time to time;
- (viii) borrow, raise or secure the payment of money;
- (ix) secure the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be incurred by the Company in such manner as the Company determines, and in particular by the issue of debentures (perpetual or otherwise) charged upon any or all of the Company's property (both present and future);
- (x) purchase, redeem, or pay off any securities;
- (xi) make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (xii) sell, improve, manage, develop, exchange, lease, dispose of, turn to account or deal with the whole or any parts of the property and rights of the Company;
- (xiii) take any gift of property whether subject to any special trust or not, subject always to rule 2.4(b)(xii) above;
- (xiv) act solely or jointly as trustee or custodian of any property or fund;
- (xv) take or hold mortgages, liens and charges to secure payment of any money due to the Company from any person;
- (xvi) take such steps by person, written appeals, public meetings or otherwise, as may from time to time be deemed expedient, for the purpose of procuring contributions to the funds of the Company, including but not limited to donations, annual subscriptions, gifts and bequests;
- (xvii) print and publish, by any means and in any medium including but not limited to hardcopy, online and electronic, any materials and publications that the Company considers desirable for the:
  - (A) promotion and furtherance of the Objects; and/or
  - (B) promotion and advertising of the Company,and adopt any such means as may seem expedient in doing so; and
- (xviii) amalgamate or affiliate with any company, institution, society or association having objects similar to the Objects of the Company (whether wholly or in part).

## **2.5 Interpretation of Company Objects**

- (a) In the interpretation of the Objects, the powers of the Company shall not be restricted by:
  - (i) reference to any other rule; or
  - (ii) the name of the Company; or

- (iii) the contradiction, comparison, juxtaposition or relationship between any two (2) or more Objects; and
- (iv) in the event of any ambiguity, rule 2.4 shall be construed in such a way as to widen and not restrict the powers of the Company.

### **3. COMPANY INCOME AND PROPERTY**

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#### **3.1 Sources of Income**

- (a) The Company may receive income from any one (1) or more of the following sources:
  - (i) Membership Fees;
  - (ii) fundraising;
  - (iii) subject to rule 3.4, donations made to a public fund established by the Company;
  - (iv) payments of interest;
  - (v) grants;
  - (vi) gifts and bequests; and
  - (vii) any other lawful source of income.
- (b) The Board may establish, implement, amend, vary, and revoke policies in relation to the management of income of the Company from time to time and:
  - (i) those policies will be subject to this Constitution; and
  - (ii) in the event of any inconsistency between this Constitution and any policy created by the Board pursuant to this rule 3.1(b), this Constitution will prevail to the extent of that inconsistency.

#### **3.2 Application of Income**

- (a) Subject to this Constitution, the income and property of the Company shall be applied solely towards the promotion and furtherance of the Objects.
- (b) No income or property of the Company will be paid, transferred or distributed (either directly or indirectly) by way of dividend, bonus or otherwise to any Member or Director except in accordance with rule 3.3.

#### **3.3 Payments in Good Faith**

- (a) Subject to chapter 2E of the Act and rule 3.4, rule 3.2 does not prevent the Company from making the following payments in good faith:
  - (i) reasonable and proper remuneration of any Director as determined by resolution of the Members in a General Meeting;
  - (ii) reasonable and proper remuneration of any Director for sitting fees, having regard to the circumstances of the Company;
  - (iii) reasonable and proper remuneration of any officer or employee of the Company;
  - (iv) payment for any goods supplied or services rendered to the Company in the ordinary course of business by a Director or Member in a professional or technical capacity, other than in the capacity as Director or Member, where:

- (A) the provision of the goods or services has the prior approval and full informed consent of the Board; and
- (B) the amount payable is approved by the Board and is not more than an amount which would be commercially reasonable for the goods or services;
- (v) payment of interest on money borrowed at a rate not exceeding the rate of interest, at that time, charged by the Commonwealth Bank of Australia on overdrawn accounts not exceeding one hundred thousand dollars (\$100,000.00);
- (vi) reasonable and proper rent for premises leased by any Member or Director to the Company;
- (vii) repayment of out-of-pocket expenses of Directors or Members for or on behalf of the Company where the amount payable does not exceed an amount previously approved by the Board; and
- (viii) payment of advisory, consultancy or legal fees.

#### **3.4 Not for Profit**

- (a) The Company must not, either directly or indirectly, distribute any income or assets to its Members, except in accordance with rule 3.4(b).
- (b) Nothing in this rule 3.4 shall be deemed to prevent the Company from doing any one (1) or more of the following acts, provided that the act is done in good faith:
  - (i) paying a Member for goods or services they have provided or rendered to the Company at:
    - (A) fair and reasonable rates; or
    - (B) rates more favourable to the Company than fair and reasonable rates;
  - (ii) reimbursing a Member for expenses they have properly incurred on behalf of, and in furtherance of the Objects of, the Company; or
  - (iii) making a payment which payment is made to cause a Member to carry out or further the Objects.

#### **3.5 Gift Fund**

- (a) The Company will maintain a Gift Fund called "Arts Capital Gift Fund" (the Fund):
  - (i) which will be used only for the charitable purpose in the Objects of the Company;
  - (ii) all gifts and deductible contributions of money or property for that purpose are made to the Fund;
  - (iii) any money received because of such gifts or deductible contributions is credited to the Fund; and
  - (iv) The Fund does not receive any other money or property.

#### **3.6 Guarantee**

- (a) Each Member must contribute an amount of not more than fifty dollars (\$50.00) (**Guarantee**) to the assets and property of the Company on the earlier of:
  - (i) the winding up of the Company; or

- (ii) the date that is twelve (12) months after the date upon which the Member ceased being a Member.

### **3.7 Winding Up**

- (a) In the event that the Company is wound up, the Guarantees provided by the Members in accordance with rule 3.6 shall be collected by the Company and applied for the:
  - (i) payment of the debts and liabilities of the Company contracted before the person ceased to be a Member (where applicable);
  - (ii) payment of the costs, charges and expenses of winding up; and
  - (iii) adjustment of the rights of the contributories amongst themselves.
- (b) If any assets or property whatsoever remain after the winding up or dissolution of the Company and following satisfaction of the Company's debts and liabilities (**Residue Property**), that Residue Property:
  - (i) shall not be paid to or distributed among the Members; and
  - (ii) shall be given or transferred to another institution that has similar objects to the Objects, as determined by the Members at or before the time of dissolution.
- (c) If rule 3.7(b)(ii) is unable to be effected, then the Residue Property is to be given to another institution that has charitable objects, as determined by the Members at or before the time of dissolution.
- (d) rule 3.7 is subject to rule 3.8.

### **3.8 Surplus assets of the Gift Fund**

- (a) If the Company is wound up or if the endorsement (if any) of the Organisation as a deductible gift recipient is revoked, any surplus assets of the Gift Fund remaining after the payment of liabilities attributable to it, shall be transferred to a charity with a similar charitable purpose to which income tax-deductible gifts can be made.

## **4. MEMBERSHIP**

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### **4.1 Membership**

- (a) Subject to rule 4.8, the Members are:
  - (i) the initial Members named in the application for the Company's registration; and
  - (ii) additional Members who are admitted to membership in accordance with this Constitution.

### **4.2 Admission to Membership**

- (a) A person (**Prospective Member**) may apply to become a Member of the Company in writing to the Secretary, provided that:
  - (i) that Prospective Member is a natural person; and
  - (ii) the application by that Prospective Member is in a form acceptable to the Board.
- (b) A Prospective Member is admitted as a Member if the Board admits the Prospective Member as a Member in accordance with rule 4.3.

### **4.3 Board's Consideration for Admission**

- (a) The Board may in its absolute discretion require a Prospective Member to supply any documents or evidence in support of that Prospective Member's application for membership that it considers reasonably necessary.
- (b) If the Board requires a Prospective Member to provide documents or evidence under rule 4.3(a):
  - (i) subject to rule 4.3(b)(ii), determination of that Prospective Member's application for membership will be deferred until the documents or evidence have been supplied; and
  - (ii) if the Prospective Member does not supply the documents or evidence within a period of six (6) months (or such other period nominated by the Board in its absolute discretion and communicated to the Prospective Member) of the request by the Board, the Board may determine that Prospective Member's application for membership in the absence of the additional documents and evidence.
- (c) Subject to rule 4.3(d), the Board may determine in its absolute discretion whether to approve or reject the application for membership by a Prospective Member.
- (d) In determining a Prospective Member's application for membership, the Board must have regard to:
  - (i) the skills, expertise and qualifications of the prospective Member, including but not limited to skills, expertise and qualifications in:
    - (ii) arts management;
    - (iii) arts practice;
    - (iv) law;
    - (v) accounting;
    - (vi) business management;
    - (vii) marketing and public relations; and
    - (viii) heritage;
  - (ix) the experience of the Prospective Member, including but not limited to experience relating to:
    - (x) arts management; and
    - (xi) arts practice;
    - (xii) the diversity present in the composition of the Members;
    - (xiii) the inclusivity present in the composition of the Members;
    - (xiv) the Objects; and
    - (xv) any other factor that the Board determines to be relevant from time to time.
- (e) If the Board rejects a Prospective Member's application for membership, it is not required to give any reason(s) for the rejection.

#### **4.4 Number of Members**

- (a) Unless determined otherwise by Special Resolution of the Company in General Meeting, the maximum number of Members shall be ten (10).

#### **4.5 Membership Fee**

- (a) The amount of the Membership Fee is to be:
  - (i) at the incorporation of the Company – fifteen dollars (\$15.00); and
  - (ii) as otherwise set annually by Ordinary Resolution of the Members at the Annual General Meeting.
- (b) The Board may determine the timing and method for payment of Membership Fees.

#### **4.6 No Categories of Members**

- (a) Membership of the Company shall not be separately classified, and all Members shall be ordinary Members.

#### **4.7 Liability of Members**

- (a) The liability of each Member is limited to their respective guarantees to the Company pursuant to rule 3.6.

#### **4.8 Cessation of Membership**

- (a) A Member automatically ceases to be a Member if:
  - (i) the Member ceases to be a Director;
  - (ii) the Member resigned by giving written notice addressed to the Secretary of that Member's intention to resign, with the resignation effective from the date of receipt of the resignation notice by the Secretary;
  - (iii) the Member commits an act of bankruptcy or is declared bankrupt under the *Bankruptcy Act 1966* (Cth);
  - (iv) a controlling trustee is appointed to the Member or over any of the property of that Member;
  - (v) the Member or the Member's property becomes subject to a personal insolvency arrangement under part X *Bankruptcy Act 1966* (Cth) or a debt agreement under part IX *Bankruptcy Act 1966* (Cth);
  - (vi) judgment is entered into against the Member;
  - (vii) the Member is convicted for a criminal offence;
  - (viii) the Member is expelled in accordance with rule 4.9;
  - (ix) the Member fails to pay the Membership Fee within two (2) calendar months of the due date for payment, provided that the Board may reinstate the Member's membership on payment of all arrears if the Board in its absolute discretion decides to do so;
  - (x) the Member becomes of unsound mind or is otherwise legally incapacitated; or
  - (xi) the Member dies.

#### **4.9 Expelling a Member**

- (a) Subject to rule 4.9(b), the Board may, by Special Resolution in a meeting, expel any Member;
  - (i) who does not comply with this Constitution or any by-laws, rules, regulations or policies of the Company; or
  - (ii) whose conduct in the opinion of the Board is prejudicial to the interest of the Company,and remove that Member's name from the Register.
- (b) At least twenty-one (21) days before the Board holds a meeting to expel a Member under rule 4.9(a), the Board must give written notice to the Member which states:
  - (i) the allegations against the Member;
  - (ii) the proposed resolution for the Member's expulsion;
  - (iii) that the Member has an opportunity at the meeting to address the allegations either orally or in writing; and
  - (iv) that, if the Member notifies the Secretary in writing at least forty-eight (48) hours before the meeting, the Member may elect to have the question of that Member's expulsion dealt with by the Company in General Meeting.
- (c) The Company must expel a Member and remove the Member's name from the Register where, at a General Meeting, a resolution to expel the Member is passed by at least a majority of two-thirds of those present.
- (d) The resolution referred to in rule 4.9(c) above shall be taken by ballot.
- (e) A Member who is expelled from the Company under this rule 4.9:
  - (i) does not have any claim on the Company, its funds or property;
  - (ii) will not be entitled to any refund (or part thereof) of any Membership Fee paid; and
  - (iii) will continue to be liable for any Membership Fee and all arrears due and unpaid at the date they ceased to be a Member and for all other moneys due by that person to the Company (including amounts payable on the winding up of the Company), provided that such amount does not exceed the amount of the Guarantee.

#### **4.10 Register of Members**

- (a) The Board must set up, maintain, and keep updated the Register.
- (b) In accordance with section 169 of the Act, the Register must contain the following information:
  - (i) the name and address of each Member;
  - (ii) the date on which the entry of the Member's name in the register is made;
  - (iii) the name and details of each person who stopped being a Member within the last seven (7) years;
  - (iv) the date on which the person stopped being a Member; and
  - (v) if the Company has more than fifty (50) Members and the Register itself is not kept in a form that operates effectively as an index, an index of Members' names.



#### **4.11 Acceptance of Contributions from Members**

- (a) Subject to this Constitution, the Company may from time to time enter into arrangements to accept contributions, gifts or donations from any Member.

#### **4.12 Rights and Privileges are Non-transferrable**

- (a) The rights and privileges of each Member are personal to that Member and are not transferable by any means whatsoever.

### **5. BOARD OF DIRECTORS**

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#### **5.1 Eligibility**

- (a) To be eligible to act as a Director, a person must:
  - (i) be a natural person;
  - (ii) be a Member, unless appointed under rule 5.11;
  - (iii) be Structurally Independent;
  - (iv) not be the auditor, nor any partner or employee of the auditor, of the Company; and
  - (v) not be ineligible to be a Director under the Act; and
  - (vi) while the Company is a Charity, not be ineligible to be a Director under the ACNC Act.

#### **5.2 Initial Directors**

- (a) The persons who are specified in the application for registration of the Company as persons who consent to becoming Directors shall constitute the Directors until the first Annual General Meeting following registration of the Company, at which Annual General Meeting Directors shall be elected in accordance with rule 5.7.

#### **5.3 Number of Directors**

- (a) The Board:
  - (i) must not consist of less than three (3) Directors; and
  - (ii) unless otherwise determined by Special Resolution of the Company in a General Meeting, and subject always to rule 5.3(a)(i), must not exceed the number of Members.
- (b) If the number of Directors is reduced below the minimum required by rule 5.3(a), the continuing Directors may act as the Board only:
  - (i) to appoint Directors up to the minimum number in accordance with rule 5.11;
  - (ii) to convene a General Meeting; and
  - (iii) in emergencies.

#### **5.4 Chairperson and Deputy Chairperson**

- (a) The Chairperson and Deputy Chairperson of the Board shall each:
  - (i) be Directors (and, for the avoidance of doubt, not be the same Director);
  - (ii) be elected by Ordinary Resolution of the Board in any meeting;

- (iii) hold office until the conclusion of the next Annual General Meeting occurring after their appointment; and
- (iv) subject to rule 5.4(a)(i), be eligible for reappointment.

#### **5.5 Term of Directors**

- (a) Subject to rule 5.5(b), the term of appointment for a Director shall be three (3) consecutive years (**Ordinary Term**).
- (b) Where a Director was appointed:
  - (i) as an initial Director by operation of rule 5.2, and that Director was reappointed at the next Annual General Meeting; and
  - (ii) as a casual Director pursuant to rule 5.11(a), and that Director was reappointed at the next General Meeting,any length of time the Director was an initial or casual Director is not calculated towards the Ordinary Term.

#### **5.6 Reappointment of Directors**

- (a) A Director may be appointed for a maximum of two (2) consecutive Ordinary Terms, after which time that person will be ineligible for reappointment as a Director for a period of twelve (12) months.

#### **5.7 Appointment of Directors**

- (a) Subject to rule 5.8, Directors shall be elected:
  - (i) by resolution the Members at a General Meeting, in accordance with the process set out in rule 5.7(b);
  - (ii) from candidates who satisfy the requirements of rule 5.1 (**Candidates**) nominated to the Board by any existing Members (**Nominations**); and
  - (iii) for an Ordinary Term.
- (b) The Nominations shall be:
  - (i) in writing;
  - (ii) signed by the Candidate;
  - (iii) lodged with the Secretary at least ten (10) days before the General Meeting.
- (c) In the event of an insufficient Nominations, the Board will put forward additional Candidates such that the number of Candidates will be sufficient to fill the vacant position(s) on the Board.
- (d) A list of the Candidates, arranged in alphabetical order, shall be provided by the Secretary to all Members at least seven (7) days prior to the General Meeting.
- (e) Balloting lists shall be prepared containing only the names of the Candidates, arranged in alphabetical order.
- (f) If there is only one (1) Nomination for any position on the Board, the Chairperson shall declare the Candidate duly elected.

- (g) If there is more than one (1) Nomination for any position on the Board, the election shall occur by ballot of the Members, conducted at the General Meeting in the following manner:
- (i) Each Member shall:
    - (A) mark its voting paper by making a tick or cross beside the names of each Candidate for whom it votes;
    - (B) legibly write its name on the voting paper;
    - (C) sign the voting paper; and
    - (D) deliver the voting paper to the Secretary.
  - (ii) Each Member present at the General Meeting shall be entitled to vote for any number of Candidates, not exceeding the number of vacancies.
  - (iii) After the closing of the ballot, the Secretary assisted by two (2) scrutineers appointed by the Board shall:
    - (A) examine the names and signatures on the voting papers and ensure each person's eligibility to vote;
    - (B) examine the voting papers and calculate the votes validly cast; and
    - (C) report in writing the result of the ballot to the Chairperson.
  - (iv) The Candidate for each position receiving the greatest number of votes shall be deemed elected and a declaration to this effect shall be made at the General Meeting by the Chairperson.
  - (v) In any case of doubt as to the formality of any voting paper, the matter shall be referred to the Chairperson, whose decision shall be final.
  - (vi) In the event of an equality of votes in favour of two (2) or more Candidates, the Chairperson shall have a casting vote so as to decide the election.
- (h) The Secretary must keep the voting papers for a period of at least one (1) month after the declaration of the election, after which time the Board may direct the Secretary to destroy the voting papers.

#### **5.8 Appointment of Multiple Directors**

- (a) A resolution passed at a General Meeting appointing or confirming the appointment of two (2) or more Directors is void unless the Company in General Meeting has unanimously resolved that the appointments or confirmations may be voted on together.
- (b) This rule 5.8 does not affect:
  - (i) a resolution to appoint Directors by an amendment to the Company's Constitution; or
  - (ii) the appointment of casual Directors under rule 5.11.

#### **5.9 Cessation of Directorship**

- (a) A Director automatically ceases to be a Director if the person:
  - (i) completes their term under rule 5.5 and is not, or ineligible to be, re-elected;
  - (ii) ceases to be a Member;

- (iii) is or becomes ineligible to be a Director under rule 5.1;
- (iv) is or becomes bankrupt, insolvent, under administration or makes any composition or arrangement with that Director's creditors or any class of creditors;
- (v) is or becomes disqualified from managing corporations under Part 2D.6 of the Act and is not given permission or leave to manage the Company under Part 2D.6 of the Act;
- (vi) is or becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (vii) dies;
- (viii) fails to attend three (3) consecutive Board meetings without leave of absence by the Board;
- (ix) is directly or indirectly interested in any contract or proposed contract with the Company and fails to disclose the nature of the interest as required by the Act and this Constitution;
- (x) resigns by giving written notice addressed to the Secretary, with such resignation taking effect from the date of receipt by the Secretary of the resignation notice;
- (xi) retires by giving written notice addressed to the Secretary, with such retirement taking effect from the date of receipt by the Secretary of the retirement notice;
- (xii) is removed from office under rule 5.10; or
- (xiii) otherwise ceases to be a Director by operation of rule 5.11.

#### **5.10 Removal of Director**

- (a) The Members may at any time, by Special Resolution, remove a Director from office.
- (b) The power to remove a Director under this rule 5.10 is in addition to section 203D of the Act (if applicable).

#### **5.11 Casual Vacancy**

- (a) Should a Director's office become vacant under rule 5.9 and:
  - (i) the number of remaining Directors is less than the minimum number set out in rule 5.3, the Board must appoint a person to temporarily fill the vacancy and, subject to this Constitution, that person will hold office until the next General Meeting; or
  - (ii) the number of remaining Directors is equal to, or more than the minimum number set out in rule 5.3, the Board may appoint a person to temporarily fill the vacancy and, subject to this Constitution, that person will hold office until the next General Meeting.
- (b) A person appointed to fill a vacancy as a casual Director under rule 5.11(a) may but need not be a Member.

### **6. SECRETARY**

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#### **6.1 Appointment of Secretary**

- (a) The Board must appoint at least one (1) individual to be a Secretary for the Company, either:

- (i) for a specified term, in which case the appointment will automatically end at the end of that specified period; or
- (ii) without specifying a period, in which case the appointment will continue indefinitely until the cessation of the appointment by operation of rule 6.4.

(b) The Secretary shall be the Public Officer of the Company.

## **6.2 Terms of Office**

- (a) A Secretary holds office on terms that the Board, in its absolute discretion, determines.
- (b) The Board may at any time and in its absolute discretion vary any previous determination made in respect of a Secretary.

## **6.3 Secretary Voting Rights**

- (a) The Secretary shall not have any voting rights at any Board meetings unless:
  - (i) the Secretary is also a Director, in which case the Secretary may vote in its capacity as a Director only; or
  - (ii) otherwise determined by the Board.
- (b) The Secretary shall not have any voting rights at any General Meeting unless the Secretary is also a Member, in which case the Secretary may vote in its capacity as a Member only.

## **6.4 Cessation of Secretary's Appointment**

- (a) A person automatically ceases to be the Secretary if the person;
  - (i) is not permitted by the Act to be a Secretary;
  - (ii) is or becomes bankrupt, insolvent, under administration or makes any composition or arrangement with that Director's creditors or any class of creditors;
  - (iii) is or becomes disqualified from managing corporations under Part 2D.6 of the Act and is not given permission or leave to manage the Company under Part 2D.6 of the Act;
  - (iv) is or becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
  - (v) dies;
  - (vi) is directly or indirectly interested in any contract or proposed contract with the Company and fails to disclose the nature of the interest as required by the Act;
  - (vii) resigns by giving written notice addressed to the Company, with such resignation taking effect from the date of receipt by the Company of the resignation notice;
  - (viii) retires by giving written notice addressed to the Company, with such retirement taking effect from the date of receipt by the Company of the retirement notice; or
  - (ix) is removed from office under rule 6.5.

## **6.5 Removal of Secretary**

- (a) The Board may in its absolute discretion and at any time remove a Secretary from office:
  - (i) whether or not the appointment was expressed to be a specified term; and

- (ii) if the appointment was expressed to be for a specified term, prior to the end of that specified term.

## **7. COMMITTEES**

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### **7.1 Establishment of Committees**

- (a) Subject to rule 7.2, the Board may establish or dissolve Committees from time to time for any purposes whatsoever.
- (b) With the exception of the Fund Committee, which shall be constituted as required by rule 7.2, each Committee shall:
  - (i) consist of at least one (1) Director and such other persons as the Board determines; and
  - (ii) appoint a chairperson for that Committee.

### **7.2 Fund Committees**

- (a) If the Company is listed on the Register of Cultural Organisations or otherwise establishes and maintains a public fund within the meaning of subdivision 30-F of the *Income Tax Assessment Act 1997* (Cth), the Board must establish the Fund Committee for the administration of the Fund.
- (b) The Board must not dissolve the Fund Committee until and unless Company ceases to be listed on the Register of Cultural Organisations or it is not required by the *Income Tax Assessment Act 1997* (Cth) to have rules in its Constitution maintaining and establishing a public fund.
- (c) The Fund Committee must be comprised of a majority of persons considered by the general community to have an underlying community responsibility because of their tenure of some public office or their professional standing, with that responsibility being separate and distinct from their obligations in respect of the Company.
- (d) The Fund Committee must at all times comply with the requirements of rule 3.5(c).

### **7.3 Role of Committees**

- (a) Each Committee shall, in the exercise of the powers delegated to it, conform to any function and regulation that may be imposed on it by the Board.
- (b) Subject always to any regulation or direction given to it by the Board, each Committee may meet and adjourn as it considers proper.
- (c) Questions arising at any meeting of the Committee shall be determined by a majority of votes of the Committee members present and, in the case of an equality of votes, the chairperson of the Committee shall not have a second or casting vote.

## **8. ADVISORY GROUPS**

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### **8.1 Establishment of Advisory Groups**

- (a) The Board must establish and at all times maintain one (1) Advisory Group comprising the residents of facilities managed by the Company.
- (b) Subject to rule 8.1(b), the Board may also:
  - (i) establish or dissolve any other Advisory Group it sees fit; and

- (ii) appoint and remove, or make provision for the appointment and removal of, members of any Advisory Group.
- (c) The Board shall determine the number of persons in each Advisory Group established under rule 8.1(b).

## **8.2 Role of Advisory Groups**

- (a) The function of each Advisory Group will be determined by the Board and, subject to any decision by the Board to the contrary, will make recommendations to the Board on matters relating to that Advisory Group's function.
- (b) In respect of each Advisory Group, the Board may specify:
  - (i) the manner in which proceedings of the Advisory Group are to be conducted;
  - (ii) the matters which the Advisory Group must consider in carrying out its functions; and
  - (iii) any other matters concerning the Advisory Group or its functions that the Board considers appropriate.

## **9. AUDITOR**

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### **9.1 Appointment**

- (a) Where an auditor is required under the Act, a properly qualified auditor shall be appointed by the Board.

### **9.2 Remuneration and Duties**

- (a) The auditor's remuneration (if any) shall be determined by Ordinary Resolution of the Company in the Annual General Meeting.
- (b) The auditor's duties shall be regulated by the Act.

### **9.3 Replacement and Removal**

- (a) Subject to the Act, the auditor may be replaced or removed by the Board from time to time.

## **10. CHIEF EXECUTIVE OFFICER**

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### **10.1 Appointment**

- (a) The Board may appoint a Chief Executive Officer to be employed by the Company.

### **10.2 Term and Conditions of Employment**

- (a) The Chief Executive Officer shall be employed by the Company for any such term and upon any conditions determined by the Board from time to time.
- (b) The Chief Executive Officer's remuneration (if any) shall be determined by the Board from time to time.

### **10.3 Powers and Rights**

- (a) The Chief Executive Officer has and may exercise:
  - (i) the power to enter into contracts binding the Company up to a value determined by the Board from time to time; and

- (ii) such powers and functions as conferred or imposed upon them by the Board from time to time;
  - (iii) the right to receive notice of all General Meetings and Board meetings; and
  - (iv) the right to attend and speak at all General Meetings and Board meetings.
- (b) The Chief Executive Officer does not have the right to vote at any General Meetings or Board meetings, except in their capacity as a Member in General Meetings or a Director in Board meetings.

#### **10.4 Delegation**

- (a) The Board may, in the absence of the Chief Executive Officer, appoint a person to act in the place of the Chief Executive Officer, and that person, while so acting:
  - (i) has the powers and functions conferred upon the Chief Executive Officer by rule 10.3; and
  - (ii) does not have the power to delegate conferred by rule 10.4(b).
- (b) The Chief Executive Officer may delegate to any person(s) any powers and functions conferred upon the Chief Executive Officer by rule 10.3:
  - (i) for a specified period, in which case the delegation will automatically lapse at the end of that specified period;
  - (ii) without specifying a period, in which case the delegation will continue indefinitely until it is revoked by the Chief Executive Officer; and
  - (iii) subject always to rule 10.5.

#### **10.5 Control**

- (a) In the exercise of any of its powers and functions pursuant to this rule 10, the Chief Executive Officer is subject to the control of the Board.

### **11. POWERS OF THE BOARD**

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#### **11.1 Powers Generally**

- (a) Subject to the Act and any other applicable law from time to time, the powers to manage and control the business and affairs of the Company shall be vested in the Board, which may exercise all powers of the Company which are not by the Act or this Constitution required to be exercised only by the Company in General Meeting.
- (b) The Board shall meet in Board Meetings at least six (6) times in each calendar year.

#### **11.2 Exercise of Powers**

- (a) A power of the Board can be exercised only:
  - (i) by resolution passed at a Board Meeting or otherwise in accordance with rule 17; or
  - (ii) in accordance with the delegation power under rule 12.

#### **11.3 Management**

- (a) The business of the Company shall be managed by the Board.



- (b) The Board, in managing the business of the Company, shall pay all expenses incurred in promoting and registering the Company subject to:
  - (i) this Constitution;
  - (ii) the Act;
  - (iii) for as long as the Company is a Charity, the ACNC Act; and
  - (iv) any by-laws, regulations or policies made by the Company in General Meeting.
- (c) Any by-laws, regulations or policies made by the Company in General Meeting shall be null and void to the extent that they are inconsistent with this Constitution or the Act.
- (d) Any by-laws, regulations or policies made by the Company in General Meeting shall not invalidate any prior act of the Board which:
  - (i) was, at the time of the relevant act, valid; and
  - (ii) which, but for the by-law, regulation or policy, would have been valid.

#### **11.4 General Powers of Administration**

- (a) Without prejudice to the general powers conferred by this Constitution, the Board may:
  - (i) determine who shall be entitled to sign cheques, notes, receipts, acceptances, endorsements, releases, contracts, deeds and all other documents on the Company's behalf, with such persons being subject to any condition determined by the Board from time to time;
  - (ii) make and give receipts, releases and other discharges for money payable to the Company and for the claims and demands of the Company;
  - (iii) exercise all the powers of the Company to borrow money, mortgage or charge its property and to issue debentures and other securities whether outright or as security for any debt, liability or obligation of the Company;
  - (iv) enter into all such negotiations and contracts and rescind and vary all such contracts and execute and do all such acts, deeds and things on behalf of the Company as they may consider expedient for the Company;
  - (v) employ or terminate the employment of any executive officer and any other staff they consider advisable for the Company and for the furtherance of the Objects;
  - (vi) adopt any other measures and do any acts they consider advisable for the carrying out and furtherance of the Objects;
  - (vii) invite any person(s) to attend any Board Meeting; and
  - (viii) exercise any of the powers conferred upon it by this Constitution or the Act.

## **12. DELEGATION OF BOARD POWERS**

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### **12.1 Power to Delegate**

- (a) The Board may delegate any of its powers as permitted by section 198D of the Act.

### **12.2 Terms of Delegation**

- (a) A delegation under rule 12.1 may be made:

- (i) for a specified period, in which case the delegation will automatically lapse at the end of that specified period;
  - (ii) without specifying a period, in which case the delegation will continue indefinitely until it is revoked by the Board;
  - (iii) on terms determined by the Board in its absolute discretion; and
  - (iv) subject to any restrictions determined by the Board in its absolute discretion.
- (b) A document of delegation may contain any provisions for the protection and convenience of those who deal with the delegate that the Board, in its absolute discretion, considers appropriate.
- (c) Powers delegated in accordance with this rule 12.2 cannot be assigned or delegated further.

### **12.3 Power to Revoke Delegation**

- (a) The Board may in its absolute discretion and at any time revoke any delegation (including any part of a delegation) previously made:
- (i) whether or not the delegation was expressed to be for a specified period; and
  - (ii) if the delegation was expressed to be for a specific period, prior to the end of that specified period.
- (b) A revocation by the Board under rule 12.3(a):
- (i) must be communicated by the Board to the relevant delegate(s) as soon as practicable after the revocation; and
  - (ii) will take effect from the date and time specified by the Board at the time of the revocation or, if no date and time is specified, immediately.

### **12.4 Delegation to Committee**

- (a) Subject to the terms on which a power of the Board is delegated to a Committee, the meetings and proceedings of Committees are, to the greatest extent practical, governed by the rules of this Constitution.

### **12.5 Valid Acts Despite Defect in Appointment**

- (a) All acts done by a delegate (including a Committee to which a power of the Board was delegated) shall be valid, notwithstanding if it is later discovered that:
- (i) there was some defect in the delegation of a power to that delegate or Committee; or
  - (ii) any member of the Committee was disqualified.

## **13. DIRECTOR'S DUTIES AND INTERESTS**

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### **13.1 Duties under the Act**

- (a) Each Director must comply with the Act.

### **13.2 Disclosure of Interests**

- (a) Each Director must disclose its interests in accordance with sections 191 and 192 of the Act.

### **13.3 Director Interested in Matter**

- (a)** In respect of being present and voting at a Board meeting concerning a matter in which the Director has a material personal interest, each Director must comply with section 195 of the Act.
- (b)** Subject to section 195 of the Act:
  - (i)** a Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter in which that Director has an interest;
  - (ii)** the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant documents by or on behalf of the Company;
  - (iii)** the Director may retain benefits under the transaction even though the Director has the interest; and
  - (iv)** the Company must not avoid the transaction merely because of the existence of the Director's interest.
- (c)** If the Director's interest is required to be disclosed under sections 191 and 192 of the Act, rule 13.3(b)(ii) applies only if that interest is disclosed by the Director before the transaction is entered into.
- (d)** In addition to the Act, and without limiting the powers of the Company under this Constitution, the Company may develop and maintain a conflict of interest policy to establish further compliance requirements for Directors in circumstances of conflicts of interest.

### **13.4 Holding other Offices**

- (a)** A Director is not disqualified from being a Director by reason only of:
  - (i)** holding any office or place of profit or employment (other than that of the Company's auditor);
  - (ii)** being a member or creditor of any corporation, association, or partnership (other than the Company's auditor); or
  - (iii)** entering into any agreement with the Company.

### **13.5 Agreements with Third Parties**

- (a)** The Company shall not avoid an agreement with a third party merely because a Director:
  - (i)** fails to disclose an interest in accordance with rule 13.2; or
  - (ii)** is present at, or counted in the quorum for, a Board meeting that considers the votes on that agreement.

### **13.6 Obligation of Confidentiality**

- (a)** Each Director and the Secretary must keep the transactions and affairs of the Company and the state of its financial reports confidential unless required to disclose them:
  - (i)** in the course of duties as an officer of the Company;
  - (ii)** by the Board or the Company in General Meeting; or
  - (iii)** by law,

in which case disclosure is permitted only to the extent necessary in the circumstances.

- (b) The Company may require any Director, Secretary, auditor, trustee or any other person engaged by the Company in any capacity to sign a confidentiality undertaking consistent with this rule 13.6 (**Confidentiality Undertaking**).
- (c) A Director or Secretary must sign a Confidentiality Undertaking if required by the Company.

#### **14. ANNUAL AND EXTRAORDINARY GENERAL MEETINGS**

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##### **14.1 Annual General Meeting**

- (a) The Annual General Meeting of the Company shall be held on a date to be fixed between the months of January and June (inclusive) of each calendar year.
- (b) Subject to the Act and rule 14.1(a), the Board may call a General Meeting in accordance with this Constitution at any time.

##### **14.2 Agenda of Annual General Meetings**

- (a) The business of each Annual General Meeting shall include, without limitation:
  - (i) receiving and considering the report of the Board;
  - (ii) the appointment or termination of the appointment of any Directors and other office bearers as necessary;
  - (iii) the appointment, termination of appointment or replacement of an auditor and the determination of that auditor's remuneration (if any); and
  - (iv) receiving and considering financial accounts and the auditor's report.

##### **14.3 Extraordinary General Meetings**

- (a) An Extraordinary General Meeting may be convened at any time by the Chairperson or, in their absence, the Deputy Chairperson upon receipt of a requisition for such a meeting signed by at least five (5) Members.

#### **15. PROCEEDINGS AT GENERAL MEETINGS**

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##### **15.1 Calling Meetings**

- (a) A General Meeting:
  - (i) may be convened at any time by the Board or any one (1) or more Directors; and
  - (ii) must be convened by the Board when requested by a Member in accordance with the Act.

##### **15.2 Multiple Venues for Meetings**

- (a) A General Meeting may be convened at two (2) or more venues using any technology that gives the Members a reasonable opportunity to participate in the General Meeting.

##### **15.3 Right to Attend Meetings**

- (a) Every Member has the right to attend all General Meetings.
- (b) Every Director has the right to attend and speak at all General Meetings.

- (c) The auditor has the right to attend any General Meetings and to speak in relation to any part of the General Meeting concerning the auditor.

#### **15.4 Notice of Meetings**

- (a) Subject to rule 15.5, at least twenty-one (21) days written notice of a General Meeting must be given individually to:
  - (i) each Member;
  - (ii) each Director; and
  - (iii) the auditor.
- (b) A notice General Meeting given under rule 15.4(a) must comply with section 249L of the Act, including by specifying:
  - (i) the location, date and time of the General Meeting;
  - (ii) the nature of the business to be transacted at the General Meeting;
  - (iii) if a Special Resolution is to be proposed at the General Meeting, the details of and intention to propose that Special Resolution;
  - (iv) if the General Meeting is to be held in two (2) or more places, the technology that will be used to facilitate the General Meeting; and
  - (v) any other information required by the Act.

#### **15.5 Shorter Notice**

- (a) Subject to section 249H of the Act and rule 15.5(b), a resolution may be proposed and passed at a General Meeting for which less than twenty-one (21) days' notice has been given if:
  - (i) at an Annual General Meeting, all Members agree; or
  - (ii) at any General Meeting other than the Annual General Meeting, at least ninety-five percent (95%) of Members agree.
- (b) Where a resolution is for:
  - (i) the removal of a Director under section 203D of the Act or this Constitution;
  - (ii) the appointment of a Director in place of a Director removed under section 203D of the Act or this Constitution; or
  - (iii) the removal of an auditor under section 329 of the Act or this Constitution,then at least twenty-one (21) days' notice of the General Meeting in which the resolution is proposed and passed must be provided.
- (c) Accidental omission to give a notice to any person entitled to receive a notice under rule 15.4 or rule 15.5 does not invalidate any resolution passed at a General Meeting.

#### **15.6 Postponement or Cancellation of Meeting**

- (a) Subject to sections 249D(5) and 250N of the Act, the Board may by written notice given in accordance with rule 15.4:
  - (i) postpone a General Meeting;

- (ii) cancel a General Meeting if:
  - (iii) that meeting was convened by the Board; or
  - (iv) that meeting was convened by a Member or Members pursuant to the Act, and the Board received written notice withdrawing the requisition signed by that Member or those Members; or
  - (v) change the location of a General Meeting.
- (b) If a General Meeting is postponed for a consecutive period of more than twenty-one (21) days, the Board must give new notice of the General Meeting in accordance with rule 15.4 and 15.5.

#### **15.7 Chairperson**

- (a) The Chairperson shall preside as chairperson at every General Meeting.
- (b) If within fifteen (15) minutes after the time appointed for the holding of the General Meeting the Chairperson is not present or is unwilling to act, then the following person shall act as Chairperson for that General Meeting:
- (i) the Deputy Chairperson; or
  - (ii) if the Deputy Chairperson is also not present or is unwilling to act as Chairperson, a Member elected by a majority of Members present at that General Meeting.
- (c) The rulings of the chairperson of a General Meeting on all matters relating to the order of business, procedure and conduct of the General Meeting shall be final and no motion of dissent from such rulings shall be accepted.

#### **15.8 Quorum**

- (a) The quorum for all General Meetings shall be five (5) Members present in person or by proxy or by attorney.
- (b) No business shall be transacted at any General Meeting unless a quorum of Members is present.

#### **15.9 Lack of Quorum**

- (a) If within thirty (30) minutes of the time appointed for the General Meeting a quorum is not present, the General Meeting shall be dissolved and stand adjourned to:
- (i) the same day in the following week at the same time and place; or
  - (ii) another day not more than fourteen (14) days after the General Meeting was adjourned and at a time and place nominated by the Chairperson.
- (b) If a quorum is not present at the resumption of the General Meeting adjourned under rule 15.9, those Members who are present shall constitute a quorum and may transact the business for which the General Meeting was called.

#### **15.10 One-Member Company**

- (a) Where the Company only has one (1) Member, that Member may pass a resolution by recording it and signing the record.

- (b) If the Act requires information or a document relating to the resolution to be lodged with ASIC, that requirement is satisfied by lodging the information or document with the resolution as passed.

#### **15.11 Adjournment Generally**

- (a) The Chairperson may adjourn or change the location of a General Meeting from time to time if a quorum is present only:
  - (i) with the consent of a majority of Members present at the General Meeting; or
  - (ii) if directed to do so by the majority of Members present at the General Meeting.
- (b) No business shall be transacted at the resumption of any General Meeting adjourned under rule 15.11(a) other than the business left unfinished at the General Meeting which was adjourned.
- (c) A resolution passed at a General Meeting resumed after an adjournment under rule 15.11 is passed on the day that the resolution was actually passed.
- (d) Subject to rule 15.11(f), it is not necessary for the Board to give notice of the resumption of a General Meeting adjourned under this rule 15.11.
- (e) If a General Meeting is adjourned for a consecutive period of more than twenty-one (21) days, the Board must give new notice of the resumed General Meeting in accordance with rule 15.4 or rule 15.5 as if the resumption was a new General Meeting.

#### **15.12 Voting**

- (a) At any General Meeting, a resolution shall be decided by a show of hands which includes, for Members attending the General Meeting by technology, a vote expressed verbally and clearly through technology that is acceptable to the Board.
- (b) In respect of each resolution put to a vote of Members at a General Meeting, each Member present in person or by a proxy or by attorney shall have one (1) vote each.
- (c) No resolution shall be passed at a General Meeting unless it is passed by:
  - (i) where a particular majority is required for that resolution under the Act or this Constitution – at least that particular majority of all Members present and voting;
  - (ii) otherwise – a majority of all Members present and voting.
- (d) In the event of an equality of votes of all Members, the Chairperson shall not have a second or casting vote.
- (e) A declaration by the Chairperson of the General Meeting of the result of a vote on a resolution and an entry to that effect in the minutes of the General Meeting signed by the Chairperson or the General Meeting or the next succeeding General Meeting shall be conclusive evidence of the outcome of a resolution and the number or proportion of the votes recorded in favour of or against the resolution.

#### **15.13 Poll**

- (a) A poll may be demanded on any resolution (except a resolution concerning the election of the Chairperson of the General Meeting) by:
  - (i) the Chairperson; or

- (ii) at least two (2) Members present at the General Meeting in person or by proxy or attorney.
- (b) If a poll is demanded under rule 15.13(a), it shall be taken in such manner and at such time (being either immediately or after an interval or adjournment) as the Chairperson directs.
- (c) The result of the poll shall be the resolution of the General Meeting at which the poll was demanded.
- (d) The demand for a poll may be withdrawn.

## **16. PROXIES AND ATTORNEYS**

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### **16.1 Appointment of Proxies or Attorneys**

- (a) A Member may appoint a proxy or attorney to attend and act for the Member at a General Meeting.
- (b) A proxy or attorney appointed under rule 16.1 may, but need not, be a Member.
- (c) An appointment of a proxy under rule 16.1 must be made by written notice to the Company:
  - (i) which complies with section 250A of the Act; or
  - (ii) in any other form that is acceptable to the Board.
- (d) An appointment of an attorney under rule 16.1 will be effective only if the power of attorney, or a certified copy of the same, is received by the Company at its registered office at least forty-eight (48) hours before the time of the General Meeting.
- (e) A Member may:
  - (i) appoint a proxy or attorney to act at a particular General Meeting;
  - (ii) make a standing appointment of a proxy or attorney; and
  - (iii) may revoke any appointment of a proxy or attorney.

### **16.2 Suspension of Proxy or Attorney Powers**

- (a) A proxy or attorney has no power to act for a Member at a General Meeting if the Member is present.

### **16.3 Conflicting Appointments of Proxy or Attorney**

- (a) If more than one (1) proxy or attorney is appointed by a Member and is present at a General Meeting, and no notice of revocation of appointment in respect of either has been received by the Company:
  - (i) the first in time is to be treated as revoked or suspended; and
  - (ii) the proxy or attorney most recently appointed may act in that General Meeting to the exclusion of any other proxy or attorney appointed by the relevant Member.

### **16.4 Continuing Authorities of Proxies or Attorneys**

- (a) Unless the Company receives written notice before the start or resumption of a General Meeting, any act done at a General Meeting by a proxy or attorney is valid even if, before the act is done, the appointing Member:
  - (i) dies;



- (ii) becomes mentally incapacitated;
- (iii) becomes bankrupt, insolvent, under administration, or is wound up; or
- (iv) revokes the appointment.

## **17. PROCEEDINGS AT BOARD MEETINGS**

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### **17.1 Calling Board Meetings**

- (a) The Chairperson or, in their absence, the Deputy Chairperson, shall summon a meeting of the Board on the requisition of any one (1) or more Directors.
- (b) The Chairperson or, in their absence, the Deputy Chairperson, shall give at least twenty-four (24) hours' notice of any Board meeting to all of the Directors.

### **17.2 Meetings**

- (a) The Board may meet for:
  - (i) the transaction of business;
  - (ii) the adjournment of meetings;
  - (iii) regulating its meetings as it thinks fit; and
  - (iv) determining the quorum necessary for the transaction of business.

### **17.3 Quorum**

- (a) Subject to rule 5.3(b), until otherwise determined by the Board, the quorum for Board meetings shall be three (3) Directors.

### **17.4 Attendance by Conference**

- (a) A meeting of the Directors may consist of a conference between Directors some or all of whom are in different places, provided that each Director is able:
  - (i) to hear each of the other participating Directors; and
  - (ii) if they so wish, to address each of the other participating Directors simultaneously.
- (b) A meeting held in this way will be taken to have been held at office of the Company, while recording the method of attendance and true location of each participating Director.
- (c) No Director may intentionally leave a conference held under this rule 17.4 by disconnecting its means of communication without prior consent of the Chairperson, or in the Chairperson's absence, the Deputy Chairperson.

### **17.5 Chairperson**

- (a) The Chairperson of the Board shall preside as Chairperson at every Board meeting.
- (b) If within fifteen (15) minutes after the time appointed for the holding of the Board meeting, the Chairperson is not present or is unwilling to act, then the following person shall act as Chairperson for that meeting:
  - (i) the Deputy Chairperson; or
  - (ii) if the Deputy Chairperson is also not present or is unwilling to act, a Director elected by a majority of Directors present at the Board meeting.

## 17.6 Voting

- (a) In respect of any matters or resolutions put to a vote of the Directors, each Director shall have one (1) vote.
- (b) Notwithstanding anything in this Constitution no resolution of the Board shall be carried unless it is passed by:
  - (i) where a particular majority is required for that resolution under the Act or this Constitution – at least that particular majority of all Directors; or
  - (ii) otherwise – a majority of all Directors.

## 17.7 No Casting Vote

- (a) In the event of an equality of votes of the Directors who attend and vote, the Chairperson of the Board meeting shall not have a second or casting vote.

## 17.8 Circular Resolution

- (a) A resolution in writing signed by all the Directors for the time being shall have the same force and effect as a resolution passed at a Board meeting notwithstanding that such resolution shall not have been passed at a Board meeting.
- (b) A resolution in writing may consist of several counterparts each signed by one (1) or more Directors.
- (c) Any resolution in writing passed in accordance with this rule 17.8 shall be deemed to have been passed on the day and at the time at which the document recording the resolution was last signed by a Director.

## 17.9 Valid Resolution Despite Defect in Appointment

- (a) All acts done by any Board meeting or by any Director or the Board under this Constitution shall be valid, notwithstanding if it is later discovered that:
  - (i) there was some defect in the appointment of any Director;
  - (ii) any Director was disqualified from office; or
  - (iii) by accidental omission, notice of a Board meeting was not given to a Director.

## 18. OFFICERS' INDEMNITY AND INSURANCE

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### 18.1 Indemnity

- (a) Subject to the Act:
  - (i) The Company indemnifies every Director, Secretary or executive officer (**Officer**) of the Company against any liability incurred by that person:
    - (A) in their capacity as an Officer of the Company; and
    - (B) to a person other than the Company or a related body corporate of the Company,
    - (C) unless the liability arises out of conduct on the part of the Officer which involved a lack of good faith.
  - (ii) The Company indemnifies every Officer against any liability for costs and expenses incurred by the person in their capacity as an Officer of the Company:

- (A) in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (B) in connection with an application, in relation to any proceedings, in which the Court grants relief to the person under the Act.
- (iii) The Company may make a payment in respect of legal costs incurred by an Officer in defending an action for a liability incurred as an Officer in resisting or responding to actions taking by a government agency or liquidator.
- (iv) This indemnity is a continuing indemnity which applies in respect of all acts done by a person while an Officer of the Company, even if the person is not an Officer at the time when the claim is made.

## **18.2 Deeds**

- (a) Subject to the Act, and without limiting rule 18.1, the Company may enter into an agreement with a person who is or has been an Officer, to give effect to the rights of the person under rule 18.1.

## **18.3 Insurance**

- (a) Subject to the Act, the Company may pay a premium in respect of a contract insuring a person who is or has been an Officer against any liability incurred by that person in that capacity.

## **19. MINUTES**

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### **19.1 Minutes**

- (a) The Board, any Committee and the Company shall cause minutes to be duly entered in the books provided for the purposes of:
  - (i) all appointment of officers;
  - (ii) the names of the Directors, Members or other persons present at each meeting;
  - (iii) all orders or regulations made by the Board and any Committee;
  - (iv) all resolutions, including whether that resolution failed or passed unanimously or by particular majority; and
  - (v) all proceedings of all General Meetings and Board meetings.
- (b) Any minutes of any General Meeting, meeting of the Board, or meeting of any Committee, if purporting to be signed by the chairperson of such meeting or of the next succeeding meeting, shall be prima facie evidence of the matters stated in such minutes and the business of that meeting.

## **20. COMPANY RECORDS AND ACCOUNTS**

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### **20.1 Financial Records and Accounts**

- (a) The Board shall cause proper accounting and other records to be kept.
- (b) The Board shall distribute to all Members copies of every profit and loss account and balance sheet, and all other documents and information required by law to be provided to the Members, accompanied by a copy of the auditor's report as required by the Act.

### **20.2 Inspection of Records**

- (a) Subject to the Act, only the following persons may inspect the records of the Company:
  - (i) the Directors; and
  - (ii) any Members permitted by the Board to inspect the records.

## **21. NOTICES**

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### **21.1 Notice in Writing**

- (a) Every notice issued under this Constitution or under the Act must be in writing.

### **21.2 Method of Notices**

- (a) A notice may be given by the Company to Members:
  - (i) personally;
  - (ii) by sending it by prepaid post to their respective registered addresses supplied by the Members to the Company for the giving of notices; or
  - (iii) by sending it to the electronic address supplied by the Members to the Company for the giving of notices.
- (b) A notice is deemed to be given by the sender and received by the addressee:
  - (i) if delivered in person, when delivered to the addressee;
  - (ii) if posted, four (4) Business Days (or six (6) Business Days, if addressed outside Australia) after the date of posting to the addressee whether delivered or not; and
  - (iii) in the case of an email, when it is received into the information system of the recipient and for the purposes of this rule, when a read receipt to the email has been received by the sender, the email is deemed to have been received into the information system.

**EXECUTION**

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*Signed by each person who consents to become a Member of the Company with effect from registration as evidence of that person's agreement to the terms of this Constitution:*



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Signature

Lauren Honcope

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Name of Member



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Signature

Eric Martin

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Name of Member



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Signature

Jeremy Christian

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Name of Member



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Signature

Leslie Pan

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Name of Member



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Signature

Sheridan Burnett

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Name of Member

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Signature

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