

Constitution

The Peninsula Montessori Association Ltd ACN 002 057
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Constitution of Peninsula Montessori Association Ltd ACN 002 057 025

Preliminary	5
1. Defined terms	5
2. Interpretation	6
3. Application of the Corporations Act	6
Objects and powers	7
4. Objects	7
5. Powers	7
Income and property of Company	8
6. Income and property of Company	8
Membership	8
7. Classes of membership	8
8. Admission	8
9. Subscriptions	9
10. Ceasing to be a Member	9
11. Powers of attorney	10
General meetings	10
12. Annual general meeting	10
13. Calling general meeting	10
14. Notice of general meeting	11
Proceedings at general meetings	11
15. Member	11
16. Quorum	11
17. Chairperson	12
18. Adjournment	12

19.	Decision on questions	12
20.	Taking a poll	13
21.	Written resolutions of Members	13
22.	Casting vote of chairperson	14
23.	Offensive material	14
	Votes of Members	14
24.	Entitlement to vote	14
25.	Objections	14
26.	Votes by proxy	14
27.	Document appointing proxy	15
28.	Lodgement of proxy	15
29.	Validity	16
	Directors	16
30.	Directors	16
31.	Appointment and removal of Directors	16
32.	Retirement	17
33.	Vacation of office	17
34.	Additional and casual Directors	17
35.	Powers and duties of Directors	18
36.	Directors' meetings	18
37.	Decision on questions	19
38.	Special Matters	19
39.	Payments to Directors	20
40.	Directors' interests	20
41.	Remaining Directors	21
42.	Chairperson	21
43.	Delegation	21
44.	Written resolutions	22
45.	Validity of acts of Directors	22

46. Minutes and Registers	22
47. Appointment of attorneys and agents	23
Secretary	23
48. Secretary	23
Inspection of records	24
49. Inspection of records	24
Notices	24
50. Service of notices	24
51. Persons entitled to notice	25
Audit and accounts	25
52. Audit and accounts	25
Winding up	25
53. Winding up	25
Indemnity and insurance	26
54. Indemnity and insurance	26

Preliminary

1. Defined terms

1.1 In this Constitution unless the contrary intention appears:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth), or any other legislation relating to the establishment or operation of an Australian charities commission and/or a national regulatory framework and/or national education body or otherwise for the not-for-profit sector, and includes:

- (a) any regulations made under that Act or any other such legislation; and
- (b) any rulings or requirements of the Commissioner of the Australian Charities and Not-for-profits Commission under that Act, or any commissioner or body under any other such legislation, having application to the Company.

Associate Member means a member of the Company admitted to membership as an Associate Member in accordance with clause 8.

Auditor means the Company's auditor or Reviewer (as the case may be).

Company means Peninsula Montessori Association Ltd ACN 002 057 025.

Constitution means the constitution of the Company as amended from time to time.

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

Director includes any person occupying the position of director of the Company.

Directors means all or some of the Directors acting as the board of directors of the Company.

Existing Members means the members of the Company as at the date of the adoption of this Constitution.

Imported Provisions means the following provisions of the Corporations Act:

- (a) Section 139 (*Company must send copy of constitution to member*);
- (b) Sections 191 to 194 (*disclosure of, and voting on matters involving, material personal interests*);
- (c) Divisions 1 to 7 of Part 2G.2 (*meetings of members of companies*); and
- (d) Part 2G.3 (*minutes and members' access to minutes*).

Member means a member of the Company under clause 8 and includes Ordinary Members and Associate Members, whose membership has not ceased.

Ordinary Member means a member of the Company admitted to membership as an Ordinary Member in accordance with clause 8.

Parent means a natural parent, step-parent or a guardian

Register means the register of Members of the Company.

Registered Entity means a body corporate registered under the ACNC Act.

Reviewer means a reviewer under the ACNC Act.

Seal means the Company's common seal (if any).

Secretary means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of those joint secretaries.

Schools means the Forestville Montessori School and any other school established by the Company as described in clause 4.1(a).

- 1.2 In this Constitution, except where the context otherwise requires, a word or expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the word or expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that word or expression has the same meaning as in that provision.

2. Interpretation

In this Constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) headings are for ease of reference only and do not affect interpretation;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (g) a reference to time is a reference to Sydney Australia time;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments made under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (i) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions.

3. Application of the Corporations Act

- 3.1 If, while the Company is a Registered Entity, the Corporations Act operates such that an Imported Provision does not apply to the Company because the Company is a Registered Entity:
- (a) a clause in the same terms as the Imported Provision, along with any relevant definitions in the Corporations Act, is deemed to be included in this Constitution and to apply to the Company to the extent the Imported Provision would have applied to the Company were the Company not a Registered Entity (**Equivalent Clause**); and
 - (b) a reference in this Constitution to an Imported Provision is deemed to be a reference to the Equivalent Clause.
- 3.2 The provisions of the Corporations Act that apply to certain companies as replaceable rules are displaced by this Constitution in their entirety and do not apply to the Company.

- 3.3 For the purposes of this Constitution, if the provisions of the Corporations Act or the ACNC Act conflict with the terms of this Constitution on the same matter, the provisions of the relevant Act prevail to the extent of the conflict.

Objects and powers

4. Objects

4.1 The objects for which the Company is established are:

- (a) To advance education in the State of New South Wales by establishing and maintaining Montessori Pre Schools and Montessori Schools of the highest standard;
- (b) To operate such Schools in accordance with the principles of Montessori education and to thereby provide schools with environments that:
 - (i) develop in each child a positive attitude towards school and learning;
 - (ii) help each child develop self-confidence as an independent learner;
 - (iii) assist each child in building a habit of concentration;
 - (iv) foster in each child an abiding curiosity;
 - (v) develop habits of initiative and persistence;
 - (vi) foster inner security and sense of order in the child;
 - (vii) help each child develop his sensory-motor skills;
 - (viii) sharpen the child's ability to discriminate and judge;
 - (ix) help the child develop socially;
 - (x) help the child develop his creative intelligence and imagination;
 - (xi) develop individuality;
- (c) to strive for co-operation between teachers, other educators, parents and children and to provide regular educational and social opportunities for close relationships to be formed between teachers, pupils and parents and to involve parents in aspects of the day-to-day work of the Schools;
- (d) to support the development of children in accordance with the Montessori philosophy;
- (e) to stimulate public interest in Montessori education;
- (f) to do all things incidental or convenient in relation to the advancement of the objects contained in this clause.

4.2 When interpreting the objects in clause 4.1, each object should be construed separately and independently of any other and each object should be interpreted as if none of the other objects is contained in that clause.

5. Powers

The Company may only exercise the powers granted in section 124(1) of the Corporations Act to:

- (a) carry out the objects set out in clause 4; and

- (b) do all things incidental or convenient in relation to the exercise of power under clause 5(a).

Income and property of Company

6. Income and property of Company

- 6.1 The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in clause 4.
- 6.2 No income or property will be paid or transferred directly or indirectly to any Member of the Company except for:
 - (a) payments to a Member:
 - (i) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
 - (ii) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent; and
 - (b) any sale of assets to a Member which is approved by the Directors and which the Directors are satisfied is on reasonable commercial terms.

Membership

7. Classes of membership

- 7.1 A Member of the Company shall be either an Ordinary Member or an Associate Member.
- 7.2 Associate Members, their proxies and their attorneys are not entitled to vote on a special resolution to modify or repeal this Constitution, except to the extent that it varies the rights attaching to the membership of Associate Members.
- 7.3 All Existing Members shall be deemed to be Ordinary Members from the date of the adoption of this Constitution, except that Existing Members who are members only because they are employed by the Company shall be deemed to be Associate Members.

8. Admission

- 8.1 The members of the Company are:
 - (a) the Existing Members; and
 - (b) any other eligible persons whom the Directors admit to membership in accordance with this Constitution and who agree to become members of the Company.
- 8.2 A person is eligible to be admitted to membership if the person:
 - (a) is a natural person;
 - (b) has never been a registrable person for the purposes of the *Child Protection (Offenders Registration) Act 2000* (NSW) nor ever been convicted of an indictable offence;
 - (c) is not an undischarged bankrupt; and

- (d) satisfies the requirements of clause 8.3 in which case they are eligible to be admitted as an Ordinary Member or clause 8.4 in which case they are eligible to be admitted as an Associate Member.
- 8.3 A person meets the requirements to be an Ordinary Member if:
- (a) they are the Parent of a child who is enrolled at the Schools, provided that only one Parent of each child enrolled at the Schools may be an Ordinary Member at any given time; or
 - (b) they are a Director of the Company, not otherwise eligible to be a Member;
- 8.4 A person meets the requirements to be an Associate Member if they are a teacher who has been employed by the Company for at least 12 continuous months and continues to be employed.
- 8.5 Applications for membership of the Company must be in writing, signed by the applicant, specify the class of membership for which the applicant is applying and be in a form approved by the Directors in their absolute discretion.
- 8.6 The Directors will consider each application for membership at the next meeting of Directors after the application is received. In considering an application for membership, the Directors may:
- (a) accept the application;
 - (b) reject the application; or
 - (c) ask the applicant to give more evidence of eligibility or suitability for membership.
- 8.7 If the Directors ask for more evidence under clause 8.6, their determination of the application for membership is to be deferred until the evidence is given.
- 8.8 The Directors do not have to give any reason for rejecting an application for membership.
- 8.9 The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or, to the extent permitted by law, by operation of law.

9. Subscriptions

- 9.1 Each Member shall pay an annual subscription in an amount prescribed by the Directors from time to time. Until the Directors otherwise resolve, the annual subscription shall be \$120 for Ordinary Members and \$60 for Associate Members.
- 9.2 Annual subscriptions shall become due and payable on 1 January of each year.
- 9.3 A person who is admitted as a Member of the Association after 31 August in any given year shall not be required to a subscription in the next calendar year.

10. Ceasing to be a Member

- 10.1 A Member's membership of the Company will immediately cease:
- (a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
 - (b) if a majority of three-quarters of the Directors present and voting at a meeting of Directors by resolution terminate the membership of a Member:
 - (i) whose conduct in their opinion renders it undesirable that that Member continue to be a Member of the Company; and

- (ii) who has been given at least 21 days' notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed; or
- (c) if the Member:
 - (i) dies;
 - (ii) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health;
 - (iii) is a registrable person for the purposes of the *Child Protection (Offenders Registration) Act 2000* (NSW) or is convicted of an indictable offence;
 - (iv) files or is the subject of a petition for bankruptcy;
 - (v) ceases to meet the requirements for eligibility for membership set out in clause 8.2.

11. Powers of attorney

- 11.1 If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the attorney to the Company for notation.
- 11.2 If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.
- 11.3 The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

General meetings

12. Annual general meeting

- 12.1 A general meeting, called the annual general meeting, must be held once in every calendar year at such time and place as may be determined by the Directors.
- 12.2 While the Company is a Registered Entity, the chairperson of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about, and make comments on, the management or governance of the Company.

13. Calling general meeting

- 13.1 Any Director may, at any time, call a general meeting.
- 13.2 A general meeting may be held at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- 13.3 The Directors must call and arrange to hold a general meeting on the request of Members with at least 5% of the votes that may be cast at a general meeting.
- 13.4 A Member may not request or call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.

14. Notice of general meeting

- 14.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.
- 14.2 A notice calling a general meeting:
- (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
 - (b) must state the general nature of the business to be transacted at the meeting; and
 - (c) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.
- 14.3 A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:
- (a) the consideration of the annual financial report, Directors' report and the Auditor's report (if any);
 - (b) the election of directors; or
 - (c) the appointment and fixing of the remuneration of the Auditor (if any).
- 14.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 13.3).
- 14.5 The Directors must give notice of the postponement or cancellation of a general meeting to all persons referred to in clause 51.1 entitled to receive notices from the Company.
- 14.6 An accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

Proceedings at general meetings

15. Member

In clauses 16, 17, 19 and 24, **Member** includes a Member present in person or by proxy or attorney.

16. Quorum

- 16.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 16.2 A quorum of Members is any eight Members.
- 16.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:
- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
 - (b) in any other case:

- (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
- (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

17. Chairperson

- 17.1 The chairperson, or in the chairperson's absence the deputy chairperson, of Directors' meetings will be the chairperson at every general meeting.
- 17.2 The Directors present may elect a chairperson of a general meeting if:
- (a) there is no chairperson or deputy chairperson; or
 - (b) neither the chairperson nor deputy chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
 - (c) the chairperson and deputy chairperson are unwilling to act as chairperson of the general meeting.
- 17.3 If the Directors make no election under clause 17.2 when they are entitled to do so, then:
- (a) the Members may elect one of the Directors present as chairperson; or
 - (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.
- 17.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.
- 17.5 The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting will be determined by the chairperson.

18. Adjournment

- 18.1 The chairperson of a general meeting at which a quorum is present:
- (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
 - (b) must adjourn the general meeting if the meeting directs him or her to do so.
- 18.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 18.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 18.4 Notice of an adjourned general meeting must only be given in accordance with clause 14.1 if a general meeting has been adjourned for more than 21 days.

19. Decision on questions

- 19.1 Subject to the Corporations Act and clause 7.2, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 19.2 A resolution put to the vote of a meeting is to be decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.

- 19.3 Unless a poll is demanded:
- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
 - (b) an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.

19.4 The demand for a poll may be withdrawn.

19.5 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

20. Taking a poll

20.1 If a poll is demanded under clause 19.2, a poll will be taken when and in the manner that the chairperson directs.

20.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.

20.3 The chairperson may determine any dispute about the admission or rejection of a vote.

20.4 The chairperson's determination, if made in good faith, will be final and conclusive.

20.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.

20.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

21. Written resolutions of Members

21.1 Subject to the Corporations Act, the Company may pass a resolution without a general meeting being held if all the Members 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. The resolution is passed when the last Member signs the document.

21.2 For the purposes of clause 21.1, separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.

21.3 If the Company has only one Member, the Company may pass a resolution by the Member recording it and signing the record.

21.4 Any document referred to in this clause 21 may be in the form of a facsimile or electronic transmission.

21.5 For the purposes of clause 21.3, a document will be taken to be signed by a Member if it:

- (a) includes or is accompanied by a personal identification code allocated by the Company to the Member; or
- (b) has been authorised by the Member in another manner approved by the Directors.

22. Casting vote of chairperson

The chairperson does not have a casting vote in addition to the chairperson's votes as a Member, proxy or attorney.

23. Offensive material

A person may be refused admission to, or required to leave and not return to, a meeting if the person:

- (a) refuses to permit examination of any article in the person's possession; or
- (b) is in possession of any:
 - (i) electronic or recording device;
 - (ii) placard or banner; or
 - (iii) other article,

which the chairperson considers to be dangerous, offensive or liable to cause disruption.

Votes of Members

24. Entitlement to vote

24.1 Subject to this Constitution, on a show of hands and on a poll every Member has one vote.

25. Objections

25.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.

25.2 An objection must be referred to the chairperson of the general meeting, whose decision is final.

25.3 A vote which the chairperson does not disallow because of an objection is valid for all purposes.

26. Votes by proxy

26.1 If a Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may not vote on a show of hands.

26.2 A proxy must be a Member.

26.3 A proxy may demand or join in demanding a poll.

26.4 A proxy or attorney may vote on a poll.

26.5 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.

27. Document appointing proxy

- 27.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by section 250A(1) of the Corporations Act. The Directors may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 27.2 For the purposes of clause 27.1, an appointment received at an electronic address will be taken to be signed by the Member if:
- (a) a personal identification code allocated by the Company to the Member has been input into the appointment; or
 - (b) the appointment has been verified in another manner approved by the Directors.
- 27.3 A proxy's appointment is valid at an adjourned general meeting.
- 27.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 27.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, and subject to clause 7.2, the appointment of the proxy or the attorney will be taken to confer authority:
- (a) to vote on:
 - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
 - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,
even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
 - (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.
- 27.6 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more Directors or the Secretary.

28. Lodgement of proxy

- 28.1 The written appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:
- (a) the time for holding the general meeting or adjourned general meeting at which the appointee proposes to vote; or
 - (b) the taking of a poll on which the appointee proposes to vote.
- 28.2 The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:
- (a) the Company's registered office;
 - (b) a facsimile number at the Company's registered office; or

- (c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

29. Validity

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became mentally incapacitated; or
- (c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

Directors

30. Directors

- 30.1 The Directors and Secretary in office on the date this Constitution is adopted by the Company, continue in office subject to this Constitution.

31. Appointment and removal of Directors

- 31.1 Subject to the Corporations Act, the Company may by resolution passed at a general meeting increase the minimum number of Directors or increase or reduce the maximum number of Directors.
- 31.2 Until the Company resolves otherwise in accordance with clause 31.1, the Company shall have a minimum of five and a maximum of nine Directors.
- 31.3 The Directors shall comprise:
 - (a) at least 5 but no more than 7 individuals elected by the Members to the board of the Company, who must be Ordinary Members at the time of their election; and
 - (b) a maximum of 4 individuals appointed by the Directors to the board of the Company.
- 31.4 Subject to applicable law, if the Directors consider in their discretion, acting reasonably, that the conduct or position of any Director is such that continuance in office is likely to be prejudicial to the interests of the Company, the Directors, at a meeting of the Directors specifically called for that purpose, may suspend that Director. The relevant Director will not be eligible to vote on the resolution.
- 31.5 As soon as possible after the suspension (subject to the notice provisions in the Corporations Act and this Constitution), the Directors must call a general meeting, at which the Members may either confirm the suspension and remove the Director from office or annul the suspension and reinstate the Director.

32. Retirement

- 32.1 All Directors retire from office at the conclusion of the third annual general meeting after the Director was last elected or appointed.
- 32.2 Subject to clause 32.3, a retiring Director is eligible for re-election or re-appointment.
- 32.3 Subject to clause 32.4, any person (including the appointees) who has been a Director for nine consecutive years is not eligible to be a Director for a period of two years after those nine years' service.
- 32.4 The Directors may, by a two-thirds majority, resolve that a person is eligible to be a Director if that person would otherwise not be eligible solely by operation of clause 32.3.

33. Vacation of office

A person immediately ceases to be a Director if he or she:

- (a) becomes ineligible to be a Director under the ACNC Act while the Company is a Registered Entity;
- (b) ceases to be a Director by virtue of the Corporations Act;
- (c) is prohibited by the Corporations Act from holding office or continuing as a Director;
- (d) is prohibited from holding or is removed from the office of Director by an order made under the Corporations Act;
- (e) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Directors incapable of performing his or her duties;
- (f) resigns by notice in writing to the Company;
- (g) is removed by a resolution of the Company;
- (h) becomes bankrupt or makes any general arrangement or composition with his or her creditors;
- (i) is absent from Directors' meetings for 6 consecutive months without leave of absence from the Directors;
- (j) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act;
- (k) is or becomes a registrable person for the purposes of the *Child Protection (Offenders Registration) Act 2000* (NSW); or
- (l) ceases to be a Member of the Company.

34. Additional and casual Directors

- 34.1 Subject to clause 31, the Directors may appoint any person as a Director to fill a casual vacancy or as an addition to the existing Directors so that the total number of Directors shall not at any time exceed the number fixed in accordance with clause 31.2.

- 34.2 A person is only eligible for appointment to fill a casual vacancy if that person is an Ordinary Member of the Company at the time of their appointment
- 34.3 A Director appointed under clause 34.1 ceases to be a Director at the conclusion of the next annual general meeting of the Company but is, subject to clause 32.3, eligible for re-election or re-appointment as a Director.

35. Powers and duties of Directors

- 35.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in general meeting.
- 35.2 Without limiting the generality of clause 35.1, the Directors may exercise all the powers of the Company to:
- (a) borrow money;
 - (b) charge any property or business of the Company;
 - (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
 - (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.
- 35.3 At all times while the Company is a Registered Entity, each Director is subject to, and must comply with, the following duties:
- (a) to exercise the Director's powers and discharge the Director's duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company;
 - (b) to act in good faith in the Company's best interests, and to further the purposes of the Company;
 - (c) not to misuse the Director's position;
 - (d) not to misuse information obtained in the performance of the Director's duties as a Director of the Company;
 - (e) to disclose perceived or actual material conflicts of interest of the Director;
 - (f) to ensure that the Company's financial affairs are managed in a responsible manner; and
 - (g) not to allow the Company to operate while insolvent.

36. Directors' meetings

- 36.1 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.
- 36.2 Reasonable notice of a Directors' meeting must be given to each Director, unless the Directors unanimously agree to the contrary.
- 36.3 It is not necessary to give notice of a meeting of the Directors to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.

- 36.4 By attending a Directors' meeting, a Director waives any objection he or she may have had in relation to the notice of meeting.
- 36.5 An accidental omission to give notice of a meeting of Directors to any Director or the non-receipt of such notice by any Director does not invalidate the proceedings at or any resolution passed at the meeting.
- 36.6 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 36.7 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 36.8 Subject to clause 40, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 36.9 Clauses 36.6 to 36.7 apply to meetings of Committees as if all committee members were Directors.
- 36.10 Subject to this clause 36, the Directors may meet together, adjourn and regulate their meetings as they think fit.
- 36.11 A quorum for meetings of Directors is five Directors.
- 36.12 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson may call a general meeting to deal with the matter.
- 36.13 Notice of a meeting of Directors may be given in writing or in person, or the meeting may be otherwise called by fax, email, telephone or any other technology consented to by all the Directors.

37. Decision on questions

- 37.1 Subject to clause 38, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 40, each Director has one vote.
- 37.2 The chairperson of a meeting does not have a casting vote in addition to his or her deliberative vote.

38. Special Matters

- 38.1 The Directors shall ensure that the Company does not undertake any of the matters set out below without a majority vote of at least 75% of the votes cast by Directors present and entitled to vote on the matter:
- (a) The:
 - (i) sale or purchase of assets having a value greater than;
 - (ii) the incurring of liabilities in an amount in excess of 20% of net tangible assets;
 - (b) the adoption or material variation of any business plan or governance charter;

- (c) the making of any loan, credit facility, guarantee, or any other type of financial accommodation to any person otherwise than in the ordinary course of business and in accordance with the terms of this Constitution;
- (d) the incorporation of a subsidiary or entry into any partnership, joint venture or agency agreement;

39. Payments to Directors

No payment will be made to any Director of the Company other than payment:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors of the Company;
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors of the Company and where the amount payable is approved by the Directors of the Company and is not more than an amount which commercially would be reasonable payment for the service;
- (c) of any salary or wage due to the Director as an employee of the Company where the terms of employment have been approved by the Directors of the Company; and
- (d) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B of the Corporations Act.

40. Directors' interests

- 40.1 As required by the Corporations Act, a Director must give the Directors notice of any material personal interest in a matter that relates to the affairs of the Company.
- 40.2 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 40.3 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 40.4 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.
- 40.5 Subject to clause 38, a Director or a body or entity in which a Director has a direct or indirect interest may:
 - (a) enter into any agreement or arrangement with the Company;
 - (b) hold any office or place of profit other than as auditor in the Company; and
 - (c) act in a professional capacity other than as auditor for the Company,

and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.

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

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

unless permitted by the Corporations Act to do so, in which case the Director may:

- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
- (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
- (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

40.7 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

41. Remaining Directors

41.1 The Directors may act even if any of the directors' positions are vacant.

41.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:

- (a) appoint a Director; or
- (b) call a general meeting.

42. Chairperson

42.1 The Directors may by simple majority appoint, remove and replace a Director as chairperson of Directors' meetings and may determine the period for which the chairperson shall hold office (save that any chairperson shall cease to be chairperson if they cease to be a Director).

42.2 If no chairperson is appointed or if the chairperson is not present at any Directors' meeting within ten minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of the meeting.

42.3 The Directors may elect a Director as deputy chairperson to act as chairperson in the chairperson's absence.

43. Delegation

43.1 The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to a committee or committees (each a **Committee**).

- 43.2 The Directors may at any time revoke any delegation of power to a Committee.
- 43.3 At least one member of each Committee must be a Director.
- 43.4 A Committee must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 43.5 A Committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.
- 43.6 Meetings of any Committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each member was a Director.

44. Written resolutions

- 44.1 The Directors may pass a resolution without a Director's meeting being held if all 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. The resolution is passed when the last Director signs.
- 44.2 For the purposes of clause 44.1, 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.
- 44.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
- 44.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause.
- 44.5 This clause applies to meetings of Directors' committees as if all members of the committee were Directors.

45. Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or member of a Committee; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Directors or the Committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

46. Minutes and Registers

- 46.1 The Directors must cause minutes to be made of:
- (a) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
 - (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
 - (c) all resolutions passed by Directors in accordance with clause 44;
 - (d) all appointments of officers;

- (e) all orders made by the Directors and Directors' committees; and
 - (f) all disclosures of interests made under clause 40.
- 46.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.
- 46.3 The Company must keep all registers required by this Constitution and the Corporations Act, including a Register of Members.

47. Appointment of attorneys and agents

- 47.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint a person in accordance with clause 47.2 to be the attorney or agent of the Company:
- (a) for the purposes;
 - (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
 - (c) for the period; and
 - (d) subject to the conditions,
- determined by the Directors.
- 47.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:
- (a) any company;
 - (b) the members, directors, nominees or managers of any company or firm; or
 - (c) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 47.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 47.4 An attorney or agent appointed under this clause may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

Secretary

48. Secretary

- 48.1 There must be at least one Secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.
- 48.2 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.
- 48.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

Inspection of records

49. Inspection of records

- 49.1 Except as otherwise required by law, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 49.2 Except as otherwise required by law, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

Notices

50. Service of notices

- 50.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:
- (a) by serving it on the person; or
 - (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- 50.2 A notice sent by post is taken to be served:
- (a) by properly addressing, prepaying and posting a letter containing the notice; and
 - (b) on the day after the day on which it was posted.
- 50.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
 - (b) on the day of its transmission except if transmitted after 5.00pm in which case is taken to be served on the next day.
- 50.4 If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Company's registered office.
- 50.5 A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Member's for the purposes of clause 50.
- 50.6 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 50.7 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- 50.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

51. Persons entitled to notice

51.1 Notice of every general meeting must be given to:

- (a) every Member;
- (b) every Director; and
- (c) any Auditor.

51.2 No other person is entitled to receive notice of a general meeting.

Audit and accounts

52. Audit and accounts

52.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company as required by law.

52.2 The Directors must cause the financial records of the Company to be audited or reviewed as required by law.

Winding up

53. Winding up

53.1 If the Company is wound up:

- (a) each Member; and
- (b) each person who has ceased to be a Member in the preceding year,

undertakes to contribute to the property of the Company for the:

- (c) payment of debts and liabilities of the Company (in relation to clause 53.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
- (d) adjustment of the rights of the contributories amongst themselves,

the amount of \$2.00.

53.2 If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to a corporation to which income tax deductible gifts can be made and which, by its constitution, is:

- (a) required to pursue similar charitable purposes to those pursued by the Company;
- (b) required to apply its profits (if any) or other income in promoting its objects; and
- (c) prohibited from making any distribution to its members or making payments to its directors (other than in circumstances contemplated by clause 39),

such corporation to be determined by the Members at or before the winding up and, in default, by application to the Supreme Court of New South Wales for determination.

Indemnity and insurance

54. Indemnity and insurance

- 54.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act and any other applicable statutory restrictions, the Company indemnifies every person who is or has been an officer of the Company against:
- (a) any and all liabilities (other than for legal costs) incurred by that person as an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment);
 - (b) any and all reasonable legal costs incurred by that person as an officer of the Company (including legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment); and
 - (c) any and all reasonable legal costs incurred by that person in defending an action for a liability incurred by that person as an officer of the Company (including legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).
- 54.2 To the extent permitted by law and subject to the restrictions in section 199B of the Corporations Act, the Company may, and may agree (by deed or otherwise) to:
- (a) enter into a contract insuring a person who is or has been an officer of the Company against liabilities incurred by the person as an officer of the Company; and
 - (b) pay the premium under any such contract.
- 54.3 Subject to the Corporations Act and any other applicable statutory restrictions, the Company may advance, and may agree (by deed or otherwise) to advance, to a person who is or has been an officer of the Company an amount that it might become liable to pay to the person under clause 54.1(c), on such terms and conditions as the Directors decide, before the outcome of any claim or proceedings to which the amount relates (and whether the Company is in fact liable to indemnify the person under clause 54.1(c) in respect of the amount) is known. If, after the Company makes any such advance, the Directors form the view that the Company is not liable to indemnify the person for the relevant amount, the Directors may recover any advance from the person as a debt due by the person to the Company.
- 54.4 Subject to the Corporations Act and without limiting a person's rights under this clause 54, the Company may enter into an agreement (including a deed) with a person who is or agrees to become or has been an officer of the Company to give effect to the rights of the person under this clause 54, or to the exercise of a discretion under this clause 54, on any terms and conditions that the Directors think fit. Any such agreement may also give the person rights to inspect and obtain copies of the books of the Company for the purposes, and on such other terms and conditions, as the Directors decide.
- 54.5 For the avoidance of doubt, the Directors may authorise the Company to enter into any agreement (including a deed) permitted by this clause 54.
- 54.6 The amount of any indemnity payable under paragraph (a), (b) or (c) of clause 54.1 will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any

indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.

- 54.7 If, for any reason and by any means, any tax is or would be imposed on a person in respect of any sum paid or payable to the person under this clause 54 (**Indemnity Payment**), then the amount of any indemnity payable under this clause 54 will include any additional amount required to ensure that the total amount retained by the person (after allowing for the amount of such tax and after taking into account any tax deduction or tax benefit available to the person, at any time, that is attributable to the liability or legal costs to which the Indemnity Payment relates) is equal to the amount that would have been retained by the person if such tax was not imposed in respect of the Indemnity Payment. Payment of any such additional amount is conditional on the person providing the Company with all information and assistance reasonably required to enable the Company to calculate and verify the amount.
- 54.8 For the purposes of this clause, **officer** has the meaning given to that term in section 9 of the Corporations Act and includes any Auditor and any person who is not a Director but who is, or has been, a member of a committee to which the Directors delegated any of their powers pursuant to clause 43.