

Constitution

SkillsEQuipped Ltd

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1 Preliminary

1.1 Company limited by guarantee

The Company is a not for profit, public company limited by guarantee and the liability of Members is limited as provided at rule 3.10 of this Constitution.

1.2 Replaceable rules

The replaceable rules referred to in section 141 of the Corporations Act do not apply to the Company and are replaced by the rules set out in this Constitution.

1.3 Definitions

The following definitions apply in this Constitution:

Apprentice Connect Australia Provider means an organisation engaged by the Commonwealth of Australia to deliver Australian Apprenticeship Support Services under the Apprentice Connect Australia model.

ACNC means the Australian Charities and Not-for-profits Commission.

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

ACNC Regulation means the Australian Charities and Not-for-profits Commission Regulation 2013 (Cth).

Advisory Committee is a Committee established pursuant to rule 10.3 with the limited powers and delegations specified therein.

Annual General Meeting means the annual general meeting of the Company, held as required by section 250N of the Corporations Act and AGM has a corresponding meaning.

Board means the Directors acting collectively under this Constitution.

Business Day means any day that is not a Saturday, Sunday or a national public holiday, where a 'national public holiday' is a public service holiday throughout Australia promulgated in the Australian Government Gazette.

By-Laws means any rules or procedures made by the Board for the purpose of giving effect to this Constitution.

Chair means the chair of the Board or the chair of a meeting of the Members as the context provides.

Chief Executive Officer means a chief executive officer of the Company appointed under rule 8.1.

Committee means a Committee established in accordance with rule 10.

Company means the company, being SkillsEQuipped Ltd, whatever its name is for the time being.

Constitution means this constitution for the Company.

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

Director means a person who is, for the time being, a director of the Company.

Director Policy means any policy for the selection, election and appointment of Directors approved by the Board from time to time.

Employee Member means a Voting Member that is a union or employee organisation in the Arts, Personal Services, Retail, Tourism or Hospitality sector.

Employer Member means a Voting Member that is an employer or peak organisation in the Arts, Personal Services, Retail, Tourism or Hospitality sector.

Employment Service Provider means an organisation that is funded by the Commonwealth of Australia as part of a program for the provision of employment services.

Government Agency means a:

- (a) government or government department or other body;
- (b) governmental, semi-governmental or judicial person; or
- (c) person (whether autonomous or not) who is charged with the administration of the law.

Group Training Organisation means an organisation which hires apprentices and trainees and places them with the host employer.

Independent Director means a Director who is free of any interest, position or relationship that might influence, or reasonably be perceived to influence, in a material respect their capacity to bring an independent judgement to bear on issues before the Board and to act in the best interests of the Company as a whole rather than in the interests of an individual Member or other party. Any person qualifying to be a Director because they are an Employee Member Representative, or an Employer Member Representative cannot be an Independent Director.

Initial Member means The Australian Retailers Association.

Jobs and Skills Council means an organisation funded by the Commonwealth of Australia as represented by the Department of Education, Skills and Employment (whatever its name may be from time to time), as part of the *Industry Clusters – Strengthening Australia's National Vocational Education and Training System* program or any equivalent successor program relating to the VET sector. The constituent documents of any Organisation that may be classed as a Jobs and Skills Council must:

- (a) require the Organisation to pursue objects similar to those of the Company in respect of the VET sector and to apply its income solely towards promoting those objects; and
- (b) prohibit the Organisation from making distributions to its members.

Liability has the meaning provided at rule 13.1(b).

Member means a member of the Company whose name is entered in the Register.

Member Eligibility Requirements means the criteria applying to an individual or Organisation's eligibility for admission as a Member as the case requires for Voting and Non-Voting Members.

Non-Voting Member means an Organisation or individual meeting the Member Eligibility Requirements in rule 3.4, admitted as a member of the Company under rule 3.9 and **Non-Voting Membership** shall have a corresponding meaning.

Office Bearer means a person holding any of the offices specified in rule 5.7.

Officer has the meaning provided in the Corporations Act.

Ordinary Resolution means a resolution passed at a meeting of Members by a majority of the votes cast by the Members entitled to vote on the resolution.

Organisation means an institution, organisation or body corporate, but does not include a natural person or individual.

Organisation Member means a Member that is an Organisation.

Register means the register of members kept as required by sections 168 and 169 of the Corporations Act.

Registered Training Organisation means a training provider registered by the Australian Skills Quality Authority or a State regulator to deliver VET services.

Representative means a representative of an Organisation Member appointed pursuant to rule 17.4.

Representative Director means an individual nominated by Voting Members under rules 5.5(a) and 5.5(b).

Secretary means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this Constitution.

Special Resolution has the meaning given by section 9 of the Corporations Act.

VET means vocational education and training.

Voting Member means an Organisation which meets the Member Eligibility Requirements in rule 3.3, admitted to a category of voting member of the Company under rule 3.9 and **Voting Membership** shall have a corresponding meaning.

1.4 Interpretation

The following rules apply in interpreting this Constitution, except where the context makes it clear that a rule is not intended to apply:

- (a) headings and marginal notes are for convenience only and do not affect interpretation;
- (b) a reference to:
 - (i) any legislation is to that legislation as amended, modified in relation to the Company, reenacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (iv) anything (including a right, obligation or concept) includes each part of it;
- (c) a singular word includes the plural, and vice versa;

- (d) a word that suggests one gender includes the other genders;
- (e) the word **includes** in any form is not a word of limitation;
- (f) if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning. The meaning of general words is not limited by specific examples;
- (g) the word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing;
- (h) a power to do something includes a power, exercisable in the like circumstances, to revoke or undo it;
- (i) a reference to a power is also a reference to authority or discretion;
- (j) a reference to "\$" means the Australian dollar;
- (k) a reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form; and
- (l) a word (other than a word defined in rule 1.3) which is defined by the Corporations Act has the same meaning in this Constitution where it relates to the same matters as the matters for which it is defined in the Corporations Act.

2 Objects and Power

2.1 Objects of the Company

- (a) The Company is formed for the charitable purpose of advancing education in the Arts, Personal Services, Retail, Tourism and Hospitality sectors. In fulfilling its purpose, the Company will:
 - (i) undertake and support the design, development and continuous improvement of high quality, nationally recognised vocational education and training products, projects and solutions to support the VET sector and improve the skills and employability of individuals in Arts, Personal Services, Retail, Tourism and Hospitality industries;
 - (ii) undertake the implementation, promotion and monitoring of high quality, nationally recognised education and training solutions within the VET sector to support the Arts, Personal Services, Retail, Tourism and Hospitality sectors;
 - (iii) identify foundational, current and emerging skills, in consultation with stakeholders, to support the employability of individuals;
 - (iv) provide strategic advice to industry stakeholders and government on workforce, labour and skills issues;
 - (v) provide industry leadership to the VET system to enable it to respond rapidly to changes in the economy, and to build a resilient workforce that delivers on industry needs and contributes to economic prosperity;
 - (vi) undertake workforce planning research and other activities that identify and address industry, training and workforce issues, priorities and needs;

- (vii) support industry engagement and cross collaboration between the Company and other Jobs and Skills Councils, to deliver the Company's objectives;
 - (viii) provide strategic leadership, advocacy and guidance in advancing education within the industries supported by the Company to industry, government and other stakeholders.
- (b) The Company may do all things that are necessary, convenient or incidental to carrying out, or for the attainment of, its objects.

2.2 Objects do not limit powers

The objects in rule 2.1 do not limit the powers of the Company under the Corporations Act or otherwise.

2.3 Application of income and property

- (a) Subject to rules 2.4 and 12.1, the Company must apply its income and assets solely towards promoting the objects of the Company as set out in rule 2.1.
- (b) Subject to rule 2.4, no part of the Company's income or assets may be paid, or transferred directly or indirectly by way of dividend, bonus or otherwise to Members.

2.4 Certain payments allowed

Rule 2.3 does not prevent the Company from paying to a Member, provided these payments are made in good faith:

- (a) reasonable remuneration to any Officer or employee of the Company, or to any Member or other person, in return for services rendered to the Company on an arm's length basis;
- (b) interest on money lent by the Member to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts; and
- (c) reasonable remuneration for goods supplied by the Member in the ordinary course of business or reasonable rent for any premises leased by the Member on an arm's length basis.

2.5 By-Laws

- (a) The Board may pass a resolution to make any By-Laws considered necessary or convenient.
- (b) Subject to rule 2.5(c), Members and Directors must comply with By-Laws as if they were part of this Constitution.
- (c) If there is any inconsistency between this Constitution and any By-Laws created, the terms of this Constitution will prevail to the extent of the inconsistency.

3 Membership

3.1 Membership

Subject to rules 3.11 and 3.12, the Members are:

- (a) the Initial Member; and

- (b) any other individual or Organisation the Board admits to membership of the Company in accordance with this Constitution.

3.2 Classes of members

The Company has the following classes of Membership:

- (a) Voting Members; and
- (b) Non-Voting Members.

3.3 Voting Member Eligibility Criteria

To be eligible for admission to the Company as a Voting Member, a person must:

- (a) be an Organisation;
- (b) not be:
 - (i) a Commonwealth, State, Territory or local government agency or body (including government business enterprises);
 - (ii) a Registered Training Organisation;
 - (iii) a Group Training Organisation;
 - (iv) an Employment Service Provider; or
 - (v) an Apprentice Connect Australia Provider.
- (c) meet the definition of:
 - (i) Employer Member or Employee Member;
 - (ii) in the reasonable opinion of the Board, be an Organisation supportive of, with a bona fide interest in the objects of the Company.

3.4 Non-Voting Member Eligibility Criteria

To be eligible for admission to the Company as a Non-Voting Member, a person:

- (a) may be either an individual or an Organisation;
- (b) must in the reasonable opinion of the Board, be supportive of, with a bona fide interest in the objects of the Company.

3.5 General Matters applying to Members

- (a) Subject to the terms of this Constitution and the ultimate discretion of the Board, every person eligible to be either a Voting Member or Non-Voting Member will be entitled to:
 - (i) be admitted as either a Voting Member or Non-Voting Member of the Company; and
 - (ii) remain either a Voting Member or Non-Voting Member so long as that individual or Organisation remains eligible to be either a Voting Member or Non-Voting Member and complies with this Constitution and the By-Laws of the Company.
- (b) For the avoidance of doubt, Members cannot be admitted to more than one class of Membership and a Voting Member cannot be admitted as both an Employer Member and an Employee Member.

3.6 Persons Excluded from Membership

The Board may in its discretion, exclude any person who wishes to be a Member from Membership if the Board considers that the person is of bad reputation, or their interests are not aligned with the purposes of the Company.

3.7 Rights and Powers of Voting Members

Subject to this Constitution, only Voting Members are entitled to:

- (a) vote on a resolution of the Company (whether at a General Meeting or on a resolution sought to be passed by the Company without a General Meeting);
- (b) nominate a candidate as a Representative Director under rule 5.5;
- (c) vote in the election of Directors.

3.8 Rights and Powers of All Members

Subject to this Constitution, all Members are entitled to:

- (a) receive notices of meetings of and attend any General Meeting;
- (b) exercise any other rights provided for under this Constitution.

3.9 Process for applying for membership

- (a) An individual or Organisation may apply to become a Member by writing to the Company stating:
 - (i) that they want and consent to becoming a Member;
 - (ii) the class of membership for which the applicant is applying, be it as a Voting Member or Non-Voting Member;
 - (iii) if they are applying to become a Voting Member, whether they are applying as an Employer Member or Employee Member;
 - (iv) how they comply with any Membership Eligibility Requirements, including providing any supporting evidence; and
 - (v) that they agree to comply with this Constitution and the By-Laws (if any) of the Company, including paying the guarantee under rule 3.10(a) if required.
- (b) Applications for membership shall be determined at each meeting of the Board.
- (c) If the Directors approve an application for membership, the Secretary must as soon as possible:
 - (i) enter the applicant on the Register; and
 - (ii) write to the applicant to tell them that their application was approved, and the date that their membership started (which will be the date the applicant was entered on the Register) and the class and category of membership which has been approved by the Board.
- (d) If the Directors reject an application for membership, the Secretary must write to the applicant as soon as reasonably practicable to tell them that their application was rejected but does not have to give reasons.

3.10 Limited liability of Members

- (a) If the Company is wound up, each Member undertakes to contribute to the assets of the Company up to an amount not exceeding \$10.00 for payment of the debts and liabilities of the Company, including the costs of the winding up.
- (b) The undertaking in rule 3.10(a) continues for one year after a person ceases to be a Member.

3.11 Resigning as a Member

A Member may resign from the Company by giving written notice to the Board but will continue to be liable for any monies due by the Member to the Company under this Constitution, including the Member's Guarantee Amount.

3.12 Cessation of Membership

A Member's Membership will cease:

- (a) on the date that the Secretary receives written notice of resignation from that Member, or the Member is deemed to have resigned pursuant to rule 3.13;
- (b) in the case of a natural person (that is not a Representative), upon that person dying;
- (c) upon that Member becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
- (d) if the Member is expelled from the Company in accordance with this Constitution;
- (e) if, being an Organisation, that Member is dissolved or otherwise ceases to exist or has appointed to it:
 - (i) a receiver;
 - (ii) a receiver and manager;
 - (iii) a liquidator;
 - (iv) an administrator;
 - (v) an administrator of a deed of company arrangement; or
 - (vi) a trustee or other person administering a compromise or arrangement between the Member and someone else.

3.13 Deemed Resignation

A Member will be deemed to have resigned if the Company provides notice to the Member requesting confirmation that the Member wishes to continue as a Member and no response is received by the Company within ninety (90) days.

3.14 Expelling a Member

- (a) The Board may, by resolution, expel from the Company any Member:
 - (i) who does not comply with this Constitution, the By-Laws or any other rules or regulations of the Company; or
 - (ii) whose conduct in the opinion of the Board is prejudicial to the interests of the Company;and remove that Member's name from the Register.

- (b) At least 21 days before the Board holds a meeting to expel a Member, the Board must give a 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 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:
 - (i) a general meeting is held to expel a Member; and
 - (ii) a Special Resolution is passed by those present at the meeting and voting for the Member to be expelled. The vote must be taken by ballot.
- (d) A Member expelled from the Company does not have any claim on the Company, its funds or its property.

3.15 Membership not transferrable

A right, privilege, or obligation which a person has by reason of being a Member:

- (a) is not capable of being transferred or transmitted to another person;
- (b) remains with that person; and
- (c) expires upon cessation of their membership.

4 Resolution of Disputes Between Members

- (a) Disputes between Members (in their capacity as Members), will be referred to the Board which must take steps to resolve the dispute.
- (b) If a dispute so referred is not resolved to the satisfaction of any party to the dispute within thirty (30) days of its being referred, then that party may refer the dispute to mediation before a mediator appointed by mutual agreement of the parties.
- (c) Failing agreement by the parties to the appointment of a mediator within fourteen (14) days of a party notifying the other party of its intention to refer the dispute to mediation, the appointment of the mediator may be made by the President of the Law Society of New South Wales.
- (d) The costs of a mediator appointed pursuant to rule 4(b) or rule 4(c) (as the case may be) must be shared equally between the Members party to the dispute.
- (e) At least seven (7) days before a mediation session established by a mediator appointed pursuant to rule 4(b) or rule 4(c) (as the case may be) is to commence, the parties to the dispute are to exchange statements of the issues that are in dispute between them and supply copies to the mediator.

5 Directors

5.1 Number of Directors

The Company must have at least three Directors and, until otherwise decided by Ordinary Resolution, not more than nine Directors.

5.2 Eligibility of Directors

- (a) In accordance with section 201B of the Corporations Act a Director must be an individual who is at least 18 years of age.
- (b) A Director need not be a Member.
- (c) A person is not eligible to serve as a Director unless they are capable of demonstrating:
 - (i) practical experience in, or a strong connection to one or more of the Arts, Personal Services, Retail, Tourism and Hospitality sector(s); or
 - (ii) experience or expertise in one of the following fields: accounting, finance, marketing, law, corporate governance, VET or technology; or
 - (iii) in relation to Independent Directors, that they meet the criteria of the definition set out in this Constitution; and
 - (iv) that actual and perceived conflicts of interest arising from their roles with third party organisations can be appropriately managed as specified in the Director Policy; and
 - (v) that they meet any other eligibility category that the Board determines is necessary to ensure the Board has a broad skillset and diverse backgrounds including those set out in the Director Policy.
- (d) A person is not eligible to serve as a Director if the person is also an Officer of:
 - (i) an Registered Training Organisation;
 - (ii) a Group Training Organisation;
 - (iii) an Employment Service Provider; or
 - (iv) an Apprentice Connect Australia Provider.
- (e) Neither the auditor of the Company nor any partner, director or employee of the auditor is eligible to act as a Director.

5.3 Composition of Board

- (a) The Board is to comprise:
 - (i) up to two Employer Representative Directors nominated by the Voting Members who are Employer Members;
 - (ii) up to two Employee Representative Directors nominated by the Voting Members who are Employee Members; and
 - (iii) up to four Independent Directors nominated in accordance with rule 5.5(c); and
 - (iv) up to one Independent Director appointed by the Board.

- (b) Any Directors appointed by virtue of rule 5.3(a)(i) to rule 5.3(a)(iii) will be elected by Voting Members in accordance with the procedures referred to in rule 5.5(e).
- (c) The Board shall ensure that those individuals nominated by the Voting Members as a Representative Director shall be from:
 - (i) an Employer Organisation; or
 - (ii) an Employee Organisation/union.
- (d) The Company must publicly:
 - (i) disclose to the Members the names of the Directors; and
 - (ii) identify those Directors who the Board considers to be Independent Directors.

5.4 Appointment of Independent Directors

- (a) To be eligible for appointment as an Independent Director, the Board must be satisfied that the person meets the definition of an Independent Director pursuant to this Constitution and brings the skills and experience to the Board to enable the Board to advance the Objects.
- (b) The Board will make the final decision as to whether the person is suitable to be nominated as a candidate for election as an Independent Director.

5.5 Election Procedure

- (a) Each Employee Member who is also a Voting Member shall be entitled to nominate two candidates as an Employee Representative Director.
- (b) Each Employer Member who is also a Voting Member shall be entitled to nominate two candidates as an Employer Representative Director.
- (c) Independent Directors may be nominated by Members and any other person with an interest in the Company.
- (d) All nominations for a Director must be in the form and contain such information as may be determined by the Board following consultation with a nominations committee appointed by the Board from time to time.
- (e) Any procedure for the election of Directors must be determined by the Board following consultation with a nominations committee appointed by the Board from time to time and must provide the Voting Members reasonable opportunity to participate in such elections.
- (f) Only persons who are eligible for appointment as a Director (whether by election or direct appointment by the Board) according to the criteria applying to the class in which appointment is sought may be nominated to stand for election or appointment.

5.6 Director Term

- (a) The term of office of a Director appointed by election:
 - (i) starts at the end of the General Meeting at which they were appointed by election; and

- (ii) subject to rule 5.6(d) ceases at the end of the third Annual General Meeting held following their appointment by election, at which time they must retire.
- (b) Subject to rule 5.6(d) and 5.6(g), a Director appointed by election who is required to retire under rule 5.6(a)(ii) may seek re-election for up to two further terms of three (3) years each, provided that the Director has given the Company notice of their intention to do so by way of a nomination provided in accordance with rule 5.5.
- (c) Subject to rule 5.6(d) and rule 5.6(g), an Independent Director appointed by the Board will hold office for a term of three (3) years and is eligible for re-appointment for two (2) further terms of three (3) years each.
- (d) At the first meeting of the Board following the 2025 Annual General Meeting, the Board must pass a resolution to determine from amongst themselves:
 - (i) which Directors will serve a term of two (2) years ceasing at the end of the second Annual General Meeting held following their election at the 2025 Annual General Meeting or appointment by the Board as an Independent Director; and
 - (ii) which Directors will serve a term of three (3) years ceasing at the end of the third Annual General Meeting held following their election at the 2025 Annual General Meeting or appointment by the Board as an Independent Director.
- (e) The Board's resolution in rule 5.6(d) must be made with consideration to board continuity.
- (f) The Company must disclose to Members the term allocated to each Director following the resolution in rule 5.6(d) being passed.
- (g) For the avoidance of doubt and notwithstanding anything else in this Constitution, once a Director has served three (3) consecutive terms, they are not eligible for re-election or re-appointment until after a period of at least one (1) year has expired from the time they ceased to be a Director. The maximum consecutive terms of a Director are calculated whether they served on the Board as an elected Director or an Independent Director appointed by the Board or a combination.

5.7 Appointment of Office Bearers

- (a) The Board must appoint from among the Directors holding office at the time, the following Office Bearers:
 - (i) a Chair (who must be an Independent Director); and
 - (ii) such additional Office Bearer positions as the Board deems necessary from time to time.
- (b) The Office Bearers will hold office for a term of one (1) year (or a shorter period, if the Office Bearer has less than one (1) year remaining in his or her term as a Director) but will be eligible for reappointment for terms of one (1) year each, provided that Office Bearers shall not hold office beyond their retirement or removal from the Board as a Director.

- (c) There is no maximum consecutive number of terms for which Office Bearers can be appointed to Office Bearer positions.
- (d) In the event of a vacancy occurring in the Office Bearer positions, the Board shall appoint a new Director meeting any criteria set out in rule 5.7(a) to such office at the next meeting of the Board and the person appointed will fill the position for the balance of the term of the vacating Office Bearer.
- (e) If any Office Bearer is temporarily absent or temporarily unable to perform his or her duties, the Board may authorise another Director to act in the vacant position during the absence or inability of the Office Bearer.

5.8 Cessation of Director's appointment

A person automatically ceases to be a Director if the person:

- (a) is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a director of a company;
- (b) becomes disqualified from managing companies under Part 2D.6 of the Corporations Act and is not given permission or leave to manage the Company under either sections 206GAB or 206G of the Corporations Act;
- (c) has been disqualified by the ACNC from being a responsible entity of a registered entity under the ACNC Regulations;
- (d) is deceased, or becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (e) fails to personally attend three consecutive Board meetings (not including meetings of a Board Committee) without leave of absence from the Board;
- (f) resigns by notice in writing to the Company;
- (g) is removed from office under rule 5.9; or
- (h) ceases to be eligible to act as a Director under rule 5.2 or no longer meets the criteria attached to being a Representative Director or Independent Director (as applicable).

5.9 Removal from office

Whether or not a Director's appointment was expressed to be for a specified period, the Company may by Ordinary Resolution, and subject to section 203D of the Corporations Act, remove a Director from office.

5.10 Too few Directors

If the number of Directors is reduced below three, the continuing Directors may act as the Board only:

- (a) to convene a meeting of the Members; and
- (b) in emergencies.

5.11 Board vacancies

- (a) The Board may act despite a vacancy occurring in any position on the Board.
- (b) The Board may appoint any person who is eligible under rule 5.2 to fill a vacancy on the Board where:

- (i) that position has become vacant under rule 5.7; or
- (ii) that position remains vacant following an Annual General Meeting.
- (c) A person appointed under rule 5.11(b) holds office for the remainder of the term which the Director they replaced would have served, with that term of service not counting towards the maximum number of consecutive terms of a Director set out in rule 5.6.

6 Powers of the Board

6.1 Powers generally

Except as otherwise required by the Corporations Act, any other applicable law or this Constitution, the Board:

- (a) has power to manage the business of the Company;
- (b) may engage and determine the remuneration and entitlements of the employees of the Company;
- (c) has the power to retain independent advisors, including accountants, lawyers, mediators, and so on, to the extent it is necessary to give effect to the Objects of the Company; and
- (d) may exercise every right, power or capacity of the Company to the exclusion of the Company in general meeting and the Members.

6.2 Exercise of powers

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 14; or
- (b) in accordance with a delegation of the power under rules 8 or 9.

7 Executing Negotiable Instruments

Negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company by being signed by two Directors, or a Director and Secretary, or in such other manner (including the use of digital or electronic signatures) as the Board may decide.

8 Chief Executive Officer

8.1 Appointment of Chief Executive Officer

- (a) The Board may:
 - (i) undertake a process to receive applications for Chief Executive Officer(s), and determine the most suitable applicant;
 - (ii) subject to that tendering process, appoint one or more persons to be the Chief Executive Officer; and
 - (iii) subject to rule 8.1(d), determine the remuneration and entitlements (in addition to any entitlements required by law) for the Chief Executive Officer.
- (b) The Chief Executive Officer is not to be a Director.

- (c) If the Board does appoint one or more persons to be the Chief Executive Officer, the term limit of the Chief Executive Officer is not to be longer than 3 years.
- (d) At the conclusion of the Chief Executive Officer's term the Board may choose to re-appoint the person for an additional term, in accordance with this rule 8.1.

8.2 Delegation to the Chief Executive Officer

- (a) The Board may delegate any of the powers and functions of the Board (other than those matters reserved for the Board under rule 9.2 and the powers and functions required by law to be dealt with by the Directors as a Board) to the Chief Executive Officer:
 - (i) on the terms and subject to any restrictions the Board decides; and
 - (ii) so as to be concurrent with, or to the exclusion of, the powers of the Board,and may revoke the delegation at any time.
- (b) This rule 8.2 does not limit rule 9.

8.3 Termination of appointment of Chief Executive Officer

Subject to any agreement between the Company and the Chief Executive Officer, the Board may at any time remove or dismiss the Chief Executive Officer from employment of the Company, whether or not the appointment was expressed to be for a specified term.

9 Delegation of Board Powers and Functions

9.1 Power to delegate

Subject to rule 9.2, the Board may delegate any of its powers and functions (other than those powers and functions required by law to be dealt with by the Directors as a Board) as permitted by section 198D of the Corporations Act.

9.2 Board reservation

Without limitation, the following powers and functions are reserved for the Board:

- (a) approval of:
 - (i) the Company's strategy and annual budget;
 - (ii) significant changes to the organisational structure of the Company;
 - (iii) the acquisition, establishment, disposal or cessation of any significant assets of the Company; and
- (b) the appointment, reappointment or replacement of the:
 - (i) Chief Executive Officer; and
 - (ii) Secretary.

9.3 Power to revoke delegation

The Board may revoke a delegation previously made, whether or not the delegation is expressed to be for a specified period.

9.4 Terms of delegation

- (a) A delegation of powers under rule 9.1 may be made:

- (i) for a specified period or without specifying a period; and
 - (ii) on the terms (including power to further delegate) and subject to any restrictions the Board decides.
- (b) A document of delegation may contain any provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

10 Committees

10.1 Formation of Committees

The Board may, from time to time, form and delegate any of its powers to any Committee consisting of such persons as it thinks fit and may revoke such delegation in its discretion. The Board has the power to require any Committee to have all decisions made by that Committee ratified by the Board.

10.2 Powers of Committees

A Committee must in exercise of the powers delegated to it conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.

10.3 Formation of Advisory Committees

The Board may, from time to time, form any Advisory Committee(s) consisting of such persons as it thinks fit, for the purposes of providing advice or guidance on specified matters in accordance with the Terms of Reference.

10.4 Powers of Advisory Committees

The Board cannot delegate any powers to the Advisory Committee and the Advisory Committee may only provide recommendations, advice and guidance and has no power to bind the Company.

11 Directors' Duties and Interests

11.1 Compliance with duties

Each Director must comply with their respective duties under the Corporations Act, the ACNC Regulation and under the general law. Without limitation, these duties require that Directors:

- (a) exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;
- (b) act for a proper purpose and in good faith in the best interests of the company;
- (c) not misuse their position as a Director;
- (d) not misuse information they gain in their role as a Director;
- (e) disclose any actual, potential or perceived material conflicts of interest; and
- (f) not allow the Company to trade while it is insolvent.

11.2 Director can hold other offices

Subject to the restriction at rule 11.1, 5.2(d) and the Director Policy, a Director may:

- (a) hold any office or place of profit or employment other than that of the Company's auditor or any director or employee of the auditor;
- (b) be a member of any corporation (including the Company) or partnership, other than the Company's auditor;
- (c) be a creditor of any corporation (including the Company) or partnership; or
- (d) enter into any agreement with the Company.

11.3 Disclosure of interests

- (a) Each Director must comply with the general law in respect of disclosure of conflicts of interest or duty, and with section 191 of the Corporations Act in respect of disclosure of material personal interests.
- (b) The Board must agree in writing on its policy for the regulation of conflicts of interest, which must, amongst other things, include a requirement that Directors only be engaged to provide goods or services to or on behalf of the Company if:
 - (i) that Director is for bona fide reasons considered by the Board and agreed to be a suitable person to provide, such goods or services;
 - (ii) bona fide attempts have been made to identify others who provide the goods or services and to compare rates and service levels of such others compared with the Director's rates and service levels;
 - (iii) the goods or services are provided on arms-length terms;
 - (iv) the provision of the goods and services is disclosed clearly and expressly to the Members in the annual report of the Company; and
 - (v) the Board agrees by ordinary resolution (excluding the interested Director) to the provision of the goods or services by the Director.

11.4 Director interested in a matter

- (a) Each Director must comply with section 195 of the Corporations Act in relation to being present and voting at a Board meeting that considers a matter in which the Director has a material personal interest.
- (b) Subject to section 195 of the Corporations Act:
 - (i) a Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter in relation to which that Director has a conflict of interest or duty;
 - (ii) the Company may proceed with any transaction in relation to which a Director has an interest or conflict of duty and the Director may participate in the execution of any relevant document by or on behalf of the Company;
 - (iii) the Director may retain any benefits accruing to the Director under the transaction; and
 - (iv) the Company cannot avoid the transaction merely because of the existence of the Director's interest or conflict of duty.
- (c) If the interest is required to be disclosed under section 191 of the Corporations Act, rule 11.4(b)(iii) applies only if it is disclosed before the transaction is entered into.

11.5 Agreements with third parties

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of a conflict of interest or duty; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement.

12 Remuneration and Out of Pocket Expenses

12.1 Directors' Remuneration for Services as Director

Subject to this rule 12.1, the Directors are to be remunerated for their services as Directors only in furtherance of the purpose expressed at rule 2.1, and in accordance with the Corporations Act and the ACNC Act. The amount of director remuneration must be reasonable, paid on the basis of a daily fee and should be on such conditions as the Board sees fit.

12.2 Out of Pocket Expenses (Board and Advisory Committees)

- (a) The Company may pay a Director all reasonable out of pocket expenses (including travelling and accommodation expenses) incurred by the Director:
 - (i) in attending meetings of the Company, the Board, or a Committee;
 - (ii) on the business of the Company; or
 - (iii) in carrying out duties as a Director,upon the receipt of a valid itemised invoice in respect of such expenses.
- (b) The Company may reimburse an Advisory Committee member for any reasonable out of pocket expenses (including travelling and accommodation expenses) incurred by the Advisory Committee member:
 - (i) in attending Advisory Committee meetings;
 - (ii) on the business of the Company; or
 - (iii) in carrying out duties as an Advisory Committee member
- (c) For the purposes of rules 12.2 (a) and (b), the Board may by resolution:
 - (i) determine what constitutes reasonable expenses; and
 - (ii) stipulate additional procedures to be complied with in relation to the reimbursement of expenses.

12.3 Other Payments to Directors with Board approval

With the approval of the Board, the Company may pay to a Director:

- (a) reasonable remuneration for any service rendered to the Company by the Director in a professional or technical capacity, aside from in their capacity as Director, where the amount payable is approved by the Board and is on reasonable commercial terms;
- (b) reasonable remuneration where the Director is an employee of the Company and the terms of employment have been approved by the Board; and

- (c) reasonable remuneration for goods supplied by the Director to the Company in the ordinary course of business or reasonable rent for premises leased by the Director to the Company.

13 Indemnity and Insurance

13.1 Indemnity

- (a) Subject to and so far as permitted by the Corporations Act and any other applicable law:
 - (i) the Company must indemnify every Officer of the Company and may indemnify its auditor against any Liability incurred as such an Officer or auditor, unless the Liability arises out of conduct involving a lack of good faith; and
 - (ii) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an Officer or auditor in defending an action for a Liability incurred as such an Officer or auditor or in resisting or responding to actions taken by a Government Agency or a liquidator.
- (b) In this rule, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a Government Agency or a liquidator.

13.2 Insurance

Subject to the Corporations Act and any other applicable law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

13.3 Former Officers and auditors

The indemnity in favour of Officers under rule 13.1 is a continuing indemnity. The indemnity applies in respect of all acts done by a person while an Officer or auditor of the Company even though the person may not be an Officer or auditor of the Company at the time the claim is made.

13.4 Director's Access, Indemnity and Insurance Deed

Subject to the Corporations Act and any other applicable law, the Company may, without limiting a person's rights under this rule 13:

- (a) enter into an agreement with; or
- (b) execute a deed in favour of,

a person who is or has been an Officer of the Company to give effect to the rights of the person under this rule 13 on any terms and conditions that the Board thinks fit.

14 Board Meetings

14.1 Convening Board meetings

A Director may at any time, and a Secretary must on request from a Director, convene a Board meeting.

14.2 Minimum number of Board meetings

The Board must convene, as a minimum, at least four times annually.

14.3 Notice of Board meeting

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director who is in Australia; and
- (b) may give that notice orally (including by telephone) or in writing,

but accidental failure to give notice to, or nonreceipt of notice by, a Director does not result in a Board meeting being invalid.

14.4 Use of technology

- (a) A Board meeting may be held using any means of audio or audiovisual or video conference communication through which each Director participating can hear and be heard by each other Director participating, or in any other way permitted by section 248D of the Corporations Act.
- (b) A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of two or more places, at the place where the Chair of the meeting is located.

14.5 Quorum of Board meetings

- (a) Unless the Board decides otherwise, the quorum for a Board meeting is a majority of current Directors, and a quorum must be present for the whole meeting.
- (b) A Director is treated as present at a meeting held by audio or audiovisual communication if the Director is able to hear and be heard by all others attending.
- (c) If a meeting is held in another way permitted by section 248D of the Corporations Act, the Board must resolve the basis on which Directors are to be treated as present.

14.6 Majority decisions of the Board

- (a) A resolution of the Board is passed if a majority of the votes cast by Directors entitled to vote on the resolution are in favour of it.
- (b) The Chair of a Board meeting does not have a casting vote.
- (c) If an equal number of votes is cast for and against a resolution of the Board, the matter is decided in the negative.

14.7 Procedural rules

- (a) The Board may adjourn and, subject to this Constitution, otherwise regulate its meetings as it decides (including through procedures detailed in any By-Laws).
- (b) The procedural rules of the Board may, amongst other things, detail the circumstance in which observers and advisers are permitted to attend and speak at meetings of the Board.

14.8 Circular resolutions of the Board

- (a) The Directors may pass a resolution without a directors' meeting being held if a majority of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) A resolution made in accordance with rule 14.8(a) is taken to be passed when the last Director signs the resolution.

14.9 Additional provisions concerning circular resolutions

For the purpose of rule 14.8:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document; and
- (b) a facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

14.10 Valid proceedings of the Board

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a Board Committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

14.11 Observers

- (a) The Board may, at its discretion, permit observers to attend and speak at meetings of the Board.
- (b) In no circumstance will an observer be counted in constituting a quorum or be permitted to vote on any decision of the Board.
- (c) The Board may revoke its permission granted under rule 14.11(a) at any time.

15 Meetings of Members

15.1 Annual General Meeting

The Company must hold an Annual General Meeting in accordance with the requirements of section 250N of the Corporations Act.

15.2 Calling meetings of Members

A meeting of Members:

- (a) may be convened at any time by the Board or a Director; and
- (b) must be convened by the Board when required by section 249D or 250N of the Corporations Act or by order made under section 249G of the Corporations Act.

15.3 Notice of meeting

- (a) Subject to rule 15.4, at least 21 days' written notice of a meeting of Members must be given individually to:

- (i) each Member (whether or not the Member is entitled to vote at the meeting);
 - (ii) each Director; and
 - (iii) to the auditor.
- (b) Subject to any regulation made under section 249LA of the Corporations Act, the notice of meeting must comply with section 249L of the Corporations Act and may be given in any manner permitted by section 249J(3) of the Corporations Act.

15.4 Short notice

Subject to sections 249H(3) and (4) of the Corporations Act:

- (a) if the Company has elected to convene a meeting of Members as the Annual General Meeting, and if all the Members entitled to attend and vote agree; or
- (b) otherwise, if Members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

15.5 Postponement or cancellation

Subject to sections 249D(5) and 250N of the Corporations Act, the Board may:

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

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

15.6 Fresh notice

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

15.7 Technology

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

15.8 Accidental omission

The accidental omission to give notice to, or the nonreceipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of Members.

16 Proceedings at Meetings of Members

16.1 Member present at meeting

If a Voting Member has appointed a proxy or attorney or (in the case of a Voting Member which is an Organisation) a Representative to act at a meeting of Members, that Voting Member is taken to be present at a meeting at which the proxy, attorney or Organisation Representative is present.

16.2 Quorum of Members meetings

- (a) The quorum for a meeting of Members is 25% of current Voting Members.
- (b) Each individual present at a meeting of Members may only be counted once toward a quorum.
- (c) If a Voting Member has appointed more than one proxy or Organisation Representative only one of them may be counted towards a quorum.

16.3 Quorum not present

If a quorum is not present within 15 minutes after the time for which a meeting of Members is called:

- (a) if called as a result of a request of Members under section 249D of the Corporations Act, the meeting is dissolved; and
- (b) in any other case:
 - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to Members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
 - (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

16.4 Chairing meetings of Members

- (a) If the Board has appointed a Director to chair Board meetings, that Director may also chair meetings of the Members.
- (b) If:
 - (i) there is no Director who the Board has appointed to chair Board meetings for the time being; or
 - (ii) the Director appointed to chair Board meetings is not present at the time for which a meeting of the Members is called or is not willing to chair the meeting,the Members present must elect a Director present to chair the meeting.

16.5 Auditor Attendance and participation at general meetings

The auditor has the right to attend any meeting of the Members and to speak on any part of the business of the meeting which concerns the auditor in their capacity as an auditor.

16.6 Adjournment

Subject to rule 15.6, the Chair of a meeting of Members at which a quorum is present:

- (a) may; and
- (b) must, if directed by Ordinary Resolution of the meeting, adjourn it to another time and place.

16.7 Business at adjourned meetings

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

16.8 Circular resolution of Members

If a majority of the Members entitled to receive notice of a meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a resolution in those terms is passed at the time when the last Member signs.

16.9 Additional provisions concerning circular resolutions of Members

For the purpose of rule 16.8:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Voting Members, are treated as one document;
- (b) signature of a document by the Member who appointed a proxy, attorney or (in the case of a Voting Member which is an Organisation) a Representative is not required if that proxy, attorney or Representative has signed the document in that capacity; and
- (c) a facsimile or electronic message containing the text of the document expressed to have been signed by a Voting Member that is sent to the Company is a document signed by that Voting Member at the time of its receipt by the Company.

17 Proxies, Attorneys and Representatives

17.1 Appointment of proxies

- (a) Each Voting Member may appoint a proxy (who is to be a natural person) to attend and act for the Member at a meeting of the Members.
- (b) An appointment of a proxy must be made by written notice to the Company that:
 - (i) complies with section 250A(1) of the Corporations Act; or
 - (ii) is in a form and mode and is signed or otherwise authenticated by the Voting Member, in a manner satisfactory to the Board.

17.2 Member's attorney

- (a) A Voting Member may appoint an attorney to act, or appoint a proxy to act, at a meeting of Members.
- (b) If the appointor is an individual, the power of attorney must be signed in the presence of at least one witness.

17.3 Deposit of proxy appointment forms, authorities and powers of attorney

An appointment of a proxy or an attorney is not effective for a particular meeting of the Members unless:

- (a) in the case of a proxy, the proxy appointment form and, if it is executed or otherwise authenticated in a manner prescribed by a regulation made for the purposes of section 250A(1) of the Corporations Act by an attorney, the relevant power of attorney or other authority under which the appointment was authenticated or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it, are received by the Company in accordance with section 250B(3) of the Corporations Act at least 48 hours before the time for which the meeting was

called or, if the meeting has been adjourned, before the resumption of the meeting.

17.4 Organisation Member Representatives

- (a) An Organisation Member must appoint an individual to act as its Representative at meetings of Members as permitted by section 250D of the Corporations Act.
- (b) The name and address of the Representative will be entered in the Register as the representative of the Organisation Member.
- (c) All correspondence and notices from the Company will be served on that Representative and any notice served on a Representative will be deemed to be service on the Organisation Member which is represented by that particular Representative.
- (d) If the appointment of a Representative by the Organisation Member is made by reference to a position held, the appointment must identify the position.
- (e) An Organisation Member may remove and replace a Representative where the Organisation Member gives written notice to the Board in a form approved by the Board.
- (f) A signature by a Representative of an Organisation Member on behalf of that Organisation Member is taken to be the signature of that Organisation Member for the purposes of this Constitution.
- (g) Any power or right of an Organisation Member as granted by this Constitution can be exercised by the Representative of that particular Organisation Member.
- (h) Organisation Members are represented at meetings of Members by their Representatives, subject to the right of a Representative to appoint a proxy pursuant to rule 17.5.
- (i) The actions of a Representative bind the Organisation Member which is represented by that particular Representative.
- (j) Each Representative will comply with the terms of this Constitution in all matters pertaining to the Company as if a Member himself or herself.

17.5 Appointment for particular meeting, standing appointment and revocation

- (a) A Voting Member may appoint a proxy, attorney or representative to act at a particular meeting of Members or make a standing appointment and may revoke any appointment.
- (b) A proxy, attorney or representative may, but need not, be a Voting Member.

17.6 Position of proxy or attorney if Member present

The appointment of a proxy or attorney is not revoked by the Voting Member attending and taking part in the general meeting, but if the Voting Member votes on a resolution, the proxy or attorney is not entitled to vote, and must not vote, as the Voting Member's proxy or attorney on the resolution.

17.7 Priority of conflicting appointments of attorney or representative

If more than one attorney or representative appointed by a Voting Member is present at a meeting of Members and the Company has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to rule 17.7(a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

17.8 More than one current proxy appointments

An appointment of proxy by a Voting Member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that Voting Member which would result in there being more than one proxy of that Member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

17.9 Continuing authority

An act done at a meeting of Members by a proxy, attorney or representative is valid even if, before the act is done, the appointing Voting Member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up; or
- (c) revokes the appointment or revokes the authority under which the appointment was made by a third party,

unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

18 Entitlement to Vote

18.1 Number of votes

Subject to sections 250BB(1) and 250BC of the Corporations Act:

- (a) each Voting Member has one vote on a show of hands or a poll; and
- (b) a Voting Member who is present and entitled to vote and is also a proxy, attorney or representative of another Member has one vote on a show of hands.

18.2 Casting vote of Chair

- (a) The Chair of a meeting of Members does not have a second or casting vote.
- (b) If an equal number of votes is cast for and against a resolution at a meeting of Members, the matter is decided in the negative.

18.3 Voting restrictions

- (a) If:
 - (i) the Corporations Act requires that some Members are not to vote on a resolution, or that votes cast by some Members be disregarded, in order for the resolution to have an intended effect; and
 - (ii) the notice of the meeting at which the resolution is proposed states that fact,

those Members have no right to vote on that resolution and the Company must not count any votes purported to be cast by those Members.

- (b) If a proxy purports to vote in a way or in circumstances that contravene section 250BB(1) of the Corporations Act, on a show of hands, the vote is invalid and the Company must not count it and on a poll rule 19.3(c) applies.

18.4 Decision on right to vote

- (a) A Member or Director may challenge a person's right to vote at a meeting of Members.
- (b) A challenge under rule 18.4(a) may only be made at the meeting of Members.
- (c) A challenge, or any other doubt as to the validity of a vote, must be decided by the Chair, whose decision is final.

19 How Voting is Carried Out

19.1 Method of voting

- (a) A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded under rule 19.2 either before or on declaration of the result of the vote on a show of hands.
- (b) Unless a poll is demanded, the Chair's declaration of a decision on a show of hands is final.
- (c) Where a meeting of Members is being facilitated through the use of technology, the technology used must enable Members to be clearly identified and counted upon the calling for a show of hands.

19.2 Demand for a poll

A poll may be demanded on any resolution (except a resolution concerning the election of the Chair of a meeting) by:

- (a) at least two Members entitled to vote on the resolution; or
- (b) the Chair.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

19.3 When and how polls must be taken

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to rule 19.3(c), in the manner that the Chair of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to rule 19.3(c), in the manner that the Chair of the meeting directs;
- (c) votes which sections 250BB(1) or 250BC of the Corporations Act require to be cast in a given way must be treated as cast in that way;
- (d) a person voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and

- (e) the result of the poll is the resolution of the meeting at which the poll was demanded.

20 Secretary

20.1 Appointment of Secretary

The Board:

- (a) must appoint at least one individual who ordinarily resides in Australia; and
(b) may appoint more than one individual,

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

20.2 Removal from office

Subject to any agreement between the Company and the Secretary, the Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

21 Minutes

21.1 Minutes must be kept

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Members;
(b) the names of Directors present at each Board meeting and the names of those present at any Committee meeting;
(c) proceedings and resolutions of Board meetings and any Committee meetings;
(d) resolutions passed by Directors without a meeting; and
(e) disclosures and notices of Directors' interests,

to be kept in accordance with sections 191, 192 and 251A of the Corporations Act.

21.2 Minutes as evidence

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

21.3 Inspection of minute books

The Company must allow all Members (voting and non-voting) to inspect, and provide copies of, the minute books for the meetings of Members in accordance with section 251B of the Corporations Act.

22 Company Seals

Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

23 Financial Reports, Audit and Registers

23.1 Company must keep financial records

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and, if required by Part 2M.3 of the Corporations Act or by the ACNC Act, audited,

and must allow a Director and, where the financial statements are required by Part 2M.3 of the Corporations Act or by the ACNC Act to be audited or reviewed, the auditor to inspect those records at all reasonable times.

23.2 Financial reporting

If required by Part 2M.3 of the Corporations Act or the ACNC Act, the Board must cause the Company to prepare as required a:

- (a) financial report;
- (b) directors' report; and / or
- (c) annual information statement (as the case may be),

that comply with that part and must report to Members in accordance with section 316A of the Corporations Act or as required under the ACNC Act (as the case may be).

23.3 Audit or review

If required by Part 2M.3 of the Corporations Act or by the ACNC Act, the Board must cause the Company's financial report for each financial year to be audited or reviewed and obtain an auditor's report.

23.4 Inspection of financial records and books

Subject to rule 21.3 and section 247A of the Corporations Act, a Member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by ordinary resolution.

23.5 Register of Members

- (a) The Company must establish and maintain the Register.
- (b) In accordance with section 169 of the Corporations 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 class and category of membership;
 - (iv) in relation to any Organisation Member, the Representative of that Member;
 - (v) the name and details of each person who stopped being a Member within the last seven years;
 - (vi) the date on which the person stopped being a Member; and

- (vii) an index of Members' names if the Company has more than 50 Members and the Register itself is not kept in a form that operates effectively as an index.

24 Notices

24.1 Notices by Company

A Member may elect to be sent documents in a physical form or electronic form by notifying the Company of the election, in accordance with the Corporations Act. The Company must take reasonable steps to comply. A notice is properly given by the Company to a Member if it is:

- (a) in writing and signed on behalf of the Company (by original or printed signature);
- (b) addressed to the Member to whom it is to be given; and
- (c) either:
 - (i) delivered personally;
 - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that Member's address;
 - (iii) sent by electronic message to the electronic address (if any) nominated by that Member.

24.2 Overseas Members

A Member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

24.3 When notice is given

- (a) A notice to a Member by the Company is regarded as given and received:
 - (i) if it is delivered personally:
 - (A) by 5.00 pm (local time in the place of receipt) on a Business Day on that day; or
 - (B) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day on the next Business Day;
 - (ii) if it is sent by electronic message or given under section 249J(3)(cb) of the Corporations Act:
 - (A) by 5.00 pm (local time in the place from which it is sent or given) on a Business Day – on that day; or
 - (B) after 5.00 pm (local time in the place from which it is sent or given) on a Business Day, or on a day that is not a Business Day – on the next Business Day; and
 - (iii) if it is sent by mail:
 - (A) within Australia one Business Day after posting; or
 - (B) to a place outside Australia three Business Days after posting.

- (b) A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.
- (c) Any Member who has not left at or sent to the Office his or her place of address for inclusion in the Register as the place at which notices may be given to the Member shall not be entitled to receive any notice.

24.4 Counting days

If a specified period must pass after a notice is given before an action may be taken, neither:

- (a) the day on which the notice is given; nor
 - (b) the day on which the action is to be taken,
- may be counted in determining whether the required period has passed.

24.5 Notices to "lost" Members

- (a) If:
 - (i) on two or more consecutive occasions a notice (served on a Member in accordance with this rule 24) is returned unclaimed or with an indication that the Member is not known at the address to which it was sent; or
 - (ii) the Board believes on other reasonable grounds that a Member is not at the address shown in the Register or notified to the Company under rule 24.2,the Company may give effective notice to that Member by exhibiting the notice at the Company's registered office for at least 48 hours.
- (b) This rule 24.5 ceases to apply if the Member gives the Company notice of a new address.

25 Winding Up

25.1 Winding up

The Company may, by Special Resolution, resolve to voluntarily wind up.

25.2 No distribution of surplus assets to Members

In the event of the winding up of the Company, any surplus property remaining after satisfaction of all the Company's debts and liabilities must not be paid to, or distributed amongst, the Members.

25.3 Distribution of surplus assets

- (a) Any surplus property remaining after satisfaction of all the Company's debts and liabilities must be paid or transferred to another institution or corporation which has:
 - (i) objects which are similar to the Objects and is charitable;
 - (ii) a constitution which requires it to apply its income solely towards promoting those objects; and

- (iii) a constitution which prohibits it from making, paying or distributing its income and property amongst its members, including by way of the distribution of surplus assets on winding up.
- (b) The entity selected for the purposes of rule 25.3(a) is to be determined:
 - (i) by the Board or,
 - (ii) if the Board does not decide or does not wish to decide, then by the Members,

in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court of New South Wales for determination.

26 Amending Constitution

26.1 Amendment procedure

- (a) The Company may, by Special Resolution, resolve to amend this Constitution.
- (b) All previous acts and appointments legal and valid under this Constitution, prior to the amendment or repeal of this Constitution or under the former Constitution (subject to any later rules), will remain legal and valid.