

MAKINSON d'APICE
L A W Y E R S

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Constitution

FOUR PAWS AUSTRALIA (ANIMAL WELFARE) LIMITED
(Company)

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Table of Contents

1.	NAME OF THE COMPANY.....	3
2.	TYPE OF COMPANY.....	3
3.	REPLACEABLE RULES	3
4.	DEFINITIONS AND INTERPRETATION	3
5.	OBJECTS AND PURPOSES	5
6.	NUMBER OF MEMBERS.....	6
7.	ELIGIBILITY AND APPLICATION FOR MEMBERSHIP.....	6
8.	MEMBERS' RIGHTS.....	7
9.	REGISTER OF MEMBERS.....	7
10.	VARIATION OF MEMBERSHIP.....	7
11.	MEMBERSHIP ENTITLEMENTS NOT TRANSFERABLE	7
12.	ENTRANCE FEE AND SUBSCRIPTIONS	7
13.	CESSATION OF MEMBERSHIP	8
14.	DISCIPLINARY PROCEDURES.....	8
15.	RIGHT OF APPEAL AGAINST DISCIPLINE OR SUSPENSION.....	9
16.	ANNUAL GENERAL MEETING	9
17.	CONVENING OF GENERAL MEETINGS	9
18.	NOTICE OF GENERAL MEETING.....	10
19.	CANCELLATION OR POSTPONEMENT OF GENERAL MEETING	10
20.	QUORUM.....	11
21.	CHAIRMAN	11
22.	ADJOURNMENTS	12
23.	DETERMINATION OF QUESTIONS	12
24.	POLLS.....	12
25.	VOTING RIGHTS	13
26.	VOTING DISQUALIFICATION.....	13
27.	OBJECTION TO QUALIFICATION TO VOTE	13
28.	PERSONS OF UNSOUND MIND AND MINORS	13
29.	CHAIRMAN'S CASTING VOTE	14
30.	RIGHT OF NON-MEMBERS TO ATTEND GENERAL MEETING	14
31.	RIGHT TO APPOINT PROXIES	14
32.	APPOINTING A PROXY	14
33.	LODGEMENT OF PROXIES	15
34.	VALIDITY OF PROXIES	15
35.	RIGHTS OF PROXIES AND ATTORNEYS.....	16
36.	NUMBER AND APPOINTMENT OF DIRECTORS.....	16
37.	VACATION OF OFFICE.....	17
38.	POWERS OF DIRECTORS	17

39.	PAYMENTS TO DIRECTORS	17
40.	FUNDS AND ACCOUNTS	18
41.	CONFERMENT OF POWERS	18
42.	CONTRACTS AND CONFLICTS OF INTEREST	18
43.	MEETINGS OF DIRECTORS	19
44.	QUORUM	19
45.	CHAIRMAN	20
46.	VOTING AND BOARD SPECIAL RESOLUTIONS	20
47.	RESOLUTIONS BY DIRECTORS	20
48.	COMMITTEE OF DIRECTORS	21
49.	VALIDATION OF ACTS OF DIRECTORS	21
50.	MINUTES	21
51.	SECRETARY	22
52.	AUDIT	22
53.	EXECUTION OF DOCUMENTS	22
54.	ACCOUNTS AND INSPECTION	22
55.	SERVICE OF NOTICES	23
56.	NOTICES OF GENERAL MEETING	24
57.	WINDING UP	24
58.	INDEMNITY	24
59.	PAYMENT OF INDEMNITY POLICY PREMIUM	25
60.	INDEMNITY TO CONTINUE	25

1. NAME OF THE COMPANY

The name of the Company is FOUR PAWS Australia (Animal Welfare) Limited.

2. TYPE OF COMPANY

- (a) The Company is a not-for-profit public company limited by guarantee.
 - (b) Subject to this Constitution, each person who is a Member and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:
 - (i) payment of debts and liabilities of the Company;
 - (ii) payment of the costs, charges and expenses of winding up; and
 - (iii) any adjustment of the rights of the contributories among Members.
 - (c) The amount that each Member or Past Member is liable to contribute is limited to \$10.00.
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3. REPLACEABLE RULES

This Constitution displaces the Replaceable Rules to the extent that it is inconsistent with any Replaceable Rules.

4. DEFINITIONS AND INTERPRETATION

- (a) In this Constitution, unless there is something in the subject or context which is inconsistent:

Act means the *Corporations Act 2001*.

Board means the Board of Directors.

Board Special Resolution means a resolution that has been passed by 75% of the votes cast by Directors entitled to vote on the resolution.

Chairman means the person holding that office under this Constitution and includes any assistant or acting chairman.

Committee means a committee established in accordance with **clause 48**.

Company means the FOUR PAWS Australia (Animal Welfare) Limited.

Constitution means this Constitution as amended or supplemented from time to time.

Director means any person holding the position of a director of the Company and **Directors** means the directors for the time being of the Company or as

the context permits such number of them as have authority to act for the Company.

Member means a member of the Company.

Office means the registered office for the time being of the Company.

Officer has the same meaning as given to that term in section 9 of the Act.

Ordinary Member means a Member of the Company admitted in accordance with **clause 7.2**.

Register means the register of Members to be kept pursuant to the Act.

Replaceable Rules means the replaceable rules applicable to a public company limited by guarantee set out in the Act.

Representative means a person authorised in accordance with section 250D of the Act to act as a representative of a body corporate that is a member of the Company.

Secretary means the Director appointed as the secretary of the Company and includes any Director acting as an assistant or acting secretary.

- (b) In this Constitution, unless there is something in the subject or context which is inconsistent:
 - (i) the singular includes the plural and vice versa;
 - (ii) each gender includes the other gender;
 - (iii) the word "person" means a natural person and any partnership, association, body or entity whether incorporated or not;
 - (iv) the words "writing" and "written" include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
 - (v) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
 - (vi) a reference to any clause or schedule is to a clause or schedule of this Constitution;
 - (vii) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.
- (c) An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.

- (d) The provisions of this Constitution displace the replaceable rules (but not replaceable rules which mandatorily apply to a public company) contained in the Act.
- (e) Headings do not form part of or affect the construction or interpretation of this Constitution.

5. OBJECTS AND PURPOSES

- (a) The objects for which the Company is established are to prevent or relieve unnecessary suffering of animals, including but not limited to:
 - (i) Providing direct assistance and relieving the suffering of animals in need of care and attention;
 - (ii) Providing veterinary care and treatment;
 - (iii) Rescuing, rehabilitating and rehoming animals;
 - (iv) Providing support and giving advice to owners, handlers and keepers;
 - (v) Promoting benevolence towards animals;
 - (vi) Promoting and providing education relating to the humane treatment of animals;
 - (vii) Improving the political climate for animal welfare to prevent animal suffering in the future, including lobbying at a national and international level;
 - (viii) Promoting and encouraging the abolition of animal testing and experimentation by all lawful means; and
 - (ix) Any other activities in furtherance of the above purposes.
- (b) The Company can only exercise the powers in section 124(1) of the Act to:
 - (i) carry out the objects of the Company set out in **clause 5(a)**; and
 - (ii) do all things incidental or convenient in relation to the exercise of power under **clause 5(b)(i)**.
- (c) The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in **clause 5(a)**.
- (d) No income or property of the Company will be paid, transferred or distributed, directly or indirectly, by way of dividend or otherwise to any Members of the Company. However nothing in this Constitution will prevent payment in good faith to a Member:
 - (i) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;

- (ii) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company; or
- (iii) of reasonable and proper rent for premises leased by any Member to the Company.
- (e) The Company must be located in Australia.

6. NUMBER OF MEMBERS

The maximum number of Members of the Company is unlimited, but may be altered by the Board from time to time.

7. ELIGIBILITY AND APPLICATION FOR MEMBERSHIP

7.1 Eligibility for Membership

- (a) A person is eligible for membership of the Company if that person:
 - (i) is a natural person over the age of 18 years, or is a company or registrable body; and
 - (ii) in the opinion of the Board holds the ideals of the promotion of the objects of the Company as set out in **clause 5**.

7.2 Application for Membership

- (a) Every application for membership of the Company must be lodged with the Secretary and must set forth the name, address, and specify the relevant credentials of the applicant as an Ordinary Member.
- (b) Applications for membership of the Company must be made in writing on a form approved by the Board for that purpose and signed by the applicant.
- (c) At the first meeting of the Board after an application for membership has been received the Board will in its absolute discretion:
 - (i) determine the admission or rejection of the applicant; or
 - (ii) decide to call on the applicant to supply any evidence of eligibility that they consider reasonably necessary.
- (d) An applicant will be admitted to membership of the Company if 75% of Directors present and entitled to vote at a meeting of the Board agree by resolution to admit the applicant.
- (e) If the Board approves an application for membership the Chairperson must, as soon as practicable, notify the applicant in writing of their approval for membership.
- (f) If the Board rejects an application for membership the Chairperson must, as soon as practicable, notify the applicant in writing that their application has

been rejected. The Chairperson is not bound to give reasons why the application was rejected.

8. MEMBERS' RIGHTS

Members of the Company will be entitled to attend and vote at general meetings of the Company.

9. REGISTER OF MEMBERS

Upon approval of an application for membership by the Board, the Chairperson will cause to be entered into the Register the name and address of the new Member, as supplied by the Member on their application for membership. The Chairperson will hold all signed applications and produce them if required to verify the identity of any person voting at any election or meeting of the Company.

10. VARIATION OF MEMBERSHIP

The Board may:

- (a) create a new class of Member;
 - (b) vary or cancel rights of Members in a class; or
 - (c) transfer a Member or class of Members from one class to another;
- if:
- (d) 75% of the Directors present and entitled to vote at a Board meeting, vote by resolution in favour of such creation, variation, cancellation or transfer; and
 - (e) such creation, variation, cancellation or transfer is not oppressive conduct or would not unfairly prejudice that class of Members.

11. MEMBERSHIP ENTITLEMENTS NOT TRANSFERABLE

A right privilege or obligation which a person has by reason of being a Member of the Company:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates on cessation of the person's membership.

12. ENTRANCE FEE AND SUBSCRIPTIONS

- (a) A Member must on admission to membership, pay any amount as determined by the Board from time to time.

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- (b) In addition to any amount payable by the Member under **subclause (a)**, a Member must pay to the Company an annual membership fee as determined by the Board:
 - (i) before 1 January in each calendar year; or
 - (ii) if the member becomes a Member on or after 1 January in any calendar year, then before 1 January in each succeeding calendar year.
 - (c) For completeness, the Board may determine that no entrance fee or annual membership fee shall be payable (in whole or in part) in a given year and may extend the time for payment by any Member.

13. CESSATION OF MEMBERSHIP

A Member's membership will cease:

- (a) on the date that the Secretary receives written notice of resignation from that Member;
- (b) if the Company in general meeting resolves by a resolution with a 75% majority of Members, to terminate the membership of a Member whose conduct or circumstances in the opinion of the Company renders it undesirable that that Member continue to be a Member of the Company, for example because the Member has not paid their annual membership fee. The Member must be given at least 21 days' notice of the proposed resolution and must be given the opportunity to be heard at the meeting at which the resolution is proposed;
- (c) a person ceases to be a Member of the Company if the person:
 - (i) dies, or
 - (ii) resigns membership, or
 - (iii) is expelled from the Company.

14. DISCIPLINARY PROCEDURES

- (a) If any Member or any Representative of a Member wilfully refuses or neglects to comply with the provisions of this Constitution or is guilty of any code of conduct which in the opinion of the Board is unbecoming of a Member or prejudicial to the interests of the Company, the Board will have the power by resolution to censure, fine, suspend or expel the Member from the Company.
- (b) For the avoidance of doubt, conduct will be considered to be unbecoming if it
 - (i) causes a majority of the Board to think less of the Member's integrity; or
 - (ii) brings the Company into disrepute; or

- (iii) breaches any of the Company's codes of conduct.
- (c) Any action taken by the Board in accordance with **clause 14(a)** is effective only after the Member has been given 14 days' notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed.

15. RIGHT OF APPEAL AGAINST DISCIPLINE OR SUSPENSION

A Member has a right to appeal against their expulsion under **clause 14** in accordance with the Company's guidelines on disciplinary and dispute resolution procedures.

16. ANNUAL GENERAL MEETING

- (a) Subject to the Act, a general meeting must be held at least once in every calendar year and within the period of five (5) months after the end of the Company's financial year at such time and place as may be determined by the Directors to be called the "Annual General Meeting";
- (b) Meetings of the Company other than the Annual General Meeting shall be called "general meetings".
- (c) The business of the Annual General Meeting may include any of the following, even if not referred to on the notice of meeting:
 - (i) the consideration of the Annual Financial Statements, Directors' Declaration and Directors' Report and Auditor's Report;
 - (ii) the election of Directors;
 - (iii) the appointment of the auditor; and
 - (iv) the fixing of the auditor's remuneration.

17. CONVENING OF GENERAL MEETINGS

- (a) Any three Directors may whenever those Directors think fit convene a general meeting of the Company.
- (b) Members with at least 5% of the votes that may be cast at a general meeting shall be entitled to require a general meeting to be convened in accordance with the provisions of the Act.
- (c) A general meeting of the Company may be convened at two or more venues using any technology that gives the Members a reasonable opportunity to participate in the meeting.

18. NOTICE OF GENERAL MEETING

- (a) Subject to consent to shorter notice being given in accordance with the Act, at least 21 days' notice of any general meeting must be given specifying:
 - (i) the place, day and hour of the meeting;
 - (ii) the general nature of any business to be transacted at the meeting;
 - (iii) if a special resolution is to be proposed, the details of and intention to propose it;
 - (iv) if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
 - (v) any other information required by the Act; and
 - (vi) notice must be given to all members in accordance with **clause 55**.
- (b) The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.

19. CANCELLATION OR POSTPONEMENT OF GENERAL MEETING

- (a) Subject to the provisions of the Act and this Constitution the Board may cancel a general meeting of the Company:
 - (i) convened by the Board; or
 - (ii) which has been convened by a Member or Members pursuant to the Act upon receipt by the Company of a written notice withdrawing the requisition signed by that Member or those Members.
- (b) The Board may postpone a general meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original meeting.
- (c) Where any general meeting is cancelled or postponed or the venue for the same is changed:
 - (i) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
 - (ii) any failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

20. QUORUM

- (a) No business may be transacted at any general meeting unless a quorum of Members is present at all times during the meeting.
- (b) A majority of Members entitled to vote constitute a quorum for all general meetings.
- (c) If within 30 minutes after the time appointed for holding a general meeting a quorum is not present:
 - (i) the meeting if convened upon the requisition of Members shall be dissolved;
 - (ii) in any other case:
 - (A) it will stand adjourned to the same day in the next week at the same time and place or to such other day time and place as the Board may by notice to the Members appoint; and
 - (B) if at such adjourned meeting a quorum is not present within 30 minutes after the time appointed for the holding of the meeting the meeting shall be dissolved.

21. CHAIRMAN

- (a) The Chairman shall be elected annually by majority vote of the Board.
- (b) The Chairman shall be entitled to preside as chairman at every general meeting.
- (c) Where a general meeting is held and:
 - (i) there is no Chairman; or
 - (ii) the Chairman is not present within 15 minutes after the time appointed for the holding of the meeting or if present is unwilling to act as Chairman of the meeting,

the other Members present may choose by majority another Director as Chairman of the meeting. If the nominated Director declines to take the chair, the Members present may choose one of their number to be Chairman of the meeting.
- (d) The rulings of the Chairman of a general meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

22. ADJOURNMENTS

- (a) The Chairman (or acting chair, as appropriate) of a general meeting at which a quorum is present:
 - (i) may adjourn a meeting with the consent of the meeting; and
 - (ii) must adjourn the meeting if the meeting so directs,to a time and place as determined.
- (b) No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- (d) It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for 30 days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

23. DETERMINATION OF QUESTIONS

- (a) At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:
 - (i) the Chairman of the meeting; or
 - (ii) at least ten Members entitled to vote on the resolution.
- (b) Before a vote on a resolution is taken, the Chairman must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (c) A declaration by the Chairman of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of the Company which has been signed by the Chairman of the meeting or the next succeeding meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

24. POLLS

- (a) A poll may be demanded:
 - (i) before a vote on a resolution is taken;
 - (ii) before the voting results on a show of hands are declared; or

- (iii) immediately after the voting results on a show of hands are declared.
- (b) If a poll is demanded it must be taken in such manner and at such time and place as the Chairman of the meeting directs subject to **clause 24(e)**.
- (c) The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.
- (d) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- (e) A poll demanded on the election of a Chairman or any question of adjournment of the meeting must be taken immediately.
- (f) The demand for a poll may be withdrawn.

25. VOTING RIGHTS

A Member entitled to vote has one vote, both on a show of hands and a poll.

26. VOTING DISQUALIFICATION

No person other than a Member shall be entitled to a vote at a general meeting.

27. OBJECTION TO QUALIFICATION TO VOTE

Any challenge as to the qualification of a person to vote at a general meeting or the validity of any vote tendered may only be raised at the meeting and must be determined by the Chairman whose decision shall be final and conclusive and a vote allowed by the Chairman shall be valid for all purposes.

28. PERSONS OF UNSOUND MIND AND MINORS

- (a) A Member of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health or who is a minor may vote whether on a show of hands or on a poll by that Member's committee or by such other person as properly has the management or guardianship of that Member's estate or by the public trustee (as the case may be) and the committee or other person or trustee may vote by proxy or Representative.
- (b) Any person having the right of management or guardianship of the person or estate in respect of a Member as referred to in **clause 28(a)** must not exercise any of the rights conferred under that clause unless and until the person has provided to the Board satisfactory evidence of the appointment of the person accordingly.

29. CHAIRMAN'S CASTING VOTE

In the case of an equality of votes whether on a show of hands or on a poll the Chairman of the meeting of Members at which the show of hands is taken or at which the poll is demanded is entitled to a casting vote.

30. RIGHT OF NON-MEMBERS TO ATTEND GENERAL MEETING

- (a) The Chairman may invite any person who is not a Member to attend and/or address a general meeting.
- (b) Any auditor of the Company shall be entitled to attend and/or address a general meeting.

31. RIGHT TO APPOINT PROXIES

- (a) A Member who is entitled to attend and vote at a general meeting of the Company may appoint a person as the Member's proxy to attend and vote for the Member at the meeting and such person need not be a Member.
- (b) If a Member appoints a proxy the proxy is entitled to vote on a show of hands and on a poll.

32. APPOINTING A PROXY

- (a) The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney duly authorised in writing or if the appointor is a corporation signed by an authorised officer or attorney of the corporation.
- (b) The instrument of proxy is valid if it contains the information required by the Act which at the date of this Constitution is the following information:
 - (i) the name and address of the Member;
 - (ii) the name of the Company;
 - (iii) the proxy's name or the name of the office of the proxy; and
 - (iv) the meetings at which the instrument of proxy may be used.
- (c) An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.
- (d) An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by **clause 32(b)**.
- (e) An instrument of proxy may be revoked at any time by notice in writing to the Company.

33. LODGEMENT OF PROXIES

- (a) An instrument appointing:
- (i) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
 - (ii) an attorney to exercise a Member's voting rights at a general meeting or a certified copy of that power of attorney,

must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than 48 hours (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be at which the person named in the instrument proposes to vote and in default the instrument of proxy or the power of attorney will not be treated as valid.

- (b) For the purposes of this clause it will be sufficient that any document required to be lodged by a Member be received in legible form via whatever means the notice of meeting permits at the place at which the document is required to be delivered by the Member and the document shall be regarded as received at the time the document was received at that place. For completeness, a legible copy of the document will be sufficient for the purposes of this **clause 33**.

34. VALIDITY OF PROXIES

- (a) A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:
- (i) the death or unsoundness of mind of the Member;
 - (ii) the bankruptcy or liquidation of the Member;
 - (iii) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,

if the Company has not received at its Office written notice of the death, unsoundness of mind, bankruptcy, liquidation or revocation at least 48 hours (or such shorter period as the Board may allow) prior to the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

- (b) A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

35. RIGHTS OF PROXIES AND ATTORNEYS

- (a) The instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.
- (b) Unless a Member by the instrument of proxy directs the proxy to vote in a certain manner the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise the proxy shall follow the voting instructions contained in the instrument of proxy.
- (c) A proxy will not be revoked by the appointor attending and taking part in any general meeting but if the appointor votes on a resolution either on a show of hands or on a poll the person acting as proxy for the appointor shall not be entitled to vote in that capacity in respect of the resolution.
- (d) The Chairman of a general meeting may require any person acting as a proxy to establish to the satisfaction of the Chairman that he is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his identity he may be excluded from voting either upon a show of hands or upon a poll.

36. NUMBER AND APPOINTMENT OF DIRECTORS

- (a) The number of Directors must not be less than three and the maximum is unlimited.
- (b) The Company may appoint a person as a Director by resolution passed in a General Meeting.
- (c) Except in the case of a casual vacancy or the first Directors of the Company in accordance with sub clause (d), a Director will serve a term of 3 years from the effective date of appointment and may be eligible for re-election by the Members as a Director for an unlimited number of further 3 year terms.
- (d) The first Directors of the Company will serve a founding term of 3 years with the exception of the first Chairman who will serve a founding term of 5 years and the first Secretary who will serve a founding term of 4 years. Any re-election of the first Directors of the Company will occur in accordance with sub clause (c).
- (e) A Director may appoint an alternate to exercise some or all of the Director's powers for a specified period. If the appointing Director requests the Company to give the alternate notice of Directors' meetings, the Company must do so. When an alternate exercises the Director's powers, the exercise of the powers is just as effective as if the powers were exercised by the Director. The appointing Director may terminate the alternate's appointment at any time. An appointment and its terms or a termination must be in writing and given to ASIC and the Company.

37. VACATION OF OFFICE

- (a) Any Director may retire from office on giving written notice to the Company at the Office of his intention to retire and the resignation shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company).
- (b) The office of a Director shall become vacant if the Director:
 - (i) resigns in accordance with **clause (a)**;
 - (ii) becomes an insolvent under administration (within the meaning of the Act); or
 - (iii) becomes prohibited from being a director of a company by reason of any order made under the Act;
 - (iv) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
 - (v) resigns by notice in writing to the Company;
 - (vi) in accordance with **clause 36(c)** has served a maximum term (if applicable);
 - (vii) is absent without permission of the Board from meetings of the Board held for more than 6 months and the Directors resolve that his or her office be vacated; or
 - (viii) subject to the Act is removed from office by a special resolution of the Members in a general meeting.

38. POWERS OF DIRECTORS

All day to day control, management and conduct of the Company shall be vested in the Board who shall exercise all such powers of the Company as are not by the Act or by this constitution required to be exercised in any other manner.

39. PAYMENTS TO DIRECTORS

- (a) A Director may not be paid directors fees for serving as a Director
- (b) **Clause (a)** does not limit any payment for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity of Director, where:
 - (i) the provision of the service has the prior approval of the Directors of the Company; and
 - (ii) the amount payable is approved by the Directors of the Company; and

- (iii) is not more than an amount which commercially would be reasonable payment for the service.
- (c) The Directors shall be entitled to be paid or reimbursed for all travelling and other expenses reasonably incurred by them in connection with any meeting of the Directors, any meeting of a committee, general meetings of the Company and otherwise in connection with the business or affairs of the Company.

40. FUNDS AND ACCOUNTS

- (a) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by at least two Directors if the Company has two or more Directors. The Directors may determine that a negotiable instrument may be signed, accepted, drawn, endorsed or otherwise executed in a different way.
- (b) The bank accounts of the Company shall be operated by such person, or persons as determined by the Board from time to time
- (c) The Company may have any number of separate accounts.

41. CONFERMENT OF POWERS

- (a) The Board may from time to time confer upon any Director for the time being or any other person as they may select such of the powers exercisable under this Constitution by the Board as it may think fit for such time and to be exercised for such purposes and on such terms and conditions and with such restrictions as it may think expedient.
- (b) Powers conferred under this clause may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.

42. CONTRACTS AND CONFLICTS OF INTEREST

- (a) The Company may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions that apply to such contracts or arrangements.
- (b) A Director must disclose an interest in accordance with the Act and the Secretary must record all declarations in the minutes of the relevant meeting.
- (c) A Director who has an interest in a contract or arrangement made by the Company and has disclosed this interest to the Board subject to compliance with section 195 and related provisions of the Act still may:
 - (i) vote on the matter;

- (ii) 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;
 - (iii) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (iv) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- (d) A Director's failure to make disclosure under this clause does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.
- (e) A general notice given to the Board by a Director that the Director is an officer, a member of or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Company and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

43. MEETINGS OF DIRECTORS

- (a) The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as it thinks fit provided that they shall meet together not less than two times each calendar year.
- (b) A Director may at any time and the Secretary upon the request of a Director shall convene a meeting of Board by giving at least 24 hours' notice of the meeting to all Directors.
- (c) Notice of a meeting of Board need not be in writing.
- (d) A Board meeting may be convened or held using any technology consented to by all Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- (e) All resolutions of the Directors passed at a meeting of Board where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors.

44. QUORUM

A majority of Directors entitled to attend a meeting of the Board who are personally present (or in conference in accordance with **clause 43**) form a quorum. A quorum

must be present at all times during the meeting. A Director who is disqualified from voting on a matter pursuant to **clause 42** shall be counted in the quorum despite that disqualification.

45. CHAIRMAN

- (a) The Chairman shall, if present, preside as Chairman of every meeting of the Board.
- (b) If a meeting of Board is held and the Chairman is not present within 10 minutes after the time appointed for the holding of the meeting or, if present, does not wish to chair the meeting, then the other Directors present must elect one of their number to be Chairman of the meeting.

46. VOTING AND BOARD SPECIAL RESOLUTIONS

- (a) A resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.
- (b) Each Director shall have one vote.
- (c) In case of an equality of votes at a meeting of the Board, the Chairman does not have a casting vote in addition to a deliberative vote.
- (d) The Board may by Board Special Resolution identify specific topics that must only be dealt with by a Board Special Resolution and the identification may be a standing one. These topics may be varied from time to time but only by further Board Special Resolution. An ordinary resolution of the Board will have no effect in respect of these topics.

47. RESOLUTIONS BY DIRECTORS

- (a) The Board may pass a resolution without a Board 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. For this purpose, signatures can be contained in more than one document. The resolution is passed when the last director signs.
- (b) A document which is received by the Company in legible form via whatever means and which purports to have been signed by a Director shall for the purposes of this clause be taken to be in writing and signed by that Director at the time of the receipt of the document by the Company in legible form.
- (c) An email transmission which is received by the Company and which purports to have been sent by a Director shall for the purposes of this clause be taken to be in writing and signed by that Director at the time of the receipt of the email transmission by the Company.

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- (d) In addition, a Directors' meeting may be called or held and resolutions may be passed using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw consent within a reasonable period before the meeting or the putting of the resolution.
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48. COMMITTEE OF DIRECTORS

- (a) The Board may form and delegate any of its powers to a Committee consisting of such Directors and other persons as it thinks fit and may from time to time revoke such delegation. All such Committees must be chaired by a Director.
- (b) A Committee must in exercise of the powers delegated to it conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- (c) The meetings and proceedings of any Committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- (d) A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act and this Constitution to be made entered and signed. A copy of these minutes shall be tabled at the next Board Meeting.
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49. VALIDATION OF ACTS OF DIRECTORS

All acts done:

- (a) at any meeting of the Board; or
- (b) by any person acting as a Director,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

50. MINUTES

- (a) The Board must cause minutes to be kept in accordance with the Act for the purposes of recording:
- (i) the names of the Directors present at each meeting of the Directors and of Directors present at each meeting of any Committee;
 - (ii) all orders, resolutions and proceedings of general meetings and of meetings of Directors and of Committees;

- (iii) such matters as are required by the Act to be recorded in the record books of the Company including without limitation all declarations made or notices given by any Director of his interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.
- (b) Such minutes shall be signed by the Chairman of the meeting, or the Chairman of the next succeeding meeting and minutes which purport to be signed accordingly shall be received in evidence without any further proof as sufficient evidence that the matters and things recorded by such minutes actually took place or happened as recorded and of the regularity of such matters and things and that the same took place at a meeting duly convened and held.

51. SECRETARY

- (a) There must be at least one Secretary appointed to that office by the Board. Such Secretary may be an honorary Secretary.
- (b) The Board may remove any Secretary from that office.

52. AUDIT

- (a) A registered company auditor must be appointed.
- (b) The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.

53. EXECUTION OF DOCUMENTS

- (a) Without limiting the manner in which the Company may execute any contract, including as permitted under section 127 of the Act, the Company may execute any agreement, deed or other document by:
 - (i) two Directors signing the same; or
 - (ii) one Director and one Secretary signing the same.
- (b) Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

54. ACCOUNTS AND INSPECTION

The Board shall cause proper financial records to be kept and must distribute copies of the financial reports of the Company and a Directors' report in accordance with the requirements of the Act and also from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the

accounting and other records of the Company or any of them will be open to the inspection of Members.

55. SERVICE OF NOTICES

- (a) A notice may be given by the Company to any Member by:
 - (i) serving it on the Member personally;
 - (ii) sending it by post to the Member or leaving it at the Member's address shown in the Register or otherwise the address supplied by the Member to the Company for the giving of notices;
 - (iii) facsimile to the facsimile number supplied by the Member to the Company for the giving of notices; or
 - (iv) sending it to the electronic address supplied by the Member to the Company for the giving of notices.
- (b) Any Member who has not left at or sent to the Office his place of address for inclusion in the Register as the place at which notices may be given to the Member shall not be entitled to receive any notice.
- (c) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been effected on the day after the date of posting. Service of a notice to a Member outside Australia shall be deemed to have been made in the ordinary course of the post.
- (d) Where a notice is sent by electronic means such as e-mail, service of the notice shall be taken to be effected by properly addressing and sending the notice and in such case shall be taken to have been effected on the business day after it is sent.
- (e) A notice may be given by the Company to the persons entitled to a share in consequence of the death, lunacy or bankruptcy of a Member by:
 - (i) service on the Member personally;
 - (ii) sending it by post addressed to the person by name or by the title of the Representative of the deceased or lunatic or the assignee of the bankrupt or by any like description at the address, if any, within Australia supplied for the purpose by the person claiming to be entitled;
 - (iii) by giving the notice in any manner in which the same might have been given if the death, lunacy or bankruptcy had not occurred.
- (f) Evidence of service of a notice may be established by proving that the envelope containing the notice and stamped appropriately was properly posted and a certificate given by any Officer of the Company to that effect shall be conclusive evidence of service.

56. NOTICES OF GENERAL MEETING

Subject to **clause 55(b)**, notice of every general meeting must be given in any manner authorised by this Constitution to:

- (a) every Member; and
 - (b) the auditor for the time being of the Company.
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57. WINDING UP

The Company may be dissolved by a special resolution of Members at a meeting of Members. 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 another institution or corporation which has:

- (a) objects which are similar to the objects of the Company as set out in **clause 5(a)**;
- (b) a governing document which requires its income and property to be applied in promoting its objects; and
- (c) a governing document which prohibits it from paying or distributing its income and property amongst its Members to an extent at least as great as imposed on the Company by **clause 5(d)**.

The identity of the corporation or institution is to be determined by the Members in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court for determination.

58. INDEMNITY

To the extent permitted by law, every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred as such an Officer or employee (or former Officer or employee). However, no such Officer (or former Officer) shall be indemnified out of the funds of the Company under this clause unless:

- (a) it is in respect of a liability to another person (other than the Company or a related body corporate to the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
- (b) it is in respect of a liability for costs and expenses incurred:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or

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- (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Act.

59. PAYMENT OF INDEMNITY POLICY PREMIUM

- (a) To the extent permitted by law the Company may at the discretion of the Board enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:

- (i) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
- (ii) a contravention of sections 182 or 183 of the Act.

The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.

- (b) Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his actions or omissions then the Company shall not be required to indemnify the Officer under **clause 58** except to the extent that the indemnity affected by the insurance policy does not fully cover the persons liability.

60. INDEMNITY TO CONTINUE

The indemnity granted by the Company contained in **clauses 58 and 59** shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.

