



Constitution

A public company limited by guarantee and not having a share capital

Wimmera Southern Mallee Development Limited
A.C.N. 656 633 402

Effective from: 12th day of April 2022

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Constitution of Wimmera Southern Mallee Development Limited A.C.N. 656 633 402

This Constitution was adopted on 12 day of April 2022

1. Interpretation

1.1 This Constitution

- (a) This Constitution contains clauses setting out the manner in which the Members of the Company have agreed to conduct the internal administration of the Company.
- (b) This Constitution takes the place of the Replaceable Rules contained in the Corporations Act.

1.2 Definitions

In this Constitution, unless the context otherwise requires:

Accounting Standards means:

- (a) the accounting standards required under the Corporations Act including the Approved Accounting Standards issued by the Australian Accounting Standards Board;
- (b) other mandatory professional reporting requirements issued by the joint accounting bodies including the Australian Accounting Standards issued either jointly by CPA Australia and the Institute of Chartered Accountants in Australia or by the Australian Accounting Research Foundation on behalf of CPA Australia and the Institute of Chartered Accountants in Australia; and
- (c) if no accounting standard applies under the Corporations Act or other mandatory professional reporting requirements, the principles set out in the Australian Statement of Accounting Concepts;

AGM means an annual general meeting of the Company held in accordance with section 250N of the Corporations Act;

Appointed Director means a Director appointed in accordance with clause 3.2;

ASIC means the Australian Securities and Investments Commission;

Auditor means the auditor for the time being of the Company;

Board means the board of Directors of the Company comprised of Municipality Appointed Directors, the Chairperson and Appointed Directors;

Chairperson means the independent person appointed as a Director to be the chairperson of meetings of Directors in accordance with clause 3.4;

Committee means any committee formed by the Board to assist with the governance of the Company or other group specifically formed to assist the Board in implementation of strategic initiatives of the Company.

Company means Wimmera Southern Mallee Development Limited ANC 656 633 402.

Constitution means this Constitution and any supplementary, substituted or amended Constitution in force from time to time;

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

Director means any person formally and lawfully appointed as a director of the Company and includes both Appointed Directors and Municipality Appointed Directors and unless the context otherwise requires, includes the Chairperson;

Guarantee means the maximum amount each Member agrees to pay to the Company in accordance with clause 2.3;

Member means a Municipality admitted as a Member under clause 7.2;

Member Representative means the representative nominated by the Member to exercise the powers of the Member in accordance with clause 7.6;

Municipality means a municipality in the Region;

Member Director means a Director nominated by Member in accordance with clause 3.3;

Objects means the object of the Company set out in clause 2.4;

Officer means an officer of the Company within the meaning of the Corporations Act;

Region means the Wimmera Southern Mallee region of Victoria;

Register of Members means the Register of Members to be kept pursuant to section 169 of the Corporations Act; and

Secretary means any person formally and lawfully appointed as a secretary of the Company including any assistant or acting Secretary or any substitute for the time being for the Secretary and in the absence of a determination by the Board shall be the person employed by the Company in the position of Chief Executive Officer.

1.3 Interpretation

In this Constitution, unless the context otherwise requires:

- (a) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (b) a reference to a **body** or **authority** which ceases to exist is a reference to a body or authority having substantially the same objects as the named body or authority;
- (c) a reference to a **clause** is a reference to a clause of this Constitution;
- (d) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this Constitution;
- (e) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (f) **related** or **subsidiary** in respect of a corporation has the same meaning given to that term in the Corporations Act;
- (g) **including** and **includes** are not words of limitation;
- (h) the words **at any time** mean at any time and from time to time;
- (i) a word that is derived from a defined word has a corresponding meaning;
- (j) **monetary amounts** are expressed in Australian dollars;
- (k) the singular includes the plural and vice-versa; and
- (l) words importing one gender include all other genders.

1.4 Application of Legislation

- (a) Unless the context otherwise requires, an expression used in this Constitution that has a particular meaning in the Corporations Act has the same meaning as in the Constitution.
- (b) Subject to the Corporations Act, the Replaceable Rules contained in the Corporations Act do not apply to the Company.
- (c) This Constitution is subject to the Corporations Act and where there is any inconsistency between a clause of this Constitution and the Corporations Act, the Corporations Act prevails to the extent of the inconsistency.

1.5 Transfer of Registration

The Company is formed upon the transfer of registration of Wimmera Development Association Inc and Wimmera Development Association Limited.

2. Nature of the Company

2.1 Public Company limited by Guarantee

The Company is a public company limited by guarantee.

2.2 Limitation of Company

- (a) The Company must not be carried on for the purpose of the profit or gain of any Member.
- (b) The Company does not have the power to:
 - (i) issue shares of any kind; or
 - (ii) apply, pay or transfer, whether directly or indirectly, any portion of the income and property of the Company for the benefit of, or to, a Member, other than as provided in clauses 3.10 and 3.11.

2.3 Guarantee of Members

If the Company is wound up:

- (a) while a Member is a Member; or
- (b) within one year after the Member ceases to be a Member, each such Member must contribute a maximum of \$50 to the Company for payment of:
 - (i) the debts and liabilities of the Company;
 - (ii) the costs, charges and expenses of any winding up; and
 - (iii) the adjustment of the rights of Members among themselves.

2.4 Objects of the Company

- (a) The Company is established with the following objectives:
 - (i) lead, support and encourage the sustainable development of the Region in partnership with government, business and the community;
 - (ii) promote, encourage and facilitate the ongoing economic and social development of the Region;
 - (iii) determine the natural and built resources of the region, which might act as focal points for economic development and opportunity;
 - (iv) establish a development strategy which meets the needs of the community and enables it to achieve its potential, while recognising the role other regional organisations and groups play in pursuing similar objectives;

- (v) advocate for the Region by engaging with politicians, relevant government agencies and senior bureaucrats;
- (vi) advocate for the Region through stakeholder engagement and consultations;
- (vii) liaise with other groups and organisations that have an interest in economic and social development, including for the avoidance of doubt groups and organisations outside the Region;
- (viii) increase the levels of communication and co-operation between Municipalities, communities, organisations, industry and individuals interested in developing the Region;
- (ix) increase public awareness of regional development strategies and directions, and to develop an on-going process of public consultation;
- (x) increase the level of understanding and awareness of all relevant Federal and State programs and services, and assist the Region and its communities obtain maximum benefit from such programs;
- (xi) develop a referral centre and comprehensive information database on matters of economic and social concern, to be available to all levels of the community; and
- (xii) ensure that any development strategy will not only preserve the community's quality of life but will seek to improve it through increased opportunities for investment, employment, education, and research and development.

2.5 Powers of the Company

Solely for the purposes of carrying out the Company's Objects, and without limiting the powers granted to it by section 124 of the Corporations Act, the Company may:

- (a) raise money and otherwise secure sufficient funds to further the Objects;
- (b) receive any funds from any government or authority, municipal, local or otherwise and distribute these funds in a manner that best attains the Objects;
- (c) manage moneys of the Company including funding received from any government or authority, municipal, local or otherwise in a manner consistent with the Objects and with any conditions or contractual obligations attached to that funding;
- (d) support, fund, promote and aid academic research relating to the Objects;
- (e) enter into any arrangements with any government or authority, municipal, local or otherwise that may seem conducive to the Objects;
- (f) employ such staff as is necessary to achieve the Objects or enter into arrangement with a Member for it to employ staff and second that staff to the Company in which event the Member will acknowledge that such staff will report and be accountable to the Board in the performance of their duties;
- (g) invest the moneys of the Company not immediately required in accordance with the investment policy approved by the Board;
- (h) borrow moneys required to facilitate the Company meeting its Objects upon such security as may be determined and to make, accept and endorse any promissory note, bill of exchange and other negotiable instrument; and
- (i) do all such things as are incidental, convenient or conducive to the attainment of all or any of the Objects.

2.6 Amending this Constitution

This Constitution may only be amended by a unanimous resolution of the Members.

3. Directors

3.1 Number and eligibility of Directors

- (a) The Company must have not more than 11 Directors unless otherwise determined in accordance with this Constitution.
- (b) The Board will be comprised of:
 - (i) up to five Appointed Directors appointed by the Members acting through the Nominations Committee;
 - (ii) an independent Chairperson appointed by the Members acting through the Nominations Committee; and
 - (iii) the Member Directors appointed by each of the Members.

3.2 Appointed Directors

- (a) The Members acting through the Nominations Committee may appoint up to five persons as Appointed Directors.
- (b) No person who is a councillor, chief executive officer or other council officer of a Member shall be eligible to be an Appointed Director.
- (c) Subject to clause 3.2(d), the Board acting through the Nominations Committee will establish procedures relating to the nomination and admission of Appointed Directors.
- (d) The Board will maintain a Board Skills Matrix identifying the skills, knowledge, experience and capabilities desired of the Board to enable it to meet both the current and future objectives of the Company. In exercising its powers the Nominations Committee:
 - (i) May engage an independent expert consultant to facilitate the making of any decisions or selections by the Nominations Committee;
 - (ii) shall have regard to the Board Skills Matrix; and
 - (iii) shall ensure that all vacancies are widely advertised to potential candidates with the relevant skills and experience identified in the Board Skills Matrix.
- (e) Save as otherwise provided in this Constitution, all Appointed Directors will hold office for a maximum term of three years with the term of office being set by the Nominations Committee at the time of their appointment. Subject to any specific provision to the contrary in this Constitution or as may otherwise be provided by the Corporations Act all Appointed Directors shall be eligible for reappointment. The Nominations Committee shall be responsible for evaluating the appropriateness of reappointing the individual Director by reviewing the then current Board Skills Matrix and the individual Director's performance. For the avoidance of doubt, all Appointed Director appointments, including re-elections, must be made pursuant to and in accordance with the procedures relating to the nomination and admission of Appointed Directors implemented by the Nominations Committee.
- (f) No Appointed Director shall hold office for more than three consecutive three year terms. When an Appointed Director has concluded a third consecutive three year term in office, they must vacate the office of Appointed Director for a minimum of one year following which he or she is eligible for re-election.

3.3 Member Directors

- (a) Each Municipality Member shall nominate one person as a Member Director.
- (b) A Member Director must be the Mayor or a councillor of the Municipality.
- (c) Where a vacancy occurs in the office of a Member Director the relevant Municipality Member shall notify the Board of a replacement nominee whose appointment shall take place automatically upon receipt of such notification.
- (d) A Member may at any time remove its Member Director and replace this person with another nominee of its choosing by notifying the Company, and the appointment of such replacement nominee in his or her capacity shall be automatic.

3.4 Chairperson

- (a) The Nominations Committee excluding the Chair must in consultation with an independent expert consultant and in accordance with the Board Skills Matrix appoint an independent person as a Director to fulfill the role of Chairperson. No person who is a councillor, chief executive officer or other council officer of a Member shall be eligible to be Chairperson.
- (b) The Chairperson shall hold office for a three year term or until such time he or she is removed as Chairperson in accordance with clause 3.4(c) or ceases office as a Director pursuant to clause 3.14. At the end of his or her term as Chairperson, he or she may nominate for re-election as Chairperson.
- (c) The Nominations Committee excluding the Chairperson may at any time revoke the appointment of the Chairperson and elect another person to that office. Upon the appointment of a Chairperson being revoked the Chairperson shall automatically cease to be a Director.
- (d) All members of the Nominations Committee must receive five (5) working days' notice of any resolution proposed to revoke the appointment of the Chairperson.

3.5 Period of appointment of Directors

Each Director may hold office until they:

- (a) die;
- (b) vacate the office in accordance with clause 3.14; or
- (c) are removed in accordance with clause 3.3(d), 3.4(c) or 3.13, or until the term for which they are appointed or elected expires.

3.6 Casual vacancies

- (a) The Nominations Committee shall whenever there is a vacancy in the number of the Appointed Directors attempt to fill such vacancy.
- (b) A person may be appointed as an Appointed Director in order to make up a quorum for a Directors' meeting even if the total number of Directors otherwise present is not enough to make up that quorum.

3.7 Non-eligibility of Auditor

The Auditor is ineligible to be elected or appointed as a Director.

3.8 Alternate Directors

No Director may appoint an alternate Director to act in his or her place.

3.9 Other offices held by Directors

A Director may hold any other office or position of profit in the Company together with the Directorship on such conditions including additional remuneration as may be agreed by the Directors in accordance with clause 3.10, 3.11 or 3.12.

3.10 No Remuneration of Member Directors

Save as may otherwise be resolved by a unanimous decision of the Nominations Committee, no remuneration or other benefit may be paid or given by the Company to any Member Director except:

- (a) for the reimbursement of out-of-pocket expenses incurred on reasonable commercial terms in carrying out the duties of a Director where the amount does not exceed an amount previously approved by a resolution of the Directors;
- (b) for any service rendered to the Company in a professional or technical capacity, other than in a capacity as Director, where the terms of service are on reasonable commercial terms and have been previously approved by a resolution of the Directors; or
- (c) as an employee of the Company, where the terms of employment are on reasonable commercial terms and have been previously approved by a resolution of the Directors.

3.11 Remuneration of Appointed Directors and Chair

Appointed Directors and the Chair shall be entitled to such remuneration as is determined by a unanimous decision of the Nominations Committee in addition to any other benefit or payment given by the Company to an Appointed Director or the Chair:

- (a) for the reimbursement of out-of-pocket expenses incurred on reasonable commercial terms in carrying out the duties of a Director where the amount does not exceed an amount previously approved by a resolution of the Directors;
- (b) for any service rendered to the Company in a professional or technical capacity, other than in a capacity as Director, where the terms of service are on reasonable commercial terms and have been previously approved by a resolution of the Directors; or
- (c) as an employee of the Company, where the terms of employment are on reasonable commercial terms and have been previously approved by a resolution of the Directors.

3.12 Remuneration of Directors for extra services

- (a) If the Company requests a Director to perform services in addition to those required by the Corporations Act, the Company may remunerate the Director in any manner the Company thinks fit.
- (b) Any remuneration paid as contemplated by clause 3.12(a) is in addition to remuneration paid under clause 3.10 or clause 3.11.

3.13 Removal of Directors

The Nominations Committee may:

- (a) remove an Appointed Director from office; and
- (b) appoint another person as a replacement of the Appointed Director removed.

3.14 Vacation of office of Director

- (a) A Director ceases to be a Director if the Director:
 - (i) becomes prohibited from being a Director by virtue of any provision of the Corporations Act;
 - (ii) becomes of unsound mind or a person whose property is liable to be dealt with under a law relating to mental health;
 - (iii) is declared bankrupt;
 - (iv) resigns their office by written notice to the Company;
 - (v) is absent from meetings of the Directors for more than 3 months without obtaining permission for such absence from the other Directors;
 - (vi) is directly or indirectly interested in any contract or proposed contract with the Company (other than as a Member) and fails to disclose details of that interest as required by 4.1;
 - (vii) is removed from the office of Appointed Director by the Nominations Committee in accordance with clause 3.13;
 - (viii) is removed from the office of Chairperson by the Nominations Committee in accordance with clause 3.4;
 - (ix) is a Member Director of a Member which ceases to be a Member; or
 - (x) is a Member Director and is removed from office by the Municipality appointing that Director.

4. Management of business by Directors

4.1 Material personal interest - Director's duty to disclose

- (a) Unless an exception under section 191 of the Corporations Act applies, if a Director has a material personal interest in a matter that relates to the affairs of the Company, the Director must give the other Directors notice of the interest.
- (b) The notice required by clause 4.1(a) must:
 - (i) include details of:
 - (A) the nature and extent of the interest; and
 - (B) the relation of the interest to the affairs of the Company; and
 - (ii) be given at a Directors' meeting as soon as practicable after the Director becomes aware of their interest in the matter.

4.2 Director may give standing notice about an interest

A Director with a material personal interest in a matter that relates to the affairs of the Company may give standing notice of this ongoing interest in accordance with clause 4.1 and section 192 of the Corporations Act.

4.3 Voting and completion of transactions in which a Director has a material personal interest

A Director who has a material personal interest in a matter that is being considered at a Director's meeting must not:

- (a) be present while the matter is being considered at the meeting; or

- (b) vote on the matter, unless:
- (c) the interest does not need to be disclosed under section 191 of the Corporations Act; or
- (d) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the Director, the nature of their interest in the matter and its relation to the affairs of the Company; and
 - (ii) states that the Directors are satisfied that the interest should not disqualify the Director from voting or being present.

4.4 Financial benefits to related parties

The Company must not give a financial benefit to a related party of the Company unless it is authorised in accordance with and complies with the Corporations Act and any laws and regulations applicable to the Company.

4.5 Powers of Directors

- (a) Subject to the Corporations Act and to any provision of this Constitution, the business of the Company is to be managed by or under the direction of the Directors.
- (b) The Directors may exercise all of the powers of the Company except any powers that the Corporations Act or this Constitution requires the Company to exercise in general meeting.

4.6 Negotiable instruments

- (a) Any two Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (b) The Directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

4.7 Delegation and Committees

- (a) The Board:
 - (i) must establish a Nominations Committee which shall consist of such Municipality Appointed Directors as the Municipality Appointed Directors determine and the Chair;
 - (ii) must establish an Operations Committee which shall consist of the Executive Officer acting as the manager of the Company and the Chief Executive Officer of each Member or such other suitable person who is employed by or holds a position of office at a Member; and
 - (iii) may establish such other Committees as it considers appropriate.
- (b) The Board may specify in writing from time to time the terms of reference and functions of any Committee formed pursuant to this clause 4.7 and shall have the power to appoint and remove any persons appointed to a Committee.
- (c) The Directors may delegate any of their powers to a Committee, a Director, an employee of the Company or any other person.
- (d) A delegate or Committee must exercise the powers delegated to it in accordance with any directions of the Directors.
- (e) The effect of the Committee, Director or employee so exercising a power is the same as if the Directors exercised it.

4.8 Appointment of attorney for Company

The Directors may by power of attorney appoint any company, firm, person or body of persons to be the attorney of the Company for:

- (a) any period; and
- (b) for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors under this Constitution.

4.9 Accounting for profit

Where a Director's interest is approved by a resolution of Directors in accordance with clause 4.3(d), no Director will be liable to account that interest to the Company for any profit arising from any office or place of profit or realised from any contract or arrangement by reason only of the Director holding that office or of the fiduciary relations so established.

4.10 Director's Duties

- (a) Duty to act in the best interest of the Company

A Director must act in the best interest of the Company. A Director's first loyalty is to the Company, not to individual members or groups of Members or to other organisations or other parties.

- (b) Duty of care and diligence

In the exercise of his or her powers or the exercise of his or her duties, a Director must exercise the degree of care and diligence that a reasonable person in a like position in an organisation would exercise in the Company's circumstances.

- (c) No improper use of inside information

A Director or former Director must not, in relevant circumstances, make improper use of information acquired by virtue of his or her position to gain, directly or indirectly, an advantage for him or herself as or for any other person or to cause detriment to the Company.

- (d) No gain by improper use of the position

A Director must not, in relevant circumstances, make improper use of his or her position to gain, directly or indirectly, an advantage for him or herself as or for any other person or to cause detriment to the Company.

- (e) Not to trade while insolvent

A Director must not permit the Company to trade while insolvent.

- (f) Duty to avoid a conflict of interest

A Director is bound to avoid any conflict between their personal interests and those of the Company.

5. Directors' meetings

5.1 Circulating resolutions

- (a) The Directors may pass a resolution without a Directors' meeting being held if all 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) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Director signs.

5.2 Calling Directors' meetings

A Directors may at any time, and the Secretary must convene a Directors' meeting on the requisition of not less than three Directors, at least one of whom must be a Member Director. Reasonable notice of a Directors' meeting must be given individually to every Director.

5.3 Use of technology

- (a) A Directors' meeting may be called or held using any technology consented to by the Directors.
- (b) Any consent may be a standing consent.
- (c) A Director may only withdraw their consent within a reasonable period before the meeting.

5.4 Chairing Directors' meetings

- (a) The Chairperson shall chair the Directors' meetings.
- (b) If a Chairperson has not been elected or is not available or declines to act as chair for the meeting or part of it, the Directors must elect a Director present to chair a meeting, or part of it as the case maybe.

5.5 Quorum at Directors' meetings

Unless the Directors determine otherwise, the quorum for a Directors' meeting is a majority in number of the Directors and the quorum must be present at all times during the meeting.

5.6 Passing of Directors' resolutions

- (a) All questions at a Directors' meeting shall be determined by a show of hands and a resolution of the Directors shall be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- (b) Each Director present in person has one vote on a matter arising and the Chairperson has no casting vote in addition to any vote they have in their capacity as a Director unless this Constitution expressly states otherwise.

6. Secretary

6.1 Appointment

The Directors must appoint a Secretary in accordance with the Corporations Act.

6.2 Terms and conditions of office

A Secretary holds office on the terms and conditions (including as to remuneration) that the Directors think fit.

7. Members

7.1 Number of Members

- (a) There must be at least one Member.
- (b) The Members may set a limit on the maximum number of Members.

7.2 Admission to membership

- (a) Any Municipality in the Region is eligible to be admitted as a Municipality Member.
- (b) The Members may resolve to impose an annual membership fee or application fee.
- (c) The application of a Municipality to become a Member must be:
 - (i) lodged with the Secretary;
 - (ii) made in writing and be in such form that the Board determines; and
 - (iii) accompanied by any applicable application or membership fees.
- (d) As soon as is practicable after the receipt of an application, the Secretary shall refer the application to the Board.
- (e) The Members must determine in its absolute discretion whether to approve or reject the application.
- (f) If the Members approves an application to become a Member, the Board must as soon as practicable notify the applicant in writing that the application has been approved.
- (g) If the Members approve an application, the Secretary must within 28 days enter the applicant's name in the register or Members.
- (h) An applicant becomes a Member and is entitled to exercise the rights of a Member when its name is entered in the Register.
- (i) If the Members rejects an application, the Board must, as soon as practicable, notify the applicant in writing that the application has been rejected. The Board does not have to give any reasons for rejecting an application.
- (j) A right, privilege or obligation of a Member by reason of being a Member is not capable of being transferred or transmitted to another Municipality or person.
- (k) Each Member admitted must sign an undertaking to be bound by this Constitution.

7.3 Classes of Members

- (a) The Members may by Special Resolution:
 - (i) establish additional different classes of Members;
 - (ii) prescribe the qualifications, rights and privileges of Members of a class; and
 - (iii) vary the qualifications, rights and privileges or terminate any class of Members established pursuant to this clause 7.3(a).

7.4 Address and contact details of Member

- (a) Each Member must provide the Secretary with:
 - (i) an address in Australia where the Company can send notices to that Member and the telephone number, facsimile number and email address (as applicable) of the Member; and
 - (ii) such other information as the Board may require.
- (b) Each Member must notify the Secretary in writing of any change in that person's name, address, telephone or facsimile number or email address within one month after the change.

- (c) If a Member fails to provide information in accordance with clause 7.4(a) the address of the Member is deemed to be the registered office of the Company.

7.5 Register of Members

- (a) The Secretary must keep and maintain a Register of Members containing:
- (i) the name and address of each Member; and
 - (ii) the date on which each Member's name was entered in the Register and, where relevant, the date any Member ceased to be a Member.

7.6 Member Representative

- 7.7 The rights of a Member shall be exercised by a Member Representative nominated in writing by the Member who will exercise the powers of the Member subject to any restrictions placed on such powers by the Member in nominating the Member Representative. Where for the purposes of this Constitution a Member is required to do any act or thing, or where it is required to give meaning or efficacy to this Constitution a reference to a Member shall be or include a reference to a Member Representative and vice versa. In the absence of a written nomination by the Member the Member Representative shall be the Member Director appointed by that Municipality Cessation of Membership**

A Member ceases to be a Member if:

- (a) the Member resigns by notice in writing to the Secretary, in which case the resignation shall take effect from the date the notice is received or such later date as is specified in the notice;
- (b) the Members determine to expel the Member where the Member has failed to pay any applicable membership fees within 3 months of such fees falling due; or
- (c) the Member has a receiver or a receiver and manager appointed to its assets or some of them, or passes a resolution or takes or has taken against it any action with the effect of its winding up.

7.8 Effect of cessation

A Member who ceases to be a Member continues to be liable for:

- (a) any moneys due by them to the Company; and
- (b) the Guarantee.

7.9 Power of Directors in respect of a Member's conduct

- (a) If any Member:
- (i) wilfully refuses or neglects to comply with the provisions of the Constitution; or
 - (ii) engages in any conduct which, in the opinion of the Members, is unbecoming of a Member or prejudicial to the interests of the Company,
- the Members have the power to censure, fine, suspend or expel the Member.
- (b) At least one week before the meeting of the Directors at which a resolution under clause 7.9(a) is passed, the Company must provide the Member with:
- (i) notice of the meeting;
 - (ii) the allegations against them;

- (iii) the intended resolution; and
- (iv) advice that the Member will have an opportunity, at the meeting and before the passing of the resolution, to give, orally or in writing, any explanation or defence they may think fit.

8. Meetings of Members

8.1 Calling of meetings of Members by a Director

A minimum of three Directors, at least one of whom must be a Member Director may call a general meeting of Members. The Board must call and arrange to hold a general meeting if required to do so under the Corporations Act.

8.2 Calling of meetings by Members

A Member may call and arrange to hold a general meeting in accordance with section 249F of the Corporations Act.

8.3 Amount of notice of meetings

- (a) Subject to the Corporations Act, at least 21 days' notice must be given of a general meeting of Members.
- (b) Subject to clause 8.3(c), the Company may call on shorter notice:
 - (i) an AGM, if all of the Members entitled to attend and vote at the AGM agree beforehand; and
 - (ii) any other general meeting, if Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- (c) At least 21 days' notice must be given of a meeting of Members at which a resolution will be moved to remove an Auditor.

8.4 Notice of meetings of Members

- (a) Written notice of the meeting of Members must be given individually to each Member entitled to vote at the meeting and to each Director.
- (b) Notice to joint Members must be given to the joint Member first named in the register of Members.
- (c) The Company may give the notice of meeting to a Member:
 - (i) personally;
 - (ii) by sending it by post to the address of the Member in the Register of Members or the alternative address (if any) nominated by the Member;
 - (iii) by sending it to the electronic address (if any) nominated by the Member; or
 - (iv) by any other means authorised by the Corporations Act.
- (d) A notice of meeting sent by post is taken to be given three days after it is posted. A notice of meeting sent by electronic means is taken to be given on the business day after it is sent.
- (e) A Member's attendance at a meeting of Members waives any objection which that Member may have had to a failure to give notice, or the giving of a defective notice, of the meeting, unless the Member at the beginning of the meeting objects to the holding of the meeting.

8.5 Auditor entitled to notice and other communication

The Company must give its Auditor:

- (a) notice of a general meeting of Members in the same way that a Member is entitled to receive notice; and
- (b) any other communication relating to the general meeting of Members that a Member is entitled to receive.

8.6 Contents of notice of meeting

- (a) The notice of meeting must specify the place, the day and the hour of meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate the meeting, the general nature of the business to be transacted and any other matters as are required by the Corporations Act.
- (b) The accidental omission to give notice of any general meeting to, or the non-receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at a general meeting of Members.

8.7 Notice of adjourned meetings

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one month or more.

8.8 Members' resolutions

The Members may propose a resolution to be moved at a general meeting only in accordance with the provisions of Division 4 of Part 2G.2 of the Corporations Act.

8.9 Time and place for meetings of Members

A meeting of Members must be held at a reasonable time and place.

8.10 Technology

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

8.11 Quorum

- (a) The quorum for a meeting of Members is three Member Representatives present in person. The quorum must be present at all times during the meeting.
- (b) In determining whether a quorum is present:
 - (i) individuals attending as proxies are to be counted;
 - (ii) if a Member has appointed more than one proxy, only one of them is to be counted; and
 - (iii) if a Member has appointed another Member present at a meeting as proxy then the Member present at the meeting shall be counted as being present themselves and as being present for each Member they are appointed as proxy for.
- (c) A meeting that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is to be adjourned to a date, time and place as the Directors specify.
- (d) If the Directors do not specify one or more of those requirements, the meeting is adjourned to :
 - (i) if the date is not specified, the same day of the week in the following week;
 - (ii) if the time is not specified, the same time; or

- (iii) if the place is not specified, the same place.
- (e) If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

8.12 Chairing meetings of Members

- (a) The Chairperson shall chair all meetings of Members.
- (b) The Members present at a meeting of the Members must elect a Member present to act as the Chairperson of the meeting (or part of it) if:
 - (i) a Chairperson has not been elected by the Directors; or
 - (ii) the Chairperson is not available or declines to act as chair for the meeting (or part of the meeting).
- (c) The chair of the meeting may determine the procedures to be adopted for proper and orderly discussion or debate at the meeting, and the casting or recording of votes at the meeting.
- (d) The chair of the meeting may make rulings without putting the question (or any question) to the vote if that action is required to ensure orderly conduct of the meeting.
- (e) The chair of the meeting may, subject to the Corporations Act, at any time terminate discussion or debate on any matter being considered at the meeting and require that matter to be put to a vote.
- (f) The chair of the meeting may refuse to allow debate or discussion on any matter which is not business referred to in the notice of that meeting or is not business of the meeting permitted pursuant to the Corporations Act without being referred to in the notice of meeting.
- (g) Subject to the terms of this Constitution regarding adjournment of meetings, the chair of the meeting's ruling on all matters relating to the order of business, procedure and conduct of the general meeting is final and no motion of dissent from a ruling of the chair of the meeting may be accepted.
- (h) The chair of the meeting may, in his or her absolute discretion, refuse any person admission to a general meeting, or expel the person from the general meeting and not permit them to return, if the chair of the meeting reasonably considers that the person's conduct is inappropriate. Inappropriate conduct in a general meeting includes:
 - (i) the use of offensive or abusive language which is directed to any person, object or thing;
 - (ii) attendance at the meeting while under the influence of any kind of drug, or using or consuming any drug at the meeting, including any alcoholic substance; or
 - (iii) possession of any article, including a recording device or other electronic device or a sign or banner, which the chair of the meeting considers is dangerous, offensive or disruptive or likely to become so.
- (i) The chair of the meeting may delegate any power conferred on them to any person.
- (j) Nothing contained in this clause 8.12 limits the powers conferred by law on the chair of the meeting.
- (k) The chair of a meeting of Members must adjourn the meeting if Members present and holding a majority of votes at the meeting agree or direct that the chair of the meeting must do so.

8.13 Auditor's right to be heard at meetings of Members

- (a) The Auditor is entitled to attend and be heard at meetings of Members.
- (b) The Auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the Auditor in their capacity as Auditor.
- (c) The Auditor is entitled to be heard even if:
 - (i) the Auditor retires at the meeting; or
 - (ii) the meeting passes a resolution to remove the Auditor from office.
- (d) The Auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any general meeting.

8.14 Proxies and body corporate representatives

- (a) Each Member Representative is entitled to attend and cast a vote at meetings of Members and Members may also appoint a proxy to attend and cast a vote at that meeting.
- (b) Any proxy or Member Representative appointed by a Member must be appointed in accordance with and has the rights set out in Division 6 of Part 2G.2 of the Corporations Act.
- (c) A proxy need not be a Member, however:
 - (i) a document appointing a proxy must be in writing, in any form permitted by the Corporations Act or in any form (including electronic) which the Board may determine or accept, and signed on behalf of the Member making the appointment; and
 - (ii) a document appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the document so provides, the proxy is not entitled to vote on the resolution except as specified in the document.
- (d) Before the time for holding the meeting or adjourned meeting at which a proxy proposes to vote, the document appointing the proxy must be deposited with the Company.
- (e) That document must either be:
 - (i) received at the Company's office or at another place or electronic address specified for that purpose in the notice convening the meeting not less than 24 hours before the time for holding the meeting; or
 - (ii) produced to the chair of the meeting before the proxy votes.
- (f) If a general meeting has been adjourned, an appointment and any authority received by the Company at least 24 hours before the resumption of the meeting are effective for the resumed part of the meeting.

8.15 Voting

- (a) Subject to any rights or restrictions attached to any class of Member, at a meeting of Members each Member has one vote on a show of hands and on a poll.
- (b) The Chairperson does not have a casting vote.

8.16 Objections to right to vote

A challenge to a right to vote at a meeting of Members:

- (a) may only be made at the meeting; and

- (b) must be determined by the Chairperson whose decision is final.

8.17 How voting is carried out

- (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.
- (b) On a show of hands, a declaration by the Chairperson is conclusive evidence of the result.
- (c) Neither the Chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against a resolution.

8.18 Matters on which a poll may be demanded

- (a) A poll may be demanded on any resolution other than resolutions concerning:
 - (i) the election of the chair of the meeting; or
 - (ii) the adjournment of the meeting.
- (b) A poll may be demanded in accordance with section 250L of the Corporations Act.

8.19 When and how polls must be taken

- (a) A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair of the meeting directs.
- (b) A poll on the election of the chair of a meeting or on the question of an adjournment must be taken immediately.

8.20 Holding of AGM

- (a) The Company must hold an AGM within 18 months after its registration.
- (b) The Company must hold an AGM at least once in each calendar year and within five months after the end of its financial year.
- (c) An AGM must be held in addition to any other meetings held by the Company in a year.
- (d) If the Company only has one Member, it is not required to hold an AGM.

8.21 Extension of time for AGM

The Company may lodge an application with ASIC to extend the period within which it is required to hold the AGM in accordance with section 250P of the Corporations Act.

8.22 Consideration of reports at AGM

The Directors must make the following available at an AGM:

- (a) the financial report;
- (b) the Directors' report; and
- (c) the Auditor's report,

for the last financial year that ended before the AGM completed in accordance with the requirements of Part 2M.3 of Chapter 2M of the Corporations Act.

8.23 Business of the AGM

The business of the AGM may include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report, Director's report and Auditor's report;
- (b) the appointment of the Auditor; and

- (c) the fixing of the Auditor's remuneration.

8.24 Questions by Members of the Company

The chair of the AGM must 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.

8.25 Questions by Members to Auditors

If the Auditor or their representative is at the meeting, the chair of an AGM must allow a reasonable opportunity for the Members as a whole at the meeting to ask the Auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the Auditor's report.

8.26 Resolution in writing

- (a) A resolution in writing signed by all Members entitled to vote on the resolution is to be treated as a determination of the Members passed at a meeting of the Members duly convened and held.
- (b) A resolution in writing may consist of several documents in like form, each signed on behalf of one or more Members, and if so signed it takes effect on the latest date on which a Member signs one of the documents.

9. Directors' and Members' minutes

9.1 Minutes

- (a) The Company must keep minute books in which it records within one month:
 - (i) proceedings and resolutions of Members' meetings;
 - (ii) proceedings and resolutions of Directors' meetings, including committee meetings;
 - (iii) resolutions passed by Members without a meeting; and
 - (iv) resolutions passed by Directors without a meeting.
- (b) The Company must ensure that the minutes of a meeting are signed by the Chairperson of the meeting or the Chairperson of the next meeting within a reasonable time after the meeting.
- (c) The Company must ensure that the minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

9.2 Members' access to minutes

Members are entitled to gain access to the minute book of meetings of Members in accordance with the Corporations Act.

10. Accounts and audit

10.1 Accounting records

- (a) The Directors must ensure that accounting and other records are kept to correctly record and explain the transactions and financial position of the Company, to enable true and fair profit and loss accounts and balance sheets to be prepared and to permit preparation of any other documents required by the Corporations Act or this Constitution.
- (b) The records must be kept:
 - (i) in a manner that enables them to be conveniently and properly audited;

- (ii) for seven years after the completion of the transactions or operations to which they relate; and
- (iii) at the Company's registered office or at such other place as the Directors think fit.
- (c) The records must at all times be open to inspection by the Directors.

10.2 Accounts

- (a) Each financial year, the Company must prepare a financial report and a Directors' report in accordance with the Corporations Act.
- (b) The financial report for each financial year must consist of:
 - (i) the financial statements for the year;
 - (ii) the notes to the financial statements; and
 - (iii) the Directors' declaration about the statement and the notes.
- (c) The financial statements for the year will consist of:
 - (i) a profit and loss statement for the previous financial year;
 - (ii) a balance sheet at the date to which the profit and loss statement is made up;
 - (iii) a statement of cashflows for the year; and
 - (iv) if required by the Accounting Standards, a consolidated profit and loss statement, balance sheet and statement of cash flows.
- (d) The notes to the financial statements must consist of:
 - (i) disclosures required by the Corporations Regulations;
 - (ii) the notes required by the Accounting Standards (if any); and
 - (iii) if required, any other information necessary to give a true and fair view of the financial position and performance of the Company.
- (e) The Directors' declaration made pursuant to clause 10.2(b)(iii) is a declaration by the Directors:
 - (i) that the financial statement, and the notes required by the Accounting Standards comply with the Accounting Standards;
 - (ii) that the financial statements and the attached notes give a true and fair view of the financial position and performance of the Company;
 - (iii) whether, in the Directors' opinion, there are reasonable grounds to believe that the Company will be able to pay its debts as and when they become due and payable; and
 - (iv) whether, in the Directors' opinion, the financial statement and attached notes are in accordance with the Corporations Act.

10.3 Auditor

The Company must appoint a registered company auditor to audit the Company's financial statements in accordance with the Corporations Act. The remuneration of the Auditor must be fixed and the Auditor's duties regulated in accordance with the Corporations Act.

11. Winding up

11.1 Rights of Members on winding up

If the Company is wound up or dissolved, the Members have no right to participate in any distribution or payment of the assets or property of the Company.

11.2 Distribution of assets

- (a) If the Company is wound up or dissolved, the assets and property available for distribution after satisfaction of all debts and liabilities must be given or transferred to some other institution or institutions:
 - (i) whose objects are similar to the objects of the Company;
 - (ii) whose constitution prohibits the distribution of its income and property to an extent at least as great as that imposed by clause 2.2(b); and
 - (iii) which is approved by the Commissioner of Taxation as an institution exempt from income tax.
- (b) The Directors must determine the identity of the institution or institutions for the purpose of clause 11.2(a) at the time of dissolution.
- (c) If the Directors fail to determine the identity of the institution or institutions under clause 11.2(b), the Supreme Court of Victoria may make that determination.

12. Indemnity

12.1 Indemnity

- (a) Subject to Part 2D.2 of the Corporations Act, a person who is an Officer or Auditor of the Company is indemnified by the Company against any liability to another person (other than the Company or a related body corporate of the Company as defined in the Corporations Act) incurred in that person's capacity as an Officer unless the liability:
 - (i) arises out of conduct involving a lack of good faith; or
 - (ii) is for a pecuniary penalty order or composition order under Part 9.4B of the Corporations Act.
- (b) The Company will indemnify any other employee of the Company at the Directors' discretion.
- (c) The Company will indemnify an Officer against a liability for costs and expenses (including, legal expenses on a full indemnity basis) incurred by the Officer:
 - (i) in defending proceedings, whether civil or criminal, in which:
 - (A) judgment is given in favour of the Officer; or
 - (B) the Officer is acquitted; or
 - (ii) in connection with an application, in relation to proceedings under clause 12.1(c)(i), in which a court grants relief to the Officer under the Corporations Act,
 subject only to an obligation on the Officer to repay to the Company the expenses advanced by the Company if:
 - (iii) judgment is not given in the Officer's favour;
 - (iv) the Officer is not acquitted;
 - (v) a court subsequently determines that the indemnification is not permitted; or

- (vi) the indemnification is not permitted by the Corporations Act.
- (d) For the purposes of this clause, the Company will have the burden of proving that the Officer to be indemnified is not entitled to the requested indemnification.
- (e) The indemnification rights in this clause constitute a contract between the relevant parties seeking indemnification and the Company and will continue to have effect following the rescission or restrictive modification of the clause with respect to events occurring prior to the rescission or modification of the clause.

12.2 Payment of Costs

The Directors may, out of the funds of the Company, pay all costs, losses and expenses which any Officer may incur or become liable to pay by reason of any contract entered into or act or thing done by them in their capacity as an Officer or in any way in discharge of their duties.

12.3 Limit of indemnity

Subject to the provisions of the Corporations Act, an Officer of the Company will not be liable for:

- (a) the acts, receipts, neglect or defaults of any other Officer;
- (b) joining in any receipt or other act of conformity or for any loss or expense happening to the Company through:
 - (i) the insufficiency or deficiency of title to any property acquired by order of the Officers for or on behalf of the Company; or
 - (ii) the insufficiency or deficiency of any security in or upon which any of the moneys of the Company is invested at any time;
- (c) any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any moneys, securities or effects are deposited at any time;
- (d) any loss occasioned by any error of judgment or oversight on the Officer's part; or any other loss, damage or misfortune which occurs in the execution of the duties of the Officer's office, unless the loss, damage or misfortune occurred through the Officer's own dishonesty.

13. Insurance

Except to the extent precluded by the Corporations Act, the Company may pay a premium for a contract insuring a person who is or has been an Officer, against:

- (a) any liability incurred by the Officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of sections 182 or 183 of the Corporations Act; or
- (b) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal and whatever their outcome.