



## **Constitution of Comm Unity Plus Services Ltd**

**Corporations Act 2001**

**Company Limited by Guarantee not having a Share Capital**

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# Constitution of Comm Unity Plus Services Ltd

## ACN 603 318 494

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### 1. Definitions

In this Constitution:

**ACNC Legislation** means the:

- (i) *Australian Charities and Not-for-profits Commission Act 2012* (Cth); and
- (ii) *Australian Charities and Not-for profits Commission Regulation 2013* (Cth)

**Act** means the *Corporations Act 2001* (Cth) as it applies to the Company for the time being or any successor legislation or any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is to that provision as so modified, amended or enacted.

**Annual General Meeting** means the annual general meeting of Members.

**Auditor** means the auditor or auditors of the Company.

**Board** means the Board of Directors of the Company.

**Business Day** means Monday to Friday excluding public holidays in Victoria.

**Chair** means the Director who is elected to this office in accordance with clause 18.3.

**Company** means Comm Unity Plus Services Ltd ACN 603 318 494

**Company Secretary** means the person who is appointed to this office in accordance with clause 18.3

**Constitution** means this constitution, including any amendments.

**Deputy Chair** means the Director who is elected to this office in accordance with clause 18.3.

**Directors** means the members individually or collectively of the Board.

**Extraordinary Meeting** means a meeting of Members other than an Annual General Meeting.

**General Meeting** means an Annual General Meeting or an Extraordinary Meeting.

**ITAA97** means the *Income Tax Assessment Act 1997* (Cth).

**Member** means each person admitted to Membership in accordance with this Constitution.

**Membership** means membership of the Company.

**Objects** mean the objects of the Company set out in clause 3.

**Ordinary Resolution** means a resolution of a general meeting where more than 50% of the total votes cast on the resolution are in favour of the resolution.

**Register** means the register of Members kept in accordance with the Act.

**Registered Address** means the address of a Member shown in the Register.

**Registered Office** means the registered office of the Company.

**Representative** means the representative of a Member, appointed in accordance with clause 16.1.1.

**Special Resolution** has the meaning given to that term in section 9 of the Act.

**Tax Law** means any law relating to taxation or duty as the case requires.

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## 2. Name of the Company

The name of the Company is Comm Unity Plus Services Ltd.

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## 3. Objects

The Objects of the Company are:

- 3.1 to provide a diverse range of programs and services which are targeted at the disadvantaged and have a focus which reflects both the Government Social Justice Strategy and our community needs. All such programs and services will remain open to all people in the community without discrimination. All programs and services will have a community development focus;
- 3.2 to provide emotional support and resources by the alleviation of poverty, distress, misfortune, destitution and helplessness;
- 3.3 to conduct a Community Legal Centre;
- 3.4 to conduct a Registered Training Organisation;
- 3.5 to provide an information and referral service which aims to inform people about their rights to services and entitlements and provide information on all other essential services and programs run by other providers;
- 3.6 to provide a friendly, informal environment where people in our community feel comfortable to drop in whenever they wish;
- 3.7 to provide advancement of education for those most disadvantaged in our community;
- 3.8 to lead by example in promoting environmentally sound practices and procedures within the Centre and its structure; and
- 3.9 to work co-operatively with other organisations the objects of which are compatible with the objects of the Company.

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## 4. Powers

The Company has the legal capacity and powers of an individual and all the powers of a body corporate other than the power to issue shares.

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## **5. Liability of Members**

5.1.1 The liability of each Member is limited to the amount specified in clause 6.

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## **6. Guarantee by Members**

Every Member undertakes to contribute an amount of not more than \$10.00 to the property of the Company if it is wound up:

6.1.1 while that person is a Member; or

6.1.2 within one year after that person ceases to be a Member,

for payment of:

6.1.3 the debts and liabilities of the Company contracted before that person ceased to be a Member; and

6.1.4 the costs, charges and expenses of winding-up.

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## **7. Application of income and property**

### **7.1 Promotion of Objects**

7.1.1 All of the income and property of the Company must be applied solely towards the furtherance and promotion of the Objects.

7.1.2 No part of the income or property may be paid or transferred directly or indirectly by way of dividend, bonus or other profit distribution to any of the Members (in their capacity as Members) or Directors.

7.1.3 Subject to clause 7.2, the Company must not pay a Director any remuneration for services as a Director.

### **7.2 Payments in good faith**

7.2.1 Clauses 7.1.1 to 7.1.3 do not prevent payment in good faith to a Director or Member, or to a company or partnership of which a Director is an officer or partner:

(a) of remuneration for services to the Company;

(b) of reimbursement for expenses properly incurred on behalf of or for the purposes of the Company;

(c) for goods supplied to the Company in the ordinary course of business;

(d) of interest on money borrowed by the Company and rent for premises let to the Company, where:

(i) the interest or rent of the service has the prior approval of the Board; and

(ii) the amount payable is not more than an amount which commercially would be reasonably paid,

provided that any such payment to a Director must comply with clause 7.2.2.

7.2.2 The Company must not make any payment to a Director:

- (a) for services rendered by that Director to the Company unless the provision of those services has the prior consent of the Board;
- (b) the amount payable is on reasonable commercial terms; and
- (c) the payment is approved by the Board.

7.3 This clause does not prohibit indemnification of or payment of premiums on contracts of insurance for any Director to the extent permitted by law and this Constitution.

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## **8. Membership**

### **8.1 Members**

The Members of the Company are:

- 8.1.1 all persons who were members of Community West Inc on 30 June 2014; and
- 8.1.2 any other person the Directors admit to Membership in accordance with this Constitution from time to time, unless they have ceased to be Members.

### **8.2 Applying for Membership**

- 8.2.1 A person who supports the Objects of the company is eligible to apply to be a member of the company.
- 8.2.2 Every applicant for Membership of the Company must apply in the form and manner determined by the Board.
- 8.2.3 After receipt of an application for Membership, the Board must consider the application and determine whether to admit or reject the admission of the applicant.
- 8.2.4 An applicant is admitted to Membership when its name is entered in the Register.

### **8.3 Admission to Membership**

An application for Membership must be made in the form and accompanied by any fee prescribed by the Board. The Board will consider and in its absolute discretion accept or reject any application. The Board is not required to give any reasons for the rejection of an application. If the Board rejects the application, any moneys tendered with it will be repaid to the applicant without interest.

### **8.4 Membership not transferable**

Membership may not be transferred to another person.

### **8.5 Fees**

- 8.5.1 The Directors may determine the Membership fee or any other fee payable by Members for a particular period. In determining the fee, the Directors may provide for different fees for different Members, based on such factors as the type of entity or group or other factors which, in the view of the Directors, justify differential fees.



8.5.2 The Board must give Members not less than one month's notice of any change to the fees.

8.5.3 Payment of the prescribed fees renders a Member financial. If a Member fails to pay the fees prescribed by the Board (if any) pursuant to clause 8.5.1 within 2 months of such fees becoming due and payable and fails to rectify that default within one month of being given notice to do so, then upon the expiration of the period of notice, the Member will cease to be a Member.

## **8.6 Eligibility and classes of Members**

8.6.1 The Board may by ordinary resolution:

- (a) create eligibility criteria for Membership; and
- (b) propose one or more classes of Membership, specifying:
  - (i) the qualification for Membership of the class; and
  - (ii) rights and obligations of Members of the class,

and the Company may, by Special Resolution, adopt the class so proposed.

8.6.2 Upon adopting or changing a class of Membership, the Directors may allocate each existing and new Member into the appropriate class of Member.

8.6.3 At the time of adopting this Constitution, there will be one class of Membership, being financial Membership pursuant to clause 8.5.3 with the voting rights specified in clause 8.7.

## **8.7 Voting rights**

8.7.1 A Member that is financial pursuant to clause 8.5.3 is entitled to one vote at a General Meeting.

8.7.2 Members that are not financial pursuant to clause 8.5.3 are not entitled to vote.

8.7.3 For the purpose of clause 8.7.2, during the period of notice specified in clause 8.5.3, a Member in default of payment of the prescribed fees is not entitled to vote.

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## **9. Register**

### **9.1 Register of Members**

9.1.1 The Company must keep and maintain the Register at its Registered Office.

9.1.2 Members may inspect the Register between the hours of 9am and 5pm on any Business Day. No amount may be charged for inspection.

9.1.3 Information that is accessed from the Register must only be used in a manner relevant the interests or rights of Members.

### **9.2 Disputes**

Any dispute that arises in relation to the Register must be referred to the Board, whose decision will be final and binding on all Members.

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## **10. Cessation of Members**

### **10.1 Resignation and other events**

10.1.1 A person immediately ceases to be a Member if the Member:

- (a) becomes insolvent;
- (b) is dissolved or otherwise wound up;
- (c) resigns as a Member by giving written notice to the Company;
- (d) ceases to be a Member under clause 8.5.3;
- (e) is expelled under clause 10.2; or
- (f) becomes, if the Board determines in its absolute discretion, an untraceable Member because the Member has ceased to reside at, attend, or otherwise communicate, their Registered Address.

### **10.2 Expulsion**

10.2.1 The Board, by a Special Resolution, may expel a Member or implement appropriate disciplinary action if the Member:

- (a) has committed a breach of any obligation or duty under this Constitution; or
- (b) has engaged in conduct detrimental to the interests of the Company.

10.2.2 At least one month before the meeting of the Board at which a resolution referred to in clause 10.2 is considered, the Member must be:

- (a) served notice of the meeting including the particulars of the alleged act, omission or conduct complained of and the intended resolution; and
- (b) given the opportunity to present in writing or orally (or both) at the meeting and before the passage of the resolution any explanation the Member thinks fit,

and the Board will take the explanation into consideration.

10.2.3 The Board will serve the Member with notice of any Board resolution made at the meeting described in clause 10.2.2. If the Board resolves to expel the Member, that Member will cease to be a Member on the service of such notice.

### **10.3 Removal from the Register**

10.3.1 Where a person ceases to be a Member, its name must be removed from the Register.

10.3.2 Upon the removal of a person's name from the Register:

- (a) the person will forfeit all rights and privileges attaching to Membership and all rights which the person may have against the Company arising out of Membership; and
- (b) the Company will have no liability to such person in respect of the removal from the Register.

## **10.4 Surviving liability**

Any person who ceases to be a Member remains liable for:

10.4.1 any moneys which may be owing to the Company; and

10.4.2 in the case of the Company being wound up within one year of the date of cessation of Membership, the relevant contribution under clause 6.

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## **11. General Meetings**

### **11.1 Annual General Meeting**

The Company must hold its first Annual General Meeting within 18 months of its incorporation at the time and place determined by the Board. Thereafter, Annual General Meetings must be held within 5 months of the end of each financial year at the time and place determined by the Board.

### **11.2 Extraordinary Meeting**

The Board may convene an Extraordinary Meeting at such time and place as the Board thinks fit, but such Extraordinary Meeting must be convened in accordance with the Act. Members may also convene an Extraordinary Meeting, but only in accordance with the Act.

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## **12. Notice of General Meetings**

### **12.1 General**

Subject to the Act, the Board must give not less than 21 days' written notice of a General Meeting to the Members, the Directors and the Auditor.

### **12.2 Contents of notice**

The notice referred to in the clause 12.1 must specify the following information:

12.2.1 the place, the day and the hour of meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the reasonable opportunity of the Member to participate);

12.2.2 the general nature of the meeting's business;

12.2.3 the details of any Special Resolutions to be proposed at the meeting; and

12.2.4 that Members are entitled to appoint a proxy.

### **12.3 Failure to receive notice**

12.3.1 Subject to the provisions in the Act, the accidental omission to give notice of a meeting to any Member or the non-receipt of such notice by any Member does not invalidate any resolution passed at, or proceeding of, that meeting.

12.3.2 A Member's attendance at a General Meeting waives any objection that the Member may have to:

- (a) a failure to give notice, or to the giving of a defective notice, of a General Meeting unless, at the beginning of the meeting, the Member objects to the holding of the meeting; and
- (b) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the Member objects to considering the matter when it is presented.

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## **13. Proceedings at General Meetings**

### **13.1 Business**

The ordinary business of an Annual General Meeting may include:

- 13.1.1 the consideration of the annual financial report, the Directors' report and the Auditor's report;
- 13.1.2 the election and appointment of Directors; and
- 13.1.3 the appointment of the Auditor and the fixing of the Auditor's remuneration.

All other business transacted at an Annual General Meeting and all business transacted at an Extraordinary Meeting is deemed special business.

### **13.2 Meetings conducted by electronic means**

- 13.2.1 All provisions of this Constitution relating to General Meetings apply, as far as they can and with any necessary changes, to General Meetings by telephone or other electronic means.
- 13.2.2 A Member who participates in a General Meeting by telephone or other electronic means is taken to be present in person at the meeting.
- 13.2.3 A General Meeting by telephone or other electronic means is taken as held at the place determined by the chair of the meeting, as long as at least one of the Members involved was at the place for the duration of the meeting.

### **13.3 Quorum**

No business may be transacted at any General Meeting except the adjournment of the meeting unless a quorum is present. The quorum for a General Meeting is 5 Members or 5% of the Membership, whichever is the greater, present in person or by proxy.

### **13.4 No Quorum**

If a quorum is not present within 30 minutes from the time appointed for a General Meeting:

- 13.4.1 if convened on the requisition of Members, the meeting will be dissolved; and
- 13.4.2 in any other case, the meeting will be adjourned to the same day in the next week at the same time and place or at such other place as the Chair appoints. If at that adjourned meeting a quorum is not present within fifteen minutes from the time appointed for holding the meeting, the Members present will be a quorum.

### **13.5 Chair**

- 13.5.1 The Chair, or in his or her absence, the Deputy Chair will preside as chair at every General Meeting.
- 13.5.2 If at any General Meeting neither the Chair nor the Deputy Chair is present within fifteen minutes after the time appointed for holding the meeting or if neither is willing to preside, the Members present will choose a Director to preside. If no Director is present or if all Directors present decline to preside, then those persons present will choose a Member who is present to preside as chair.

### **13.6 Adjournment**

- 13.6.1 The Chair of a General Meeting may, with the consent of the Members entitled to vote at any meeting at which a quorum is present, and must, if so directed by the meeting, adjourn the meeting to another time or place (or both).
- 13.6.2 Only unfinished business may be transacted at any meeting resumed after an adjournment of a General Meeting.
- 13.6.3 Where a General Meeting is adjourned for one month or more, new notice of the adjourned meeting must be given.

### **13.7 Show of hands**

Every item of business submitted to a General Meeting will be decided in the first instance by a show of hands of the Members personally present and entitled to vote.

### **13.8 Declaring result of vote in show of hands**

Unless a poll is demanded in accordance with this Constitution, a declaration by the Chair that a resolution has, on a show of hands, been:

- (a) carried; or
- (b) carried unanimously; or
- (c) carried by a particular majority or
- (d) lost or not carried by a particular majority,

is conclusive evidence of the fact declared. An entry to that effect made in the minute book of the Company signed by the Chair is evidence of that fact unless the contrary is proved.

### **13.9 Poll**

- 13.9.1 The Chair or any Member present personally or by proxy may demand a poll before or on the declaration of the result of a show of hands.
- 13.9.2 The poll will be taken in the manner and at the time and place as the Chair of the meeting directs, and either at once or after an interval or adjournment or otherwise.
- 13.9.3 The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- 13.9.4 The demand for a poll may be withdrawn.

13.9.5 If there is a dispute as to the admission or rejection of a vote, the Chair will finally determine that dispute.

### **13.10 Demand for poll**

The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment will be taken at the meeting and without adjournment.

### **13.11 Evidence of resolution**

13.11.1 Within 1 month after each general meeting, the Directors must record or cause to be recorded in the minute book:

- (a) the proceedings and resolutions of each general meeting;
- (b) any declarations at each general meeting; and
- (c) all resolutions passed by Members without a general meeting.

13.11.2 The Chair, or the Chair of the next general meeting, must sign the minutes of a general meeting within a reasonable time of the general meeting.

13.11.3 The minute books must be kept at the Registered Office.

13.11.4 Members may inspect the minute books between the hours of 9am and 5pm on any Business Day. No amount may be charged for inspection.

13.11.5 The minutes of each general meeting may be kept in any form of minute book, including in electronic form, in accordance with the Act.

### **13.12 Auditor**

The Auditor is entitled:

13.12.1 to attend any General Meeting;

13.12.2 to receive all notices of and other communications relating to any General Meeting which a Member is entitled to receive; and

13.12.3 to be heard at any General Meeting which the Auditor attends on any part of the business of the meeting which concerns the Auditor in that capacity and is entitled to be heard, despite the fact that the Auditor retires at that meeting or a resolution to remove the Auditor or the agent from office is passed at that meeting.

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## **14. Appointment of Proxy**

### **14.1 General**

Any Member may appoint a natural person as a proxy to vote on the Member's behalf and may direct the proxy to vote either for or against each or any resolution.

### **14.2 Instrument appointing proxy**

14.2.1 The Company must receive the instrument appointing a proxy (and an original or certified copy of the power of attorney, if any, under which it is signed) at:

- (a) the Registered Office;
- (b) a fax number at the Registered Office;
- (c) a place, fax number or electronic address specified for such purpose in the notice of meeting,

not less than 48 hours before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument is to vote.

14.2.2 Unless the contrary is stated on it, an instrument appointing a proxy is valid for any adjournment of the meeting to which it relates.

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## **15. Form of Proxy**

### **15.1 Required information**

An instrument appointing a proxy must contain the following information:

- 15.1.1 the Member's name and address;
- 15.1.2 the proxy's name or the name of the office held by the proxy; and
- 15.1.3 the meetings at which the appointment may be used,

and be signed by the Member.

### **15.2 Voting instructions**

An instrument appointing a proxy may specify the way in which the proxy is to vote for a particular resolution and if so, the proxy is not entitled to vote on the resolution except as specified in the instrument.

### **15.3 Authority**

An instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll and will (except to the extent to which the proxy is specifically directed to vote for or against any proposal) include power to act generally at the meeting for the Member giving the proxy.

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## **16. Representatives and Attorneys**

### **16.1 Appointment by Member of Representative**

- 16.1.1 Each Member shall nominate in writing to the Board an officer, member or partner of the Member as its representative for the purposes of this Constitution and shall be represented for all purposes under this Constitution (including, without limitation, for the purposes of voting at a General Meeting) by that Representative.
- 16.1.2 A Member may replace its Representative from time to time by notice in writing to the Board.
- 16.1.3 A reference in this Constitution to a Member doing any act, matter or thing, including being present or voting at a General Meeting, is a reference to that Member doing the act, matter or thing by and through its Representative.

## **16.2 Appointment by Directors of Attorney**

- 16.2.1 The Directors may at any time, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the Directors under this Constitution) and for such period and subject to such conditions as they may think fit. Any such powers of attorney may:
- (a) contain such provisions for the protection of and convenience of persons dealing with any such attorney as the Directors think may fit; and
  - (b) authorise any such attorney to delegate all or any of the powers, authorities and discretion vested in the attorney.

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## **17. Voting of Representative or Proxy**

### **17.1 Validity**

A vote given in accordance with the terms of engagement as a Representative or under an instrument of proxy will be valid despite the replacement of the Representative or revocation of the proxy, provided no notice in writing of the replacement or revocation has been received at the Registered Office before the meeting.

### **17.2 Attendance of Representative at meetings**

A Representative attending and taking part in the meeting will not revoke a proxy given by the Representative's Member, unless that Representative votes on the resolution to which the proxy applies.

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## **18. Directors**

### **18.1 Number and qualifications of Directors**

The number of Directors comprising the Board will be no less than 5 and no more than 11, elected in accordance with this Constitution.

### **18.2 Election of Directors**

- 18.2.1 The nomination of any person as a candidate for election as a Director must be in writing and signed by the nominated person and their proposer and seconder. The nomination must be lodged with the Company Secretary at least 30 days before the Annual General Meeting at which the election is to take place.
- 18.2.2 If there are more candidates nominated than there are vacancies, balloting lists will be prepared containing the names of the candidates in an order determined by lot. The Board may determine the method of the ballot. Each Member is entitled to vote for any number of candidates not exceeding the number of vacancies.
- 18.2.3 If there are no more candidates nominated than there are vacancies, then the Chair of the Annual General Meeting will declare those candidates elected as Directors.
- 18.2.4 If there is not a sufficient number of candidates nominated to meet the required minimum number of Directors, the Board must appoint a Representative as Director, subject to their consent, so that the Board consists of at least the minimum number of Directors specified in clause 18.1.



### **18.3 Officers on the Board**

At the first meeting of the Board after each Annual General Meeting, the Directors will:

- 18.3.1 elect from among their number a Chair and a Deputy Chair, each of whom will hold that office until the end of the next Annual General Meeting but who shall be eligible for re-election; and
- 18.3.2 appoint a Company Secretary, who need not be a Member or a Director.

### **18.4 Term of Appointment of Elected Directors**

- 18.4.1 Except for Directors appointed to fill casual vacancies and subject to clause 18.5, Directors will hold office for a term of approximately 3 years commencing at the end of the Annual General Meeting at which they were appointed and expiring at the end of the third Annual General Meeting after their election, at which time they will retire.
- 18.4.2 A retiring Director is eligible for re-election, but will only be eligible to be re-elected as a Director for 3 consecutive terms.
- 18.4.3 Clause 18.4.2 does not prevent a person:
  - (a) serving as a Director for more than 3 terms; or
  - (b) being re-elected as a Director after having served 3 consecutive terms, provided any further term commences at least 3 years after the end of the person's third consecutive term as Director.

### **18.5 Rotation of Directors**

At the first Annual General Meeting:

- 18.5.1 one third of the Directors will be elected to hold office until the end of the following Annual General Meeting, when he or she will retire but will be eligible for re-election;
- 18.5.2 one third of the Directors will be elected to hold office until the end of the second Annual General Meeting after the one at which he or she was elected when he or she will retire but will be eligible for re-election;
- 18.5.3 one third of the directors will be elected to hold office until the end of the third Annual General Meeting after the one at which he or she was elected when he or she will retire but will be eligible for re-election; and
- 18.5.4 if the number of Directors to be elected is not a multiple of 3, the Board in its absolute discretion may determine which Directors are elected for one, 2 and 3 years respectively.

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## **19. Casual vacancies**

- 19.1.1 The Board may appoint a Director to any casual vacancy arising in the office of a Director.
- 19.1.2 Any Director so appointed will hold office until the end of the next Annual General Meeting.

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## **20. Disqualification of Directors**

The office of a Director will be vacated if:

- 20.1.1 the Director becomes bankrupt or makes any arrangement or composition with his or her creditors or if being a director of a company which is a Member, a winding up order is made in respect of such company;
- 20.1.2 the Director becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under a law relating to mental health;
- 20.1.3 without leave of the Board the Director is absent from meetings of the Board for 3 consecutive Board Meetings, unless the Board makes a resolution to the contrary;
- 20.1.4 by notice in writing to the Company the Director resigns from office; or
- 20.1.5 the Director ceases to hold office by reason of any order made under the Act.

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## **21. Powers of the Board**

- 21.1.1 Subject to the Act and to any other provisions of this Constitution, the control and direction of the Company and the management of its property and affairs is vested in the Board.
- 21.1.2 The Board may exercise all powers of the Company except those that are required to be exercised or done by the Company in General Meeting.

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## **22. Borrowing**

The Board may raise money in any manner it thinks fit including the borrowing of money on the security of the Company's assets and the issuing of a security for any other purpose.

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## **23. Investment**

The Board may invest funds of the Company in any manner and for any period as it thinks fit.

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## **24. Negotiable instruments**

The Board may determine how cheques, promissory notes, drafts, bills of exchange and other negotiable instruments must be signed, drawn, accepted, endorsed and otherwise executed (as applicable) by and on behalf of the Company.

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## **25. Proceedings of the Board**

### **25.1 General**

- 25.1.1 The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- 25.1.2 The contemporaneous linking together by telephone or other electronic means of a sufficient number of Directors to constitute a quorum constitutes a meeting of the Board. All the provisions in this Constitution relating to meetings of the Board apply, so far as they can and with any necessary changes, to a meeting of the Board by telephone or other electronic means.
- 25.1.3 A Director who takes part in a meeting by telephone or other electronic means is taken to be present at the meeting.
- 25.1.4 A meeting by telephone or other electronic means is taken as held at the place determined by the chair of the meeting, as long as at least one of the Directors involved was at that place for the duration of the meeting.

### **25.2 Convening and notice of Board meetings**

- 25.2.1 The Board may meet and adjourn and otherwise regulate its meeting as the Board sees fit.
- 25.2.2 The Chair may convene a meeting of the Board whenever he or she thinks fit.
- 25.2.3 The Company Secretary must, on the request of a Director, convene a meeting of the Board.
- 25.2.4 Notice of a Board meeting must be given to each person who is a Director, except a Director on leave of absence approved by the Board.
- 25.2.5 Notice of a Board meeting:
- (a) must specify the time and place of the meeting;
  - (b) need not state the nature of the business to be transacted at the meeting; and
  - (c) may be given in person or by post, telephone, fax or other electronic means.
- 25.2.6 Subject to the provisions of the Act, the accidental omission to give notice of a meeting to, or the non-receipt of a notice of meeting by, a Director will not invalidate proceedings at a Board meeting.
- 25.2.7 A Director's attendance at a Board meeting waives any objection that Director may have to a failure to be given notice of the meeting.

### **25.3 Delegation by the board**

- 25.3.1 Subject to clause 25.3.2, the Board may delegate any of its powers to employees, individual Directors or to committees formed by the Board or as the Board thinks fit. Any individual or committee so formed must conform to any direction given to it by the Board in the execution of the delegated powers.
- 25.3.2 The Board may not delegate its power to delegate.

25.3.3 The meetings and proceedings of any committee will be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as applicable and so far as those provisions are not superseded by any other direction given by the Board.

#### **25.4 Quorum**

25.4.1 No business may be transacted at a Board meeting unless a quorum is present at the time the business is considered.

25.4.2 If a quorum of the Board is not present within 30 minutes of the time appointed for holding that meeting, the meeting will be adjourned for a period of 7 days.

25.4.3 Unless otherwise determined by the Board, a quorum for meetings of the Board is greater than 50% of Directors.

25.4.4 If the number of Directors in office at any time is less than the minimum number fixed under this Constitution, then the remaining Directors:

- (a) must act as soon as possible to procure the appointment of additional Directors to satisfy the minimum number required under this Constitution; and
- (b) until that has happened, may only act if and to the extent that there is an emergency requiring them to act.

#### **25.5 Chair and decisions**

25.5.1 The Chair will be the chair of the Board. If the Chair:

- (a) is not present within 30 minutes of the time appointed for holding that meeting;
- (b) is present but is unwilling to act; or
- (c) notifies the Board prior to the meeting that he or she will not be attending,

then the Deputy Chair will preside at the meeting.

25.5.2 If the Deputy Chair is not present (or being present is unwilling to act) then the Directors present will choose one of their number to chair the meeting.

25.5.3 Except as provided by the Act and by clause 10.2, questions arising at any meeting will be decided by a majority of votes and each Director present will be entitled to one vote.

25.5.4 The Chair will not have a casting vote.

#### **25.6 Written resolutions of the Board**

25.6.1 If all the Directors (other than a Director on leave of absence approved by the Directors) have approved a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms will be deemed to have been passed at a meeting of the Board held on the day on which the resolution was approved and at that time at which the document was last approved by a Director or, if the Directors approved the document on different days, on the day on which, and at the time at which the document was last approved by a Director.

25.6.2 Any such resolution in writing may consist of several documents in identical terms, each approved by one or more Directors and must be entered in the relevant book of minutes of the Company.

25.6.3 In this clause 25.6, a Director gives approval by:

- (a) signing a document containing the resolution;
- (b) affixing an electronic signature to a document containing the resolution; or
- (c) using such other written means approved by the Directors.

25.6.4 A reference in clause 25.6.1 to all Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution.

## **25.7 Defects in appointment**

An act done in good faith by any meeting of the Board, of any committee formed by the Board or by any person acting as a Director will not be invalidated by reason of:

25.7.1 any defect in the election, appointment or tenure of a Director or person acting on any such committee; or

25.7.2 the disqualification of any of them.

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## **26. Minutes**

### **26.1 Minutes to be kept**

The Board must cause:

26.1.1 proper minutes to be made of the proceedings and resolutions of all meetings of the Company, the Board and committees formed by the Board;

26.1.2 the minutes to be entered in books kept for that purpose; and

26.1.3 the minutes to be signed by the Chair of the meeting or by the Chair of the next meeting within a reasonable time after a meeting is held or resolution is passed, in accordance with the Act.

### **26.2 Evidence of proceedings and resolutions**

26.2.1 Any minutes made pursuant to clause 27.1 that purport to be signed by the Chair of the meeting to which they relate or by the Chairperson of the next succeeding meeting are presumed to be an accurate record of the relevant proceedings unless the contrary is proved.

26.2.2 The minutes of each meeting of Directors may be kept in any form of minute book, including in electric form, in accordance with the Act.

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## **27. Reimbursement of expenses**

The Board may authorise the payment of any expenses incurred by any Director or Member in connection with the performance of their duties to the Company.

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## **28. Accounts**

### **28.1 Books of account to be kept**

The Directors will cause to be kept proper books of account in which will be kept true and complete accounts of the affairs and transactions of the Company. Proper books will not be deemed to be kept unless the books give a true and fair view of the state of the Company's affairs and explain its transactions. The Company must account separately for all gifts of money and property, including any gifts which are placed in a gift fund which complies with section 30-125 of the ITAA97.

### **28.2 Location of books of account**

The books of account will be kept at the Registered Office or place or places as the Directors think fit and will be open to the inspection of the Directors during usual business hours.

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## **29. Auditor**

The Company will observe the provisions of the Act in relation to the appointment, removal and resignation of an Auditor.

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## **30. Indemnity**

### **30.1 Definition of Liability and Officer**

In this clause 30:

30.1.1 **Liability** means costs, losses, liabilities and expenses.

30.1.2 **Officer** means a Director, Company Secretary or other officer of the Company and includes a former Officer, but does not include an auditor or agent of the Company.

30.1.3 A reference to **Officer** includes a reference to a former Officer.

### **30.2 Indemnity of Officers**

Every Officer must be indemnified out of the assets of the Company against any Liability incurred by that Officer in the person's capacity as an Officer by reason of any act or thing done or omitted to be done by that person in that capacity or in any way in the discharge of that person's duties or by reason of or relating to the person's status as an Officer, but excluding any Liability from or against which the Company is not permitted by the Act to exempt or indemnify the Officer.

### **30.3 Indemnity for proceedings**

Without limiting clause 30.2, every Officer must be indemnified out of the assets of the Company against any Liability incurred by that person in defending proceedings, whether civil or criminal, in respect of any act or thing done by the Officer in that person's capacity as such Officer but excluding any Liability from or against which the Company is not permitted by the Act to exempt or indemnify the Officer.

### **30.4 Insurance**

The Company may, to the extent permitted by law:

30.4.1 purchase and maintain insurance; or

30.4.2 pay or agree to pay a premium for insurance,

for any Officer against any Liability incurred by the person as an Officer where the Board considers it appropriate to do so.

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## **31. Notices**

31.1 The Company may serve notice on any Member either personally, or by sending it through the ordinary post to the Member's Registered Address, or by leaving at the Registered Address in an envelope addressed to the Member or by sending it to the fax number or electronic address (if any) nominated by the Member.

31.2 A notice of meeting sent by fax or other electronic means is taken to be served at the time when the electronic communication is received by the addressee. Any notice sent by post is taken to be served 3 days after the day it is posted. In proving such service, it is sufficient to prove that the envelope containing the notice was properly addressed and deposited as a prepaid letter at the post office or in some postal receptacle.

31.3 A certificate in writing signed by the Company Secretary or any officer of the Company that the envelope containing the notice was properly stamped, addressed and posted will be conclusive evidence of the service of such notice.

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## **32. Distribution of property on winding-up**

32.1 If, upon the winding-up or dissolution of the Company after the satisfaction of all its debts and liabilities, there remains any property, this property must not be paid to or distributed among the Members unless the Member is a charitable fund, authority or institution within the meaning of clauses 32.1.1 and 32.1.2. Instead, this property must be given or transferred to some other institution or institutions having:

32.1.1 objects similar to the Objects of the Company; and

32.1.2 a constitution which prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the Company under clause 7 of this Constitution.

32.2 This institution or institutions must be determined by:

32.2.1 a Special Resolution of the Members at or before the time of dissolution; or

32.2.2 if no such Special Resolution is passed, by a Judge of the Supreme Court or such other court of competent jurisdiction.

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## **33. Altering the Constitution**

The Company may alter this Constitution in accordance with the Act.

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## **34. Interpretation**

### **34.1 General**

In this Constitution, unless the context requires otherwise:

- 34.1.1 a person includes a corporate body, association, firm, partnership, or other unincorporated body;
- 34.1.2 a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
- 34.1.3 this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- 34.1.4 a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Constitution;
- 34.1.5 a word or phrase that is defined has the corresponding meaning in its other grammatical forms;
- 34.1.6 writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 34.1.7 the singular includes the plural and vice versa;
- 34.1.8 a gender includes all other genders; and
- 34.1.9 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Constitution.

### **34.2 Replaceable Rules Displaced**

Each of the provisions of the Act that would apply to the Company as a replaceable rule but for this clause, is expressly displaced and does not apply to the Company.