

## **Constitution**

**Gayaa Dhuwi (Proud Spirit) Australia Limited**

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## 1 Definitions and interpretation

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### 1.1 Replaceable Rules

All of the replaceable rules set out in the Act which the Company is entitled to displace, are displaced by the rules set out in this constitution.

### 1.2 Definitions

The following definitions apply in this constitution:

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

**Board** means the board of Directors of the Company;

**ACNC Legislation** means:

- (a) *Australian Charities and Not-for-profits Commission Act 2012* (Cth); and
- (b) *Australian Charities and Not-for-profits Commission Regulations 2013* (Cth);

**Company** means Gayaa Dhuwi (Proud Spirit) Australia Limited;

**Gayaa Dhuwi (Proud Spirit) Declaration** means the Gayaa Dhuwi (Proud Spirit) Declaration developed by the National Aboriginal and Torres Strait Islander Leadership in Mental Health and launched on 27 August 2015;

**Director** means a person appointed to that position by the Members;

**Insolvency Event** means an event by which a person:

- (c) is insolvent, insolvent under administration, or states that it is unable to pay its debts when they become due and payable;
- (d) is placed in or under any form of external administration including if a party or its property is subject to the appointment of an administrator, a controller, receiver or receiver and manager, a liquidator or an official manager;
- (e) is made subject to any compromise or arrangement with any of its creditors or members or scheme for its reconstruction or amalgamation, otherwise than as a result of voluntary corporate reconstruction;
- (f) is wound up or dissolved, or an order or resolution is made to wind up or dissolve the party;
- (g) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of the relevant person or his or her estate under any laws relating to insolvency;
- (h) is or applies to be protected from any of its creditors under any applicable legislation, or
- (i) has anything similar to any of the events in paragraphs (a) to (e) happen to it under the law of any applicable jurisdiction;

**Material Personal Interest** means a material personal interest for the purposes of the Act;

**Member Representative** means the a person, for a member which is a body corporate, a person authorised by the body corporate to act as its representative in the Company for the purposes of general meetings or rights afforded under this constitution;

**Members** means the members of the Company from time to time;

**Secretary** means any person appointed to perform the duties of a Secretary of the Company; and

**Special resolution** means a resolution:

- (a) for which the requisite notice has been given under rule 8.3(b)(iii); and
- (b) that has been, or is proposed to be, passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

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

### 1.3 Interpretation

The following rules apply in interpreting this document:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) words or expressions defined in the Act or the ACNC Legislation, have those meanings;
- (d) except so far as the contrary intention appears in this constitution, an expression has, in a provision of these rules that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act;
- (e) headings are for convenience only, and do not affect interpretation; and
- (f) a reference to:
  - (i) a party includes its administrators, successors, substitutes by novation and assigns;
  - (ii) any legislation includes legislation varying consolidating or replacing that legislation and includes all regulations or other instruments issued under that legislation;
  - (iii) a person includes a body incorporated or unincorporated, partnership or any legal entity, and
  - (iv) 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.

## 2 Structure

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### 2.1 Company limited by Guarantee

The Company is limited by guarantee and the liability of the Members is limited as provided in this document. The Company is bound to comply with its objects and character as a not-for-profit company limited by guarantee that is a registered entity under the Act and ACNC Legislation.

### 2.2 Constitution of Company

This is the constitution of the Company and comprises its governing document for the purposes of the ACNC Legislation.

### 2.3 ACNC Legislation

If the Company is registered under the ACNC Legislation, it must comply with the ACNC Legislation.

## 2.4 Exercise of powers to achieve objects

Nothing restricts the Company from exercising a power which in itself is not charitable, for any purpose which is incidental to the charitable objects of the Company set out in rule 3.1 or which is intended to generate revenue for, or otherwise further, those objects.

## 3 Objects

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### 3.1 Objects

The Company is established for the public charitable purposes of promoting the prevention or the control of disease in human beings, particularly Aboriginal and Torres Strait Islander peoples, through:

- (a) promoting an Australian mental health system that enables Aboriginal and Torres Strait Islander people, families and communities to access the best cultural and clinical approaches to support their social and emotional wellbeing and mental health, and to prevent suicide;
- (b) promoting the adoption and proactive implementation of the Gayaa Dhuwi (Proud Spirit) Declaration by all levels of Australian governments (including by the Council of Australian Governments) and across all the stakeholders in the mental health system and as relevant;
- (c) promoting Aboriginal and Torres Strait Islander employment and presence at all levels of the mental health system; and
- (d) promoting Aboriginal and Torres Strait Islander leadership within the mental health system.

### 3.2 Achievement of objects

To achieve these objects, the company may, without limitation:

- (a) harness the resources of the community in support of the objects in rule 3.1;
- (b) establish and maintain affiliations and information exchange with other organisations having similar objects to those in rule 3.1, including to establish networks with reach into Aboriginal and Torres Strait Islander communities and communities of interest to inform rule 3.1;
- (c) advising all governments (including the Council of Australian Governments) and all the stakeholders in the mental health system in relation to:
  - (i) all initiatives relevant to rules 3.1; and
  - (ii) all matters relevant to Aboriginal and Torres Strait Islander social and emotional wellbeing, mental health and suicide prevention including the social, political and historical determinants of mental ill-health and suicide;
- (d) act as trustee of any trust the purpose of which relates to the objects in rule 3.1;
- (e) promote the objects in rule 3.1;
- (f) aim to be a collective national voice, leader and advocate for system-wide changes that support the best interests of Aboriginal and Torres Strait Islander people, families and communities in connection with rule 3.1; and
- (g) do all other things incidental or conducive to the attainment of the objects in rule 3.1.

## **4 Income and property**

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- (a) The Company must apply its income and property solely towards promoting the objects of the Company as stated in rule 3. No part of the Company's income or property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise to any of the Members.
- (b) Nothing in this document prevents the payment in good faith of remuneration to any officers or employees of the Company or to any Member in return for:
  - (i) any services actually rendered by the Company;
  - (ii) goods supplied in the ordinary course and usual way of business;
  - (iii) interest on money lent to the Company at reasonable rates; or
  - (iv) reasonable rent for premises leased to the Company.
- (c) No remuneration or other benefit may be paid by the Company to any Director except:
  - (i) for the reimbursement of out-of-pocket expenses incurred on reasonable commercial terms in carrying out the duties of a Director; or
  - (ii) to the Chairperson of the Company for attending upon the functions and duties of a chairperson, provided that the remuneration or benefit paid or given complies with all applicable laws and:
    - (A) at rate equivalent to current Australian Public Service schedule of payments for committee members; and
    - (B) does not exceed an amount previously approved by a Special Resolution of the Directors.

## **5 Deductible gift recipient status**

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### **5.1 General**

If at any time the Company has the status of a company to which gifts can be deducted under the Tax Act, any provisions which from time to time are required in order to maintain the status of the Company as a Company to which gifts can be deducted under the Tax Act are deemed to form part of this constitution.

### **5.2 Winding up or revocation of deductible gift recipient status**

On the earlier of the winding up of the Company or the revocation of the Company's deductible gift recipient endorsement under Sub-division 30-BA of the Tax Act, the Company must transfer the following to a fund, authority or institution that is charitable at law and to which gifts can be deducted under Division 30 of the Tax Act, as approved by the Members:

- (a) any surplus gifts of money or property for the objects of the Company; and
- (b) any surplus contributions described in item 7 or 8 of the table in section 30-15 of the Tax Act in relation to a fund-raising event held for that purposes; and
- (c) any surplus money received by the Company because of such gifts or contributions.

## **6 Winding up**

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### **6.1 Limited liability of Members**

If the Company is wound up, each of the Members undertakes to contribute to the assets of the Company an amount not exceeding \$10 for payment of the debts and liabilities of the Company including the costs of the winding up. This undertaking continues for one year after each of the Members ceases to be a member of the Company.

### **6.2 Distribution of Property**

If the Company is wound up or dissolved, any property remaining after the satisfaction of the debts and liabilities of the Company will not be paid to or distributed among the Members but will be given or transferred to a charitable organisation nominated by the Members which:

- (a) has similar objects to the Company that are charitable at law;
- (b) meets the requirements of rule 5 if the Company has deductible gift recipient status at the time of winding up; and
- (c) is exempt from income tax under the Tax Act.

## **7 Membership**

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### **7.1 Members**

The Members of the Company upon its registration and the adoption of this Constitution are:

- (a) National Aboriginal and Torres Strait Islander Leadership in Mental Health Ltd;
- (b) Indigenous Allied Health Australia Ltd;
- (c) Australian Indigenous Psychologists Association Ltd;
- (d) National Aboriginal Community Controlled Health Organisation Ltd; and
- (e) Australian Indigenous Doctors Association Ltd.

### **7.2 Class of Members**

Until otherwise decided by the Members in a general meeting, the only class of membership is ordinary membership.

### **7.3 Member Representative**

Each Member that is a body corporate, must nominate one individual (**Member Representative**) to represent it as a member in the Company.

### **7.4 Admission of new members**

The Members may from time to time approve the admission of an additional member or members by way of a Special Resolution.

### **7.5 Cessation of Membership**

Any person will automatically cease to be a Member if they:

- (a) resign as a Member by notice in writing to the Company;
- (b) become the subject of an Insolvency Event or subject to any form of insolvent administration; or



- (c) fail to exercise their respective right, in accordance with 11.2(a), to appoint a Director following a vacancy, for a period longer than 12 months;
- (d) are deregistered as a company and therefore cease to exist.

#### 7.6 Resolutions if the Company has one Member

- (a) If at any time there is only one Member, all resolutions and decisions required by the Act, the ACNC Legislation or by this constitution to be made by the Member will be passed and made by the Member recording the resolution or decision and signing the record, without holding any annual general meeting or other general meetings.
- (b) An annual general meeting of the Company will be held in accordance with the Act provided however that where there is only one Member, the Member may elect not to hold an annual general meeting in accordance with section 250N (4) of the Act.

#### 7.7 Written Resolution of the Members

If all the Members entitled to vote have signed a document containing a statement that they are in favour of a resolution of the Members in terms set out in the document, a resolution in those terms will be deemed to have been passed at a meeting of the Members held on the day on which the document was signed and at the time at which the document was last signed by a Member or if the Members signed the document on different days on the day on which and at the time at which the document was last signed by a Members.

## 8 Meetings of Members

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### 8.1 Act and ACNC Legislation to apply

A general meeting of the Company and an Annual General Meeting must be held in accordance with the provisions of the Corporations Act or the ACNC Legislation as applicable unless the provisions of this Constitution provide otherwise.

### 8.2 Calling of meetings

- (a) Any three Directors may call a General Meeting.
- (b) General Meetings will be convened on such requisition by Members as provided by the Corporations Act.

### 8.3 Notice of meeting

- (a) Notice of a General Meeting may be given by post, facsimile or by electronic mail.
- (b) Every notice of a General Meeting must:
  - (i) set out the place, date and time of meeting;
  - (ii) in the case of special business, state the general nature of the business;
  - (iii) if a Special Resolution is to be proposed, set out an intention to propose the Special Resolution and state the resolution;
  - (iv) contain a statement setting out the following in relation to proxy voting:
    - (A) that the Member has a right to appoint a proxy; and
    - (B) that a proxy need not be a Member.

### 8.4 Entitlement to notice

Notice of a General Meeting must be given to:

- (a) each Member, apart from any Member who under this Constitution or by the terms of issue of any category of Membership is not entitled to the notice;
- (b) the auditor of the Company; and
- (c) each Director.

#### 8.5 Notice period

Notice of a General Meeting must be given in accordance with section 249H of the Corporations Act and where those provisions no longer apply to the Company, must be given in writing upon no less than 21 days' notice unless Members with at least 95% of the votes that may be cast at the meeting agree to a shorter period beforehand.

#### 8.6 Proxy voting by Members

A Member may appoint a proxy who need not be a Member to attend and vote at any General Meeting at which the Member is entitled to attend and vote. To be valid, a proxy appointment must be in writing in the form prescribed by the Company from time to time (**Form**). The Form must be delivered to the place nominated by the Directors in the notice of General Meeting (or, if no place is nominated, the Office) at least 48 hours before the scheduled commencement of the General Meeting. A proxy appointment may be delivered by post, electronic mail or facsimile transmission.

#### 8.7 Omission to give notice

The accidental omission to give notice of a General Meeting to, or the non-receipt of any such notice by, a person entitled to receive it, or the accidental omission to advertise (if necessary) such General Meeting, does not invalidate the proceedings at, or any resolution passed at, any such General Meeting.

#### 8.8 Consent to short notice for Annual General Meeting

With the consent in writing of all the Members entitled to vote at an Annual General Meeting, an Annual General Meeting may be called on short notice and in any manner they think fit and all provisions of this Constitution are modified accordingly.

#### 8.9 Notice of cancellation or postponement

The Directors may notify the Members of a cancellation or postponement of a General Meeting by such means as they see fit, but must provide notice of the cancellation or postponement at least two business days prior to the time of the meeting as specified in the notice of meeting. If any General Meeting is postponed for 28 days or more, then no less than 5 days' notice must be sent to the Members of the postponed General Meeting. It is not necessary to specify in such notice the nature of the business to be transacted at the postponed General Meeting.

#### 8.10 Venue

Despite any other rule, the Company may hold a General Meeting of Members at two or more venues using technology that gives each Member a reasonable opportunity to participate in the General Meeting.

### 9 Proceedings at meetings of Members

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#### 9.1 Quorum

No business may be transacted at any General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Except as provided in clause 9.2, more than half of the Members entitled to vote at the meeting present by Corporate Representative, proxy or attorney are a quorum.

## 9.2 Failure of quorum

- (a) If a quorum is not present within 30 minutes from the time appointed for a General Meeting:
  - (i) where the meeting was called by, or in response to, the requisition of Members made under the Corporations Act, the meeting is dissolved; or
  - (ii) in any other case the meeting stands adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Directors may determine. If a meeting has been adjourned to another time and place determined by the Directors, not less than five business days' notice must be given in the same manner as in the case of the original meeting.
- (b) If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting the meeting is dissolved.

## 9.3 Business of Annual General Meeting

The business of an Annual General Meeting is:

- (a) to receive the Company's financial report, the Director's report and the auditor's report on the financial statements;
- (b) to allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about, or make comments on, the management of the Company;
- (c) to transact any other business which under this Constitution, the Corporations Act or the ACNC Legislation ought to be transacted at an Annual General Meeting; and
- (d) consider any matters referred by Members to the Company at least 21 days before the meeting, to be included in the agenda.

## 9.4 Report on Company's activities

At each Annual General Meeting held, the Board must submit to the Members a report on the activities of the Company in addition to the matters in clause 9.3, including any payments made to Directors, in the period since the previous General Meeting.

## 9.5 Frequency of Annual General Meeting

If required by the Act or ACNC Legislation, the Company must hold an Annual General Meeting at least once every calendar year and within 5 months after the end of its financial year.

## 9.6 Special business

No special business may be transacted at any Annual General Meeting or General Meeting other than that stated in the notice calling the meeting unless:

- (a) it is a matter that is required by this Constitution, the Corporations Act or the ACNC Legislation to be transacted at the meeting; or
- (b) notice in writing of the agenda items is provided to the Board at least 21 days before the Annual General Meeting or General Meeting.

## 9.7 Chair of meeting

- (a) The Chair of the Board is entitled to take the chair at each General Meeting.
- (b) If the Chair is not present at the meeting within 15 minutes after the time appointed for holding the meeting, or is unwilling to take the chair, the Directors present at the meeting must elect one of their number to chair that meeting.

- (c) If there are no Directors present at the meeting within 15 minutes after the time appointed for holding the meeting or all directors present are unwilling to chair the meeting, the Members present that are entitled to vote must elect one of those Members to chair the meeting.

#### 9.8 **Passing the Chair**

If the Chair of a General Meeting is unwilling or unable to be the Chair for any part of the business of the meeting:

- (a) that the Chair may withdraw as Chair for that part of the business and may nominate any person who would be entitled under the preceding clause to chair the meeting for that part of the business; and
- (b) after that part of the business is completed, the person so nominated must cease to chair the meeting upon the request of the prior Chair. The prior Chair is then entitled to resume as the Chair of the meeting.

#### 9.9 **Responsibilities of the Chair**

The Chair of a General Meeting is responsible for the general conduct of the meeting and to ascertain the sense of the meeting concerning any item of business which is properly before the meeting. For these purposes the Chair of the meeting may, without limitation:

- (a) delay the commencement of the meeting if that person determines it is desirable for the better conduct of the meeting;
- (b) make, vary or rescind rulings;
- (c) prescribe, vary or revoke procedures;
- (d) in addition to other powers to adjourn, adjourn the meeting, or any item of business of the meeting, without the consent of the meeting if that person determines it is desirable for the orderly conduct of the meeting or the conduct of a poll; and
- (e) determine conclusively any dispute concerning the admission, validity or rejection of a vote.

#### 9.10 **Persons entitled to attend**

Only the following persons may attend a General Meeting:

- (a) each Member, apart from any Member who under the Constitution or by the terms of issue of any Membership is not entitled to attend;
- (b) each Director, Secretary and auditor of the Company;
- (c) each person, whether a Member or not, who is a proxy, Corporate Representative or attorney of a Member;
- (d) other persons only with leave of the meeting or the Chair and then only while the leave has not been revoked in accordance with the terms of the leave.

#### 9.11 **Admission to meetings**

The Chair of a General Meeting may refuse admission to, or require to leave and remain out of, the meeting any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of an article considered by the Chair to be dangerous, offensive or liable to cause disruption;

- (d) who refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
- (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (f) who is not entitled under this Constitution to attend the meeting.

#### 9.12 **Adjournment of meeting**

The Chairperson may with the consent of any meeting at which a quorum is present (and must if so directed by the meeting) adjourn the meeting from time to time and from place to place as the Chairperson determines.

#### 9.13 **Business at adjourned meeting**

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place and no notice need be given of an adjournment, or of the business to be transacted at an adjourned meeting. However, when a meeting is adjourned for 20 business days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

## 10 **Voting at meetings of Members**

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### 10.1 **Entitlement to vote**

Subject to this Constitution and the terms of issue of any category of Membership, each Member who is present at a General Meeting may vote if he or she is a Member having the right to vote at the meeting or a proxy of a Member having the right to vote at the meeting.

### 10.2 **Number of votes**

Each Member who is, under the preceding clause, entitled to vote has:

- (a) on a show of hands (or on the voices) only one vote; and
- (b) on a poll, one vote.

### 10.3 **Voting restrictions**

If permitted or contemplated by the Corporations Act, the ACNC Legislation or this Constitution, the Directors may direct that particular persons (whether specified by name or description) do not cast a vote on particular business of a meeting. In relation to that business, votes cast by the prohibited persons are to be disregarded.

### 10.4 **Method of voting**

Every resolution put to a vote at a General Meeting be determined by the voices or a show of hands (as determined by the Chair of the meeting) unless a poll is properly demanded either before or on the declaration of the result of the voices or the show of hands.

### 10.5 **Demand for poll**

A demand for a poll under the preceding clause may be made by:

- (a) the Chair of the meeting;
- (b) at least two Members entitled to vote on the resolution, or if the quorum is less than four, one Member entitled to vote; or
- (c) at least 10% of the Members present having the right to vote at the meeting.

**10.6 Declaring result of vote on show of hands**

In respect of any General Meeting (unless a poll is so demanded):

- (a) a declaration by the Chair of the meeting that a resolution has been carried, or carried by a particular majority, or lost, or has not been carried by a particular majority; and
- (b) an entry made in the book containing the minutes of proceedings of the Company,

is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

**10.7 Conduct of poll**

The demand for a poll may be withdrawn. If a poll is duly demanded (and the demand not withdrawn) it must be taken in such manner and at such time (either at once or after an interval or adjournment or otherwise) as the Chair of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded. A poll demanded on the election of a Chair or on any question of adjournment must be taken at the meeting and without an adjournment. The demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded.

**10.8 Casting vote of Chair**

In the case of an equality of votes, whether on a show of hands or on a poll, the Chair of the meeting is entitled to a second or casting vote.

**10.9 Objections**

No objection may be made to the validity of any vote except at the meeting or adjourned meeting or poll at which such vote is tendered. Every vote allowed at any such meeting or poll is treated as valid. In recording votes the latest copy of the Register held in the Office must be adopted and acted on as the voting roll.

**10.10 Ruling on votes**

The Chair of the meeting is the sole judge of the validity of every vote tendered at the meeting and the determination of the Chair is final and conclusive.

**11 Board of Directors**

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**11.1 Number of Directors**

- (a) Subject to the Act, the Members may increase the number of Directors.
- (b) Subject to rule 11.1(a), there will be:
  - (i) a minimum of three Directors; and
  - (ii) a maximum of 8 Directors.

**11.2 Method of appointment and removal of Directors**

- (a) Each Member of the Company may, in the Member's absolute discretion:
  - (i) appoint and re-appoint one Director to the Board; and
  - (ii) remove the Director appointed by that Member pursuant to rule 11.2(a)(i) from the Board,

by notice, in writing, addressed to the Board.

- (b) Subject to rule 11.2(c), the Board may, in its discretion:
  - (i) formally advise Members on their preferred candidates for appointment under clause 11.2(a) and in doing so, Members must give due consideration to the Board's advice prior to making any such appointment; and
  - (ii) appoint up to three individuals as Directors for a term determined by the Board based on particular skills and experience.
- (c) Following registration with ASIC, the inaugural Board only must appoint two individuals as Directors pursuant to rule 11.2(b) for a term determined by the Board, which must include nominees from the Australian Government-funded:
  - (i) Centre of Best Practice in Aboriginal and Torres Strait Islander Suicide Prevention; and
  - (ii) National Indigenous Critical Response Service operated by Thirrilli Ltd.

### 11.3 Term

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act or ACNC Legislation, the office of a Director becomes vacant if the Director:

- (a) is absent from three successive meetings of the Board without the approval of the Board;
- (b) resigns by notice in writing to the Board;
- (c) becomes of unsound mind or physically or mentally incapable of performing the duties of that office as resolved by the Board;
- (d) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the interest as required by the Act;
- (e) is removed from office by the relevant Member under rule 11.2(a)(ii);
- (f) is an employee of a Member and the Director's employment ceases or is terminated for any reason; or
- (g) ceases to meet the conditions under the ACNC Legislation for being a responsible entity of the Company.

### 11.4 Board must appoint Chair

The Directors must appoint one of its number as the Chair of the Board and will nominate the term of office.

### 11.5 Board may appoint Deputy Chair

The Board may also appoint one of its number to be Deputy Chair and nominate the term of his or her office.

### 11.6 Retirement

- (a) Subject to rule 11.6(b) and 11.6(c), each Director must retire within three years of their appointment, but may, if eligible, be re-appointed for a further three-year term.
- (b) In relation to the Board in place upon the Company's registration with the Australian Securities and Investments Commission:
  - (i) half of the Directors must retire following their first three-year term, but may, if eligible, be re-appointed for a further three-year term; and

- (ii) the remaining half of the Directors must retire following their six-year term, and upon such retirement, will not be eligible for reappointment pursuant to clause 11.6(d).
- (c) The maximum aggregate of any one term of office of any Director will be six years.
- (d) A Director who has served a six year-term will only be eligible for reappointment to the Board after a retirement period of three years.

## **12 Operation of the Company**

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### **12.1 Powers and duties of the Board**

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

- (a) has the power to manage the business of the Company; and
- (b) may exercise every right, power or capacity of the Company as are not by the Act or by this constitution otherwise required to be exercised by the Company in a general meeting.

### **12.2 Negotiable Instruments**

All negotiable instruments must be executed, accepted or endorsed by the Company by the signature of 2 Directors or in any other manner as the Board determines.

## **13 Proceedings of the Board**

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### **13.1 Board Meetings**

- (a) The Board may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as the Board thinks fit.
- (b) The Chair or any 2 Directors may at any time and the Secretary must on the requisition of 2 Directors convene a meeting of the Board.
- (c) A Board meeting may be held with one or more of the Directors taking part by telephone, audiovisual link up or other instantaneous communication medium, if the meeting is conducted so that Directors are able to hear the proceedings of the entire meeting and to be heard by all others attending the meeting.
- (d) 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 equal numbers of Directors are located in each of two or more places, at the place where the Chair of the meeting is located.
- (e) In the absence of the Chair, the Deputy Chair will chair Board meetings. In the absence of both the Chair and Deputy Chair, the Directors present must elect one of their number to chair the Board meeting.

### **13.2 Notice of Board Meeting**

The convenor of each Board meeting:

- (a) must give as much notice as is reasonably possible of the meeting (and, if it is adjourned, of its resumption) individually to each Director;
- (b) must give that notice in writing directed to such address as the Director in question furnishes to the Secretary from time to time; and



- (c) must give that notice containing as much information as is reasonably possible concerning the business to be dealt with by the meeting to which it relates,

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

### 13.3 Voting

- (a) The board should aim to resolve any questions or decisions by way of a consensus in the first instance, however if a consensus is unable to be achieved, then, subject to this constitution, the Board will be decided by a majority of votes of Directors present, and entitled to vote, and any such decision will be deemed a decision of the Board.
- (b) In the case of an equality of votes only, the Chair of the meeting is entitled to a second or casting vote in addition to any deliberative vote.

### 13.4 Quorum

- (a) At a meeting of the Board more than one half of the number of Directors constitutes a quorum.
- (b) No business will be transacted at any such meeting unless a quorum is present at the time the meeting proceeds to business.

### 13.5 Continuing Directors

In the event of a vacancy or vacancies in the office of a Director or offices of Directors the remaining Directors may act but if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of the Board they may act only:

- (a) for the purpose of requesting the Members to appoint additional Directors;
- (b) to convene a meeting of Members; or
- (c) in emergencies.

### 13.6 Written Resolution of the Directors

If all the Directors entitled to vote have signed a document containing a statement that they are in favour of a resolution of the Board 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 document was signed and at the time at which the document was last signed by a Director or if the Directors signed the document on different days on the day on which and at the time at which the document was last signed by a Director.

### 13.7 Procedure at Board Meetings

Subject to this constitution and the Act the procedure to be followed at a meeting of the Board will be as the Board decides.

### 13.8 Board Committees

The Board may constitute committees comprised of at least one Director and including other persons suitable to assist and advise the Board in the discharge of its functions. Board committees will be constituted and act in accordance with resolutions of the Board.

## 14 Director's duties and interests

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### 14.1 Holding Offices or entering into Agreements

A person is not disqualified by reason only of being a Director of the Company from:

- (a) holding any office or place of profit or employment with, or being a member of, any entity dealing with the Company, other than that of the Company's auditor; or
- (b) entering into any agreement with the Company.

#### 14.2 **Duty to disclose Material Personal Interests**

- (a) For the purposes of this rule 14, a Director has a Material Personal Interest in a matter that relates to the affairs of the Company if that Director would be considered to have a Material Personal Interest under the Act.
- (b) Unless the Act says otherwise, a Director who has a Material Personal Interest in a matter that relates to the affairs of the Company must, at a Directors' meeting as soon as practicable after the Director's appointment or after the Director becomes aware of their interest in the matter (whichever is later), give the other Directors notice of the interest which must include details-of:
  - (i) the nature and extent of the interest;
  - (ii) the relation of the interest to the affairs of the Company; and
  - (iii) any other information the Director is required to disclose under the Act.
- (c) A Director does not need to give notice of an interest under rule 14.2(b) if he or she is not required to do so under the Act.
- (d) A Director who is required to disclose a Material Personal Interest to the Company under this Constitution or the Act must ensure that the nature and extent of the interest is tabled at a Directors' meeting and recorded in the minutes of that meeting.

#### 14.3 **Effect of Director having a Material Personal Interest**

Each Director must comply with the 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.

#### 14.4 **Duty to disclose a conflict of interest**

- (a) Unless the ACNC Legislation says otherwise, a Director who has a perceived or actual material conflict of interest in accordance with the ACNC Legislation must, subject to 14.4(b) below, at a Directors' meeting as soon as practicable after the Director's appointment or after the Director becomes aware of their interest in the matter (whichever is later), give the other Directors notice of the interest which must include details of:
  - (i) the nature and extent of the interest;
  - (ii) the relation of the interest to the affairs of the Company; and
  - (iii) any other information the Director is required to disclose under the ACNC Legislation.
- (b) A Director may disclose a material conflict of interest (within the meaning of ACNC Legislation) that is not a Material Personal Interest in the form of a standing notice to the other Directors with ongoing effect.

## 15 **By-Laws**

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The Board has power to make vary and repeal by-laws from time to time for the proper conduct and management of the Company.

## **16 Company Secretary**

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At least one Secretary of the Company will be appointed by the Board and hold office on such terms and conditions as the Board determines.

## **17 Company seals**

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### **17.1 Common Seal**

The Company will not have a common seal unless the Board resolves to adopt one.

### **17.2 Use of Seals**

Any common seal adopted by the Board may only be used with the authority of the Board.

### **17.3 Fixing Seals to documents**

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) by 2 directors;
- (b) by 1 director and 1 Secretary; or
- (c) by any other way resolved by the Board.

## **18 Accounts and audit**

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### **18.1 Keeping accounts**

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

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited.

### **18.2 Board responsibilities**

The Board must do all things reasonably open to it to:

- (a) ensure that all money payable to the Company is properly collected;
- (b) ensure that all money expended by the Company is properly expended and properly authorised;
- (c) ensure that adequate control is maintained over assets owned by or in the custody of the Company;
- (d) ensure that all liabilities incurred by the Company are properly authorised;
- (e) ensure efficiency and economy of operations and avoidance of waste and extravagance;
- (f) develop and maintain an adequate budgeting and accounting system; and
- (g) develop and maintain an adequate internal audit system.

### **18.3 Right of Access**

- (a) A Director has a right of access to financial records of the Company at all reasonable times and after providing reasonable notice.

- (b) Except as provided by law, this constitution or as authorised by a Directors' resolution, a person who is not a Director does not have the right to inspect any of the Board papers, books, records or documents of the Company.

#### 18.4 **Financial Report**

If required by the Act or the ACNC Legislation, the Board must cause the Company to prepare a financial report and a Directors' report that comply with the Act and must report to Members in accordance with the Act.

#### 18.5 **Audit**

If required by the Act or the ACNC Legislation, the Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report.

#### 18.6 **Inspection of financial records and books**

The books of account of the Company must be kept at the registered office of the Company or at such other place as the Board thinks fit and will be open to inspection by the Members of the Company on such reasonable conditions as the Board determines.

### 19 **Indemnity**

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#### 19.1 **Indemnity**

Subject to the Act, the Company must, to the extent the person is not otherwise indemnified, indemnify every officer (as defined in the Act) of the Company against a liability:

- (a) incurred to the Company, to a related body corporate or to a person other than the Company (including a liability incurred as a result of appointment or nomination of the Company or subsidiary as a trustee or as an officer of another corporation) unless the liability arises out of conduct involving a lack of good faith or is for a pecuniary penalty order or compensation under the Act; and
- (b) for costs and expenses incurred by the officer in defending civil or criminal proceedings in which judgment is given in favour of that person or in which that person is acquitted, or in connection with an application in relation to those proceedings in which the court grants relief to that person under the Act.

#### 19.2 **Insurance**

Subject to the Act, the Company may enter into and pay premiums on a contract of insurance in respect of any person, to the fullest extent permitted by the Act.

#### 19.3 **Former Officers**

The indemnity in favour of officers under rule 19.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company, even if the person is not an officer at the time the claim is made.

### 20 **Amendments to constitution**

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Any amendment to this constitution must be approved by:

- (a) a Special Resolution at a meeting of the members; or
- (b) a circular resolution signed by all of the members.