

CLAYTON UTZ

# Constitution of Gondwana Choirs

ACN 065 410 577

[Amended AGM 5 June 2018]

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# GONDWANA CHOIRS ACN 065 410 577

## Constitution

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### 1. Preliminary

#### 1.1 Definitions and interpretation

Schedule 1 applies and forms part of this Constitution.

#### 1.2 Nature of the Company

- (a) The Company is a public company limited by guarantee.
- (b) Each Member undertakes to contribute an amount not exceeding \$20 to the property of the Company if the Company is wound up:
  - (i) at a time when that person is a Member; or
  - (ii) within one year of the time that person ceased to be a Member,for:
  - (iii) payment of the debts and liabilities of the Company contracted before that person ceased to be a Member;
  - (iv) payment of the costs, charges and expenses of winding up the Company; and
  - (v) adjustment of the rights of the contributories among themselves.

#### 1.3 Replaceable rules

The replaceable rules in the Corporations Act do not apply to the Company.

#### 1.4 Objects

- (a) The objects of the Company are to:
  - (i) Be the leader in Australian choral performance, shaping the Australian sound through the creation and presentation of innovative new work.
  - (ii) Provide opportunities to all musically talented young Australians through world-class training by leading artists.
  - (iii) Develop sustainable funding through a mix of government, philanthropic grants, corporate partnerships, private donors, participation & performance fees.
- (a) The Company will only apply the income and property of the Company in promoting the objects of the Company.

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## 2. Members

### 2.1 Exercise of powers

The powers of the Company under this Article 2 may only be exercised by the Directors.

## **2.2 Members**

Those persons identified in Annexure A are the Members as at the date this Constitution was adopted.

## **2.3 Applications**

- (a) Directors are automatically deemed organisation Members.
- (b) Any non-Director is eligible to apply to become a Member.
- (c) Each applicant to become a Member must sign and deliver to the Company an application in the form which the Directors determine, and pay any initial fee which the Directors determine.
- (d) The Company determines whether an applicant may become a Member.
- (e) The Company is not required to give any reason for the rejection of any application to become a Member.
- (f) If an application to become a Member is accepted, the Company must:
  - (i) give written notice of the acceptance to the applicant; and
  - (ii) enter the applicant's name in the Register.
- (g) If an application to become a Member is rejected, the Company must:
  - (i) give written notice of the rejection to the applicant; and
  - (ii) refund in full the fee (if any) paid by the applicant.
- (h) A determination of an application to become a Member is not invalid if the Company does not comply with Article 2.3(f) or 2.3(g).
- (i) Membership shall not become effective until the Directors have so resolved and the Member's name is entered in the Register. The Directors must not unreasonably delay in ensuring the effective admission of an applicant to membership of the Company.

## **2.4 No transfers**

The rights of being a Member are not transferable whether by operation of law or otherwise.

## **2.5 Ceasing to be a Member**

- (a) A person will cease to be a Member if:
  - (i) the Member resigns in accordance with Article 2.6;
  - (ii) the Member is expelled under Article 2.7; or
  - (iii) a Cessation Event occurs in respect of the Member.
- (b) The estate of a deceased Member is not released from any liability in respect of that person being a Member.

## 2.6 Resignation

- (a) A Member may resign as a Member by giving the Company notice in writing.
- (b) Unless the notice provides otherwise, a resignation by a Member takes effect immediately on the giving of that notice to the Company.

## 2.7 Expulsion

- (a) Subject to Article 2.7(c), the Company may expel a Member by a resolution of the Directors if:
  - (i) an Expulsion Event occurs in respect of the Member; and
  - (ii) the Company gives that Member at least 5 Business Days notice in writing:
    - A. stating the Expulsion Event and that the Member is liable to be expelled; and
    - B. informing the Member of its right under Article 2.7(c).
- (b) The Company may expel a Member by a resolution of Directors if:
  - (i) the Member does not pay moneys owing by him to the Company within 90 days after the due date for its payment (provided that at least 2 written requests for payment of such invoice, issued at intervals of not less than 30 days have been sent to the Member at his last known address), or fails to make any arrangement for the payment of such moneys; or
  - (ii) having made an arrangement to pay any moneys owing by him to the Company, fails to comply with those arrangements.
- (c) Before the passing of any resolution under Article 2.7(a), a Member is entitled to give the Directors, either orally or in writing, any explanation or defence of the Expulsion Event the Member may think fit.
- (d) If a resolution is passed under Article 2.7(a) or 2.7(b), the Company must give that Member notice in writing of the expulsion within 5 Business Days of the resolution.
- (e) A Member may by notice in writing to the Company within 4 Business Days of receipt of the notice referred to in Article 2.7(d), request that a resolution under Article 2.7(a) be reviewed by the Company at the next general meeting.
- (f) If a request under Article 2.7(e) is made, the Company must propose at the next general meeting of the Company that a resolution be moved to confirm the expulsion of the Member concerned.
- (g) A resolution under Article 2.7(f) must be passed by at least two-thirds of the votes cast by Members present and entitled to vote on the resolution.
- (h) A resolution under Article 2.7(a) takes effect:
  - (i) if the Member gives a notice under Article 2.7(e), on the date (if any) the resolution is confirmed by a general meeting of the Company; or
  - (ii) if the Member does not give a notice under Article 2.7(e), on the date of the resolution.

- (i) A resolution under Article 2.7(b) takes effect on the date of the resolution.
- (j) The Company may reinstate an expelled Member on any terms and at any time as the Directors resolve, including a requirement that all amounts due but unpaid by the expelled Member are paid.

## **2.8 Classes of Members**

Subject to the Corporations Act, the Company may determine:

- (a) that there shall be different classes of Members; and
- (b) the rights applicable to each different class of Members.

## **2.9 Variation of classes and class rights**

- (a) Subject to the Corporations Act and the terms of a particular class of Members, the Company may vary or cancel rights of Members of that class by special resolution of the Company and:
  - (i) a special resolution passed at a meeting of the Members included in that class; or
  - (ii) the written consent of Members who are entitled to at least 75% of the votes that may be cast in respect of Members of that class.
- (b) The provisions in this Constitution concerning meetings of Members (with the necessary changes) apply to a meeting held under Article 2.8(a)(i).

## **2.10 Certificates**

- (a) The Company may issue to each Member, free of charge, a certificate evidencing that person as a Member.
- (b) The Company may issue a replacement certificate of being a Member if:
  - (i) the Company receives and cancels the existing certificate; or
  - (ii) the Company is satisfied that the existing certificate is lost or destroyed, and the Member pays any fee as the Directors resolve.

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# **3. Fees and other payments**

## **3.1 Exercise of powers**

The powers of the Company under this Article 3 may only be exercised by the Directors.

## **3.2 Payment of Fees**

- (a) The Company may require the payment of fees or levies by Members in the amounts and at the times as the Directors resolve, including payments by instalments (**Fees**).
- (b) The Company may make Fees payable for one or more Members for different amounts and at different times.
- (c) The Company may revoke or postpone Fees or extend the time for payment of Fees.

- (d) The Company must give Members at least 10 Business Days notice of Fees.
- (e) A notice of Fees must be in writing and specify the amount of the Fee, the due date for payment of the Fee and the manner in which payment of the Fee must be made.
- (f) A Fee is not invalid if either or both a Member does not receive notice of the Fee or the Company accidentally does not give notice of the Fee to a Member.
- (g) A Member must pay to the Company the amount of each Fee payable by the Member on the date and in the manner specified in the notice of the Fee.
- (h) If a Fee is payable in one or more fixed amounts on one or more fixed dates, the relevant Member must pay to the Company those amounts on those dates.
- (i) A Member must pay to the Company:
  - (i) interest at the rate specified in Article 3.4(a) on any amount referred to in Article 3.2(g) or 3.2(h) which is not paid on or before the time appointed for its payment, from the time appointed for payment to the time of the actual payment; and
  - (ii) reasonable expenses incurred by the Company because of the failure to pay or late payment of that amount.
- (j) The Directors may waive payment of all or any part of an amount payable under Article 3.2(i).

### **3.3 Company payments on behalf of a Member**

- (a) A Member or, if the Member is deceased, the Member's Personal Representative, must indemnify the Company against any liability which the Company has under any law to make a payment (including payment of a tax) in respect of that Member.
- (b) A Member or, if the Member is deceased, the Member's Personal Representative, must pay to the Company immediately on demand:
  - (i) the amount required to reimburse the Company for a payment referred to in Article 3.3(a); and
  - (i) pay to the Company interest at the rate specified in Article 3.4(a) on any amount referred to in Article 3.3(a) paid by the Company, from the date of payment by the Company until and including the date the Company is reimbursed in full for that payment.
- (b) The powers and rights of the Company under this Article 3.3 are in addition to any right or remedy that the Company may have under the law which requires the Company to make a payment referred to in Article 3.3(a).
- (c) The Company may waive any or all of its rights under this Article 3.3.

### **3.4 Interest**

- (a) A person must pay interest under this Article 3 to the Company:
  - (i) at a rate the Directors resolve; or
  - (ii) if the Directors do not resolve, at 11% per annum.



- (b) Interest payable to the Company under Article 3 accrues daily.
  - (c) The Company may capitalise interest payable under this Article 3 at any interval the Directors resolve.
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## **4. Proceedings of Members**

### **4.1 Written resolutions of Members**

While the Company has only one Member, the Company may pass a resolution by that Member signing a record in writing of that resolution.

### **4.2 Who can call meetings of Members**

- (a) Subject to the Corporations Act, the Directors may call a meeting of Members at a time and place as the Directors resolve.
- (b) The Directors must call and arrange to hold a general meeting of the Company on the request of Members made in accordance with the Corporations Act.
- (c) The Members may call and arrange to hold a general meeting of the Company as provided by the Corporations Act.

### **4.3 Annual General Meeting**

- (a) The Company must hold an Annual General Meeting if required by, and in accordance with, the Corporations Act.
- (b) The business of an Annual General Meeting may include any of the following, even if not referred to in the notice of the meeting:
  - (i) the consideration of the annual financial report, directors' report and auditor's report for the Company;
  - (ii) the election of Directors;
  - (iii) the appointment of the auditor of the Company; and
  - (iv) the fixing of the remuneration of the auditor of the Company.

### **4.4 How to call meetings of Members**

- (a) The Company must give not less than Prescribed Notice of a meeting of Members.
- (b) Notice of a meeting of Members must be given to each Member, each Director, each Alternate Director and any auditor of the Company.
- (c) Subject to Article 4.12(h), a notice of a meeting of Members must:
  - (i) set out the place, date and time for the meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
  - (ii) state the general nature of the business of the meeting; and
  - (iii) set out or include any other information or documents specified by the Corporations Act.

- (d) A person may waive notice of any meeting of Members by notice in writing to the Company to that effect.
- (e) Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting of Members is not invalid because either or both a person does not receive notice of the meeting or the Company accidentally does not give notice of the meeting to a person.

#### **4.5 Right to attend meetings**

- (a) Each Member and any auditor of the Company is entitled to attend any meetings of Members.
- (b) Subject to this Constitution, each Director is entitled to attend and speak at all meetings of Members.

#### **4.6 Meeting at more than one place**

- (a) A meeting of Members may be held in 2 or more places linked together by any technology that:
  - (i) gives the Members as a whole in those places a reasonable opportunity to participate in proceedings;
  - (ii) enables the chairperson to be aware of proceedings in each place; and
  - (iii) enables the Members in each place to vote on a show of hands and on a poll.
- (b) If a meeting of Members is held in 2 or more places under Article 4.6(a):
  - (i) a Member present at one of the places is taken to be present at the meeting; and
  - (ii) the chairperson of that meeting may determine at which place the meeting is taken to have been held.

#### **4.7 Quorum**

- (a) A quorum for a meeting of Members is 5. Members entitled to vote at that meeting.
- (b) In determining whether a quorum for a meeting of Members is present:
  - (i) where more than one proxy, attorney or representative of a Member is present, only one of those persons is counted; and
  - (ii) where a person is present as a proxy, attorney or representative for more than one Member, that person is counted separately for each appointment provided that there is at least one other Member present.
- (c) A quorum for a meeting of Members must be present at all times during the meeting.
- (d) If a quorum is not present within 15 minutes after the time appointed for a meeting of Members:
  - (i) if the meeting was called under Article 4.2(b) or Article 4.2(c), the meeting is dissolved; and

- (ii) any other meeting is adjourned to the date, time and place as the Directors may by notice to the Members appoint, or failing any appointment, to the same day in the next week at the same time and place as the meeting adjourned.
- (e) If a quorum is not present within 15 minutes after the time appointed for an adjourned meeting of Members, the Members present at that adjourned meeting who are entitled to vote will be a quorum unless only one Member is present within that time, in which case the meeting is dissolved.

#### **4.8 Chairperson**

- (a) The chairperson of Directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) chair each meeting of Members.
- (b) If at a meeting of Members:
  - (i) there is no chairperson of Directors;
  - (ii) the chairperson of Directors is not present within 10 minutes after the time appointed for the holding of a meeting of Members; or
  - (iii) the chairperson of Directors is present within that time but is not willing to chair all or part of that meeting,

the Directors present may, by majority vote, elect a person present to chair all or part of the meeting of Members.
- (c) Subject to Article 4.8(a), if at a meeting of Members:
  - (i) a chairperson of that meeting has not been elected by the Directors under Article 4.8(b); or
  - (ii) the chairperson elected by the Directors is not willing to chair all or part of a meeting of Members,

the Members present must, by majority vote, elect another person present and willing to act to chair all or part of that meeting.

#### **4.9 General conduct of meetings**

- (a) Subject to the Corporations Act, the chairperson of a meeting of Members is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The chairperson of a meeting of Members may delegate any power conferred by this Article to any person.
- (c) The powers conferred on the chairperson of a meeting of Members under this Article 4.9 do not limit the powers conferred by law.

#### **4.10 Resolutions of Members**

- (a) Subject to the Corporations Act, a resolution at a meeting of Members is passed if the number of votes cast in favour of the resolution by Members entitled to vote on the resolution exceeds the number of votes cast against the resolution by Members entitled to vote on the resolution.

- (b) Unless a poll is requested in accordance with Article 4.11, a resolution put to the vote at a meeting of Members must be decided on a show of hands.
- (c) A declaration by the chairperson of a meeting of Members that a resolution on a show of hands is passed, passed by a particular majority, or not passed, and an entry to that effect in the minutes of the meeting, are sufficient evidence of that fact, unless proved incorrect.

#### **4.11 Polls**

- (a) A poll may be demanded on any resolution at a meeting of Members.
- (b) A poll on a resolution at a meeting of Members may be demanded by:
  - (i) at least 2 Members present and entitled to vote on that resolution; or
  - (ii) the chairperson of that meeting.
- (c) A poll on a resolution at a meeting of Members may be demanded:
  - (i) before a vote on that resolution is taken; or
  - (ii) before or immediately after the results of the vote on that resolution on a show of hands are declared.
- (d) A demand for a poll may be withdrawn.
- (e) A poll demanded on a resolution at a meeting of Members other than for the election of a chairperson of that meeting or the adjournment of that meeting must be taken in the manner and at the time and place the chairperson directs.
- (f) A poll demanded on a resolution at a meeting of Members for the election of a chairperson of that meeting or the adjournment of that meeting must be taken immediately.
- (g) The result of a poll demanded on a resolution of a meeting of Members is a resolution of that meeting.
- (h) A demand for a poll on a resolution of a meeting of Members does not prevent the continuance of that meeting or that meeting dealing with any other business.

#### **4.12 Adjourned, cancelled and postponed meetings**

- (a) Subject to the Corporations Act, the chairperson:
  - (i) may adjourn a meeting of Members to any day, time and place; and
  - (ii) must adjourn a meeting of Members if the Members present with a majority of votes that may be cast at that meeting agree or direct the chairperson to do so. The chairperson may adjourn that meeting to any day, time and place.
- (b) No person other than the chairperson of a meeting of Members may adjourn that meeting.
- (c) The Company is only required to give notice of a meeting of Members resumed from an adjourned meeting if the period of adjournment exceeds 10 days.

- (d) Only business left unfinished is to be transacted at a meeting of Members resumed after an adjournment.
- (e) Subject to the Corporations Act and this Article 4.12, the Directors may at any time postpone or cancel a meeting of Members by giving notice not less than 5 Business Days before the time at which the meeting was to be held to each person who is, at the date of the notice:
  - (i) a Member;
  - (ii) a Director or Alternate Director; or
  - (iii) auditor of the Company.
- (f) A general meeting called under Article 4.2(b) must not be cancelled by the Directors without the consent of the Members who requested the meeting.
- (g) A general meeting called under Article 4.2(c) must not be cancelled or postponed by the Directors without the consent of the Members who called the meeting.
- (h) A notice under Article 4.12(c) of a meeting of Members resumed from an adjourned meeting and a notice postponing a meeting of Members must set out the place, date and time for the revised meeting (and if the revised meeting is to be held in 2 or more places, the technology that will be used to facilitate this).

#### **4.13 Number of votes**

- (a) Subject to this Constitution and any rights or restrictions attached to a class of Members, on a show of hands or on a poll at a meeting of Members, every Member present has one vote.
- (b) In the case of an equality of votes on a resolution at a meeting of Members, the chairperson of that meeting has a casting vote on that resolution both on a show of hands and on a poll, in addition to any vote the chairperson of that meeting has in respect of that resolution.
- (c) A Member present at a meeting of Members is not entitled to vote on any resolution if any amount due and payable to the Company by that person in their capacity as a Member has not been paid.
- (d) A Member present at a meeting of Members is not entitled to vote on a resolution at that meeting where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction.
- (e) The Company must disregard any vote on a resolution purported to be cast by a Member present at a meeting of Members where that person is not entitled to vote on that resolution.
- (f) The authority of a proxy or attorney for a Member to speak or vote at a meeting of Members is suspended while the Member is present in person at that meeting.

#### **4.14 Objections to qualification to vote**

- (a) An objection to the qualification of any person to vote at a meeting of Members may only be made:
  - (i) before that meeting, to the Directors; or

- (ii) at that meeting (or any resumed meeting if that meeting is adjourned), to the chairperson of that meeting.
- (b) Any objection under Article 4.14(a) must be decided by the Directors or the chairperson of the meeting of Members (as the case may be), whose decision, made in good faith, is final and conclusive.

#### **4.15 Proxies, attorneys and representatives**

- (a) A Member, who is entitled to attend and cast a vote at a meeting of Members, may vote on a show of hands and on a poll:
  - (i) in person or, if the Member is a body corporate, by its representative appointed in accordance with the Corporations Act;
  - (ii) by not more than one proxy; or
  - (iii) by not more than one attorney.
- (b) A proxy, attorney or representative of a Member need not be a Member.
- (c) A Member may appoint a proxy, attorney or representative for:
  - (i) all or any number of meetings of Members; or
  - (ii) a particular meeting of Members.
- (d) An instrument appointing a proxy is valid if it is signed by the Member making the appointment and contains:
  - (i) the name and address of that Member;
  - (ii) the name of the Company;
  - (iii) the name of the proxy or the name of the office of the proxy; and
  - (iv) the meetings of Members at which the proxy may be used.
- (e) The chairperson of a meeting of Members may determine that an instrument appointing a proxy is valid even if it contains only some of the information specified in Article 4.15(d).
- (f) An instrument appointing an attorney or representative must be in a form as the Directors may prescribe or the chairperson of a meeting of Members may accept.
- (g) Subject to the Corporations Act, the decision of the chairperson of a meeting of Members as to the validity of an instrument appointing a proxy, attorney or representative is final and conclusive.
- (h) Unless otherwise provided in the Corporations Act or in the instrument appointing a proxy or attorney, a proxy or attorney may:
  - (i) agree to a meeting of Members being called by shorter notice than is required by the Corporations Act or this Constitution;
  - (ii) agree to a resolution being either or both proposed and passed at a meeting of Members of which notice of less than 21 days is given;

- (iii) speak on any resolution at a meeting of Members on which the proxy or attorney may vote;
  - (iv) vote at a meeting of Members (but only to the extent allowed by the appointment);
  - (v) demand or join in demanding a poll on any resolution at a meeting of Members on which the proxy or attorney may vote; and
  - (vi) attend and vote at any meeting of Members which is rescheduled or adjourned.
- (i) Unless otherwise provided in the Corporations Act or in the instrument appointing a proxy or attorney, a proxy or attorney may vote on:
- (i) any amendment to a resolution on which the proxy or attorney may vote;
  - (ii) any motion not to put that resolution or any similar motion; and
  - (iii) any procedural motion relating to that resolution, including a motion to elect the chairperson of a meeting of Members, vacate the chair or adjourn that meeting,
- even if the appointment directs the proxy or attorney how to vote on that resolution.
- (j) If the name of the proxy or the name of the office of the proxy in a proxy form of a Member is not filled in, the proxy of that Member is:
- (i) the person specified by the Company in the form of proxy in the case the Member does not choose; or
  - (ii) if no person is so specified, the chairperson of that meeting.
- (k) A Member may specify the manner in which a proxy or attorney is to vote on a particular resolution at a meeting of Members.
- (l) An appointment of proxy or attorney for a meeting of Members is effective only if the Company receives the appointment (and any authority under which the appointment was signed or a certified copy of the authority) not less than:
- (i) 48 hours before the time scheduled for commencement of that meeting; or
  - (ii) in the case of a meeting which has been adjourned, 48 hours before the time scheduled for resumption of the meeting.
- (m) Unless the Company has received notice in writing of the matter not less than 48 hours before the time scheduled for the commencement of a meeting of Members, a vote cast at that meeting by a person appointed by a Member as a proxy, attorney or representative is, subject to this Constitution, valid even if, before the person votes:
- (i) a Cessation Event occurs in respect of that Member;
  - (ii) that Member revokes the appointment of that person; or
  - (iii) that Member revokes the authority under which the person was appointed by a third party.

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## **5. Directors**

### **5.1 Number of Directors**

- (a) The Company will attempt to ensure a minimum of 5 Directors.
- (b) The Company in general meeting may by ordinary resolution alter the required number of Directors provided that such number is not divisible by 2.

### **5.2 Appointment of Directors**

- (a) A Director must be a Member. Notwithstanding Article 5.3, the term of each Director shall not exceed three (3), three-year (3-year) terms without the unanimous resolution of the Board, reaffirmed annually.
- (b) The Founding Artistic Director of the Company must be a Director for the duration of his/her contract of employment as Artistic Director with the Company.
- (c) The Company in general meeting at which any Director retires or at the conclusion of which at any Director ceases to hold office may by ordinary resolution appoint a like number of Directors to fill the vacated offices from amongst those persons nominated in accordance with the following procedure:
  - (i) a person seeking election as a Director must be proposed by a Member and seconded by another Member, such nomination to be received at the registered office of the Company at such time in advance of the relevant Annual General Meeting as the Directors for the time being shall prescribe and shall be signed by the proposer and the seconder and accompanied by a consent to accept appointment signed by the candidate;
  - (ii) no nomination or re-nomination of retiring Directors is required but each retiring Director shall inform the Secretary at least one (1) month advance of the due date of his retirement whether or not he intends to stand for election or re-election; and
  - (iii) notwithstanding the foregoing, the chairman may, in his discretion, waive any deficiency in notice or in the form of nomination.
- (d) In any voting forms or publicity material issued in connection with an election of Directors, candidates will be listed in strict alphabetical order.

### **5.3 Rotation of Directors**

- (a) The Directors other than the Founding Artistic Director shall hold office until such time as they are subject to retirement by rotation in accordance with this Article 5.3, at which time they must retire from office but will be eligible for election or re-election in accordance with Article 5.2.
- (b) At every Annual General Meeting, one-third of the Directors who are subject to retirement by rotation, or if their number is not divisible by 3, the number nearest to one-third, shall retire from office.
- (c) The Directors to retire by rotation shall be those who have been longest in office since their last appointment or re-appointment, but as between persons who become or were last re-appointed Directors on the same day, those to retire shall (unless they otherwise agree amongst themselves) be determined in alphabetical order.



## **5.4 Casual vacancies**

Appointments to fill a casual vacancy in the Board will be made by the Board as constituted at the date of the vacancy falling due and such appointee will hold office until the expiry of the original term of the Director being replaced.

## **5.5 Vacation of office**

- (a) A Director may resign from office by giving the Company 7 days' notice in writing, effective upon the expiration of the 7 day period or on earlier acceptance by the Directors.
- (b) Subject to the Corporations Act, the Company may by ordinary resolution passed at a general meeting remove any Director, and if thought fit, appoint another person in place of that Director.
- (c) A Director ceases to be a Director if:
  - (i) the Director becomes of unsound mind or a person whose property is liable to be dealt with under a law about mental health;
  - (ii) the Director resigns or is removed under this Constitution;
  - (iii) the Director is the Artistic Director of the Company and ceases to be the Artistic Director of the Company;
  - (iv) the Director becomes an insolvent under administration; or
  - (v) the Corporations Act so provides.

## **5.6 Alternate Directors**

- (a) With the approval of a majority of the other Directors, a Director may appoint a person as an Alternate Director of that Director for any period.
- (b) An Alternate Director must be a Member.
- (c) The appointing Director may terminate the appointment of his or her Alternate Director at any time.
- (d) A notice of appointment, or termination of appointment, of an Alternate Director is effective only if:
  - (i) the notice is in writing;
  - (ii) the notice is signed by the Director who appointed that Alternate Director; and
  - (iii) the Company is given a copy of the notice.
- (e) Subject to this Constitution and the Corporations Act, an Alternate Director may:
  - (i) attend, count in the quorum of, speak at, and vote at a meeting of Directors in place of his or her appointing Director if that Director is not present at a meeting; and
  - (ii) exercise any other powers (except the power under Article 5.6(a)) that his or her appointing Director may exercise.

- (f) An Alternate Director cannot exercise any powers of his or her appointing Director if that appointing Director ceases to be a Director.
- (g) A person does not cease to be a Director under Article 5.6(f) if that person retires as a Director at a meeting of Members and is re-elected as a Director at that meeting.
- (h) Subject to Article 5.7(c), the Company is not required to pay any remuneration to an Alternate Director.
- (i) An Alternate Director is an officer of the Company and not an agent of his or her appointing Director.

## **5.7 Remuneration of Directors**

- (a) The Company must not pay any fees to a Director for performing that person's duties and responsibilities as a Director.
- (b) The Company must not pay any amount to a Director under this Article 5.7 unless that payment has been approved by the Directors.
- (c) The Company may pay all reasonable travelling, accommodation and other expenses that a Director or Alternate Director properly incurs:
  - (i) in attending meetings of Directors or any meetings of committees of Directors;
  - (ii) in attending any meetings of Members; and
  - (iii) in connection with the business of the Company,
 where the amount payable does not exceed an amount previously approved by the Directors.
- (b) The Company may pay for any service rendered to the Company by a Director in a professional or technical capacity, other than in the capacity of director, where the provision of the service has the prior approval of the directors of the Company and is not more than an amount which commercially would be reasonable payment for the service.
- (c) The Company may pay any salary or wage due to a Director as an employee of the Company where the terms of employment have been approved by the Directors.
- (d) Subject to the Corporations Act, any Director may participate in any fund, trust or scheme for the benefit of:
  - (i) past or present employees or Directors of the Company or a related body corporate of the Company; or
  - (ii) the dependants of, or persons connected with, any person referred to in Article 5.7(d)(i).

## **5.8 Interests of Directors**

- (a) A Director may:
  - (i) hold an office or place of profit (except as auditor) in the Company, on any terms as the Directors resolve;

- (ii) hold an office or otherwise be interested in any related body corporate of the Company or other body corporate in which the Company is interested; or
- (iii) act, or the Director's firm may act, in any professional capacity for the Company (except as auditor) or any related body corporate of the Company or other body corporate in which the Company is interested,

and retain the benefits of doing so if the Director discloses in accordance with the Corporations Act the interest giving rise to those benefits.

- (b) If a Director discloses the interest of the Director in accordance with the Corporations Act:
  - (i) the Director may contract or make an arrangement with the Company, or a related body corporate of the Company or a body corporate in which the Company is interested, in any matter in any capacity;
  - (ii) the Director may, subject to the Corporations Act, be counted in a quorum for a meeting of Directors considering the contract or arrangement;
  - (iii) the Director may, subject to the Corporations Act, vote on whether the Company enters into the contract or arrangement, and on any matter that relates to the contract or arrangement;
  - (iv) the Director may sign on behalf of the Company, or witness the affixing of the common seal of the Company to, any document in respect of the contract or arrangement;
  - (v) the Director may retain the benefits under the contract or arrangement; and
  - (vi) the Company cannot avoid the contract or arrangement merely because of the existence of the Director's interest.

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## **6. Officers**

### **6.1 Artistic Director**

- (a) The Directors may appoint any person to the position of Artistic Director and for any period and on any terms (including as to remuneration) as the Directors resolve.
- (b) Subject to any agreement between the Company and the Artistic Director, the Directors may remove or dismiss an Artistic Director at any time, with or without cause.
- (c) The Directors may delegate any of their powers (including the power to delegate) to an Artistic Director.
- (d) The Directors may revoke or vary:
  - (i) the appointment of an Artistic Director; or
  - (ii) any power delegated to an Artistic Director.
- (e) An Artistic Director must exercise the powers delegated to him or her in accordance

with any directions of the Directors.

- (f) The exercise of a delegated power by an Artistic Director is as effective as if the Directors exercised the power.

## **6.2 Secretary**

- (a) The Directors may appoint one or more Secretaries, for any period and on any terms (including as to remuneration) as the Directors resolve.
- (b) Subject to any agreement between the Company and a Secretary, the Directors may remove or dismiss a Secretary at any time, with or without Cause.
- (c) The Directors may revoke or vary the appointment of a Secretary.

## **6.3 Indemnity and insurance**

- (a) To the extent permitted by law, the Company may indemnify each Relevant Officer against:
  - (i) a Liability of that person; and
  - (ii) Legal Costs of that person.
- (b) To the extent permitted by law, the Company may make a payment (whether by way of advance, loan or otherwise) to a Relevant Officer in respect of Legal Costs of that person.
- (c) To the extent permitted by law, the Company may pay, or agree to pay, a premium for a contract insuring a Relevant Officer against:
  - (i) a Liability of that person; and
  - (ii) Legal Costs of that person.
- (d) To the extent permitted by law, the Company may enter into an agreement or deed with:
  - (i) a Relevant Officer; or
  - (ii) a person who is, or has been an officer of the Company or a subsidiary of the Company,

under which the Company must do all or any of the following:

- (iii) keep books of the Company and allow either or both that person and that person's advisers access to those books on the terms agreed;
- (iv) indemnify that person against any Liability of that person;
- (v) make a payment (whether by way of advance, loan or otherwise) to that person in respect of Legal Costs of that person; and
- (vi) keep that person insured in respect of any act or omission by that person while a Relevant Officer or an officer of the Company or a subsidiary of the Company, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

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## **7. Powers of the Company and Directors**

### **7.1 General powers**

- (a) The Company may exercise in any manner permitted by the Corporations Act any power which a public company limited by guarantee may exercise under the Corporations Act.
- (b) The business of the Company is managed by or under the direction of the Directors.
- (c) The Directors may exercise all the powers of the Company except any powers that the Corporations Act or this Constitution requires the Company to exercise in general meeting.

### **7.2 Execution of documents**

- (a) If the Company has a common seal, the Company may execute a document if that seal is fixed to the document and the fixing of that seal is witnessed by:
  - (i) 2 Directors;
  - (ii) a Director and a Secretary; or
  - (iii) a Director and another person appointed by the Directors for that purpose.
- (b) The Company may execute a document without a common seal if the document is signed by:
  - (i) 2 Directors;
  - (ii) a Director and a Secretary; or
  - (iii) a Director and another person appointed by the Directors for that purpose.
- (c) The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with Article 7.2(a) or 7.2(b).
- (d) The Directors may resolve, generally or in a particular case, that any signature on certificates for Members may be affixed by mechanical or other means.
- (e) Negotiable instruments may be signed, drawn, accepted, endorsed or otherwise executed by or on behalf of the Company in the manner and by the persons as the Directors resolve.

### **7.3 Committees and delegates**

- (a) The Directors may delegate any of their powers (including this power to delegate) to a committee of Directors, a Director, an employee of the Company or any other person.
- (b) The Directors may revoke or vary any power delegated under Article 7.3(a).
- (c) A committee or delegate must exercise the powers delegated in accordance with any directions of the Directors.

- (d) The exercise of a delegated power by the committee or delegate is as effective as if the Directors exercised the power.
- (e) Article 8 applies with the necessary changes to meetings of a committee of Directors.

#### **7.4 Attorney or agent**

- (a) The Directors may appoint any person to be attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) as the Directors resolve.
- (b) The Directors may delegate any of their powers (including the power to delegate) to an attorney or agent.
- (c) The Directors may revoke or vary:
  - (i) an appointment under Article 7.4(a); or
  - (ii) any power delegated to an attorney or agent.

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### **8. Proceedings of Directors**

#### **8.1 Written resolutions of Directors**

- (a) The Directors may pass a resolution without a meeting of the Directors being held if all the Directors entitled to vote on the resolution assent to a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of the document referred to in Article 8.1(a) may be used for assenting to by Directors if the wording of the resolution and the statement is identical in each copy.
- (c) A Director may signify assent to a document under this Article 8.1 by signing the document or by notifying the Company of the assent of the Director:
  - (i) in a manner permitted by Article 9.3; or
  - (ii) by any technology appropriate
- (d) Where a Director signifies assent to a document under Article 8.1(c) other than by signing the document, the Director must by way of confirmation sign the document before or at the next meeting of Directors attended by that Director.
- (e) The resolution the subject of a document under Article 8.1(b) is not invalid if a Director does not comply with Article 8.1(d).

#### **8.2 Meetings of Directors**

- (a) The Directors may meet, adjourn and otherwise regulate their meetings as they think fit.
- (b) A meeting of Directors may be held using any technology.
- (c) If a meeting of Directors is held in 2 or more places linked together by any technology:

- (i) a Director present at one of the places is taken to be present at the meeting unless and until the Director states to the chairperson of the meeting that the Director is discontinuing her or her participation in the meeting; and
- (ii) the chairperson of that meeting may determine at which place the meeting will be taken to have been held.

### **8.3 Who can call meetings of Directors**

- (a) A Director may call a meeting of Directors at any time.
- (b) On request of any Director, a Secretary of the Company must call a meeting of the Directors.

### **8.4 How to call meetings of Directors**

- (a) Notice of a meeting of Directors must be given to each Director and Alternate Director.
- (b) A notice of meeting of Directors must:
  - (i) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this); and
  - (ii) state the general nature of the business of the meeting.
- (c) A Director or Alternate Director may waive notice of a meeting of Directors by notice in writing to the Company to that effect.

### **8.5 Quorum**

- (a) Subject to the Corporations Act, a quorum for a meeting of Directors is:
  - (i) if the Directors have fixed a number for the quorum, that number of Directors; and
  - (ii) in any other case, 3 Directors entitled to vote on a resolution that may be proposed at that meeting.
- (b) In determining whether a quorum for a meeting of Directors is present:
  - (i) where a Director has appointed an Alternate Director, that Alternate Director is counted if the appointing Director is not present;
  - (ii) where a person is present as Director and an Alternate Director for another Director, that person is counted separately provided that there is at least one other Director or Alternate Director present; and
  - (iii) where a person is present as an Alternate Director for more than one Director, that person is counted separately for each appointment provided that there is at least one other Director or Alternate Director present.
- (c) A quorum for a meeting of Directors must be present at all times during the meeting.

- (d) If there are not enough persons to form a quorum for a meeting of Directors, one or more of the Directors (including those who have an interest in a matter being considered at that meeting) may call a general meeting of the Company and the general meeting may pass a resolution to deal with the matter.

## **8.6 Chairperson**

- (a) The Directors may elect a Director as chairperson of Directors or deputy chairperson of Directors for any period they resolve, or if no period is specified, until that person ceases to be a Director.
- (b) The Directors may remove the chairperson of Directors or deputy chairperson of Directors at any time.
- (c) The chairperson of Directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) chair each meeting of Directors.
- (d) If:
  - (i) there is no chairperson of Directors; or
  - (ii) the chairperson of Directors is not present within 10 minutes after the time appointed for the holding of a meeting of Directors; or
  - (iii) the chairperson of Directors is present within that time but is not willing to chair all or part of that meeting,then if the Directors have elected a deputy chairperson of Directors, the deputy chairperson of Directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) chair all or part of the meeting of Directors.
- (e) Subject to Articles 8.6(c) and 8.6(d), if:
  - (i) there is no deputy chairperson of Directors; or
  - (ii) the deputy chairperson of Directors is not present within 10 minutes after the time appointed for the holding of a meeting of Directors; or
  - (iii) the deputy chairperson of Directors is present within that time but is not willing to chair all or part of that meeting,the Directors present must elect one of themselves to chair all or part of the meeting of Directors.
- (f) A person does not cease to be a chairperson of Directors or deputy chairperson of Directors if that person retires as a Director at a meeting of Members and is re-elected as a Director at that meeting.

## **8.7 Resolutions of Directors**

- (a) A resolution of Directors is passed if more votes are cast in favour of the resolution than against it.
- (b) Subject to Article 5.8 and this Article 8.7, each Director has one vote on a matter arising at a meeting of the Directors.



- (c) In determining the number of votes a Director has on a matter arising at a meeting of Directors:
    - (i) where a person is present as Director and an Alternate Director for another Director, that person has one vote as a Director and, subject to Article 5.6(e), one vote as an Alternate Director; and
    - (ii) where a person is present as an Alternate Director for more than one Director, that person has, subject to Article 5.6(e), one vote for each appointment.
  - (d) Subject to the Corporations Act, in case of an equality of votes on a resolution at a meeting of Directors, the chairperson of that meeting has a casting vote on that resolution in addition to any vote the chairperson has in his or her capacity as a Director in respect of that resolution.
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## **9. Notices**

### **9.1 Notice to Members**

- (a) The Company may give Notice to a Member:
  - (i) in person;
  - (ii) by sending it by post to the address of the Member in the Register or the alternative address (if any) nominated by that Member;
  - (iii) by sending it to the email address (if any) nominated by that Member;
  - (iv) if permitted by the Corporations Act, by sending it by other electronic means (if any) nominated by that Member; or
  - (v) by any other means permitted by the Corporations Act.
- (b) If the address of a Member in the Register is not within Australia, the Company must send all documents to that Member by air-mail, air courier, fax or electronic address.
- (c) Subject to the Corporations Act, a Notice to a Member is sufficient, even if:
  - (i) a Cessation Event occurs in respect of that Member; or
  - (ii) that Member is an externally administered body corporate,and regardless of whether or not the Company has notice of that event.
- (d) Any Notice required or allowed to be given by the Company to one or more Members by advertisement is, unless otherwise stipulated, sufficiently advertised if advertised once in a daily newspaper circulating in the states and territories of Australia.

### **9.2 Notice to Directors**

The Company may give Notice to a Director or Alternate Director:

- (a) in person;
- (b) by sending it by post to the usual residential address of that person or the alternative

address (if any) nominated by that person;

- (c) by sending it to the email address (if any) nominated by that person; or
- (d) by any other means agreed between the Company and that person.

### **9.3 Notice to the Company**

A person may give Notice to the Company:

- (a) by leaving it at the registered office of the Company;
- (b) by sending it by post to the registered office of the Company;
- (c) by sending it to the email address (if any) nominated by the Company for that purpose; or
- (d) by any other means permitted by the Corporations Act.

### **9.4 Time of service**

- (a) A notice sent by post to an address within Australia is taken to be given:
  - (i) in the case of a notice of meeting, one Business Day after it is posted; or
  - (ii) in any other case, at the time at which the notice would be delivered in the ordinary course of post.
- (b) A notice sent by post or air-mail to an address outside Australia is taken to be given:
  - (i) in the case of a notice of meeting, 5 Business Days after it is posted; or
  - (ii) in any other case, at the time at which the notice would be delivered in the ordinary course of post.
- (c) A notice sent by air courier to a place outside Australia is taken to be given 2 Business Days after delivery to the air courier.
- (d) A notice sent by email is taken to be given on the Business Day it is sent.
- (e) If the Corporations Act permits a notice of meeting to be given to a Member by notifying the Member (using the nominated notification means of that Member):
  - (i) that the notice of meeting is available; and
  - (ii) how the Member may use the nominated access means of that Member to access the notice of meeting,

the notice of meeting is taken to be given on the Business Day after the day on which the Member is notified that the notice of meeting is available.
- (f) The giving of a notice by post, air-mail or air courier is sufficiently proved by evidence that the notice:
  - (i) was addressed to the correct address of the recipient; and
  - (ii) was placed in the post or delivered to the air courier.

- (g) A certificate by a Director or Secretary of a matter referred to in Article 9.4(f) is sufficient evidence of the matter, unless it is proved to the contrary.

## 9.5 Signatures

The Directors may decide, generally or in a particular case, that a notice given by the Company be signed by mechanical or other means.

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## 10. Company distributions

### 10.1 No distributions to Members

- (a) Subject to Article 10.1(b), the Company must not make any distributions to any Members, whether by way of dividend, surplus on winding up or otherwise.
- (b) Subject to Article 5.7, the Company may make the following payments to a Member of:
- (i) reasonable remuneration to any Member in consideration for services rendered or goods supplied by that Member to the Company in the ordinary course of business;
  - (ii) interest at a reasonable rate on money borrowed by the Company from any Member;
  - (iii) reasonable rent for premises leased to the Company by any Member; or
  - (iv) any other reasonable amount of a similar character to those described in this Article 10.1(b).

### 10.2 Winding up

On a winding up of the Company, the Members must determine a company, association or institution whose constituent documents satisfy the following requirements to whom the liquidator must give or transfer any surplus on winding up:

- (a) requires it to pursue only objects similar to those in Article 1.4 and to objects incidental or conducive to them and to apply its income in promoting those objects;
- (b) prohibits it from making distributions to its members to at least the same extent as in Article 10.1; and
- (c) if a company, prohibits it from paying fees to its directors and requires its directors to approve all other payments the company makes to its directors.

## Schedule 1 Definitions and interpretation

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### 1. Definitions

In this Constitution:

**"Artistic Director"** means a person for the time being holding office as the artistic director of the Company under Article 6.1.

**"Alternate Director"** means a person for the time being holding office as an alternate director of the Company under Article 5.6.

**"Business Day"** means a day except a Saturday, Sunday or public holiday in New South Wales.

**"Cessation Event"** means:

- (a) if a Member is an individual:
  - (i) death or bankruptcy of that Member; or
  - (ii) that Member becoming of unsound mind or becoming a person whose property is liable to be dealt with under a law about mental health;
- (b) if a Member is a body corporate, the deregistration of that Member under the laws of the jurisdiction of its registration; and
- (c) whether an individual or body corporate, the failure of a Member to pay Fees owing by that Member in accordance with Article 3.

**"Corporations Act"** means the *Corporations Act 2001* (Commonwealth), except to the extent of any exemption, modification, declaration or order made in respect of that legislation which applies to the Company.

**"Directors"** means the directors of the Company for the time being.

**"Expulsion Event"** means, in respect of a Member:

- (a) the Member has intentionally, recklessly or negligently breached a provision of this Constitution;
- (b) the conduct of the Member, in the opinion of the Directors, is unbecoming of the Member or prejudicial to the interests or reputation of the Company; or
- (c) the Member is, or any step is taken for the Member to become, either an insolvent under administration or an externally administered body corporate.

**"Fees"** has the meaning given to that term in Article 3.2(a).

**"Legal Costs"** of a person means legal costs incurred by that person in defending an action for a Liability of that person.

**"Liability"** of a person means any liability incurred by that person as an officer of the Company or a subsidiary of the Company.

**"Member"** means a person whose name is entered in the Register as a Member.

**"Notice"** means a notice given pursuant to, or for the purposes of, this Constitution or the Corporations Act.

**"Personal Representative"** means the legal personal representative, executor or administrator of the estate of a deceased person.

**"Prescribed Notice"** means 21 days or any shorter period of notice for a meeting allowed under the Corporations Act.

**"Register"** means the register of Members kept under the Corporations Act and, where appropriate, includes any branch register.

**"Relevant Officer"** means a person who is, or has been, a Director or Secretary.

"Secretary" means a company secretary of the Company for the time being.

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## 2. Interpretation

- (a) In this Constitution:
- (i) a reference to a meeting of Members includes a meeting of any class of Members;
  - (ii) a Member is taken to be present at a meeting of Members if the Member is present in person or by proxy, attorney or representative;
  - (iii) a reference to something being "**written**" or "**in writing**" includes that thing being represented or reproduced in any mode in a visible form; and
  - (iv) where a notice or document is required by this Constitution to be signed, that notice or document may be authenticated by any other manner permitted by the Corporations Act or any other law, instead of being signed.
- (b) In this Constitution, headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:
- (i) words importing the singular include the plural (and vice versa);
  - (ii) words indicating a gender include every other gender;
  - (iii) the word "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
  - (iv) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
  - (v) the word "**includes**" in any form is not a word of limitation.
- (c) Unless the context indicates a contrary intention, in this Constitution:
- (i) a reference to an Article or a schedule is to an article or a schedule of this Constitution;
  - (ii) a reference in a schedule to a clause is to a clause of that schedule;
  - (iii) a schedule is part of this Constitution; and
  - (iv) a reference to this Constitution is to this Constitution (and where applicable any of its provisions) as modified or repealed from time to time.
- (d) Unless the context indicates a contrary intention, in this Constitution, a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it.
- (e) Unless the context indicates a contrary intention, an expression in a provision of

this Constitution that is defined in section 9 of the Corporations Act has the same meaning as in that section.

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### **3. Exercise of powers**

Where this Constitution confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.

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### **4. Severing invalid provisions**

If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that does not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Constitution.

**Annexure A**  
**Members**

*[Insert names of Members as at date of adoption of Constitution]*