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# Constitution of Home Equity and Rental Services Ltd

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A company limited by guarantee

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# Constitution

## Home Equity and Rental Services Ltd

### 1 Preliminary

#### 1.1 Definitions

In this constitution:

Term	Definition
<b>ACNC Legislation</b>	means the: (a) <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth); and (b) <i>Australian Charities and Not-for-profits Commission Regulation 2013</i> (Cth).
<b>Business Day</b>	means a day that is not a Saturday, Sunday or public holiday in the place where an act is to be performed, notice received or a payment is to be made.
<b>Corporations Act</b>	means <i>Corporations Act 2001</i> (Cth).
<b>Governance Standards</b>	means the Governance Standards established under the ACNC Legislation.
<b>Member Representative</b>	means, for a member which is a body corporate , a person authorised by the body corporate to act as its representative in the company.
<b>NAHC</b>	National Affordable Housing Consortium ABN 30 132 604 552.

#### 1.2 Interpretation

In this constitution:

- (a) a reference to a member present at a general meeting is a reference to a member present in person or by proxy, attorney or Member Representative;
- (b) a reference to a person holding or occupying a particular office or position is a reference to any person who occupies or performs the duties of that office or position;
- (c) unless the contrary intention appears:
  - (i) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
  - (ii) a reference to a person includes that person's successors, legal personal representatives, permitted substitutes and permitted assigns;

- (iii) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (iv) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (v) a reference to a rule is a reference to a rule of this constitution;
- (vi) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced; and
- (vii) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day; and
- (d) headings are for convenience only and do not affect interpretation.

### **1.3 Application of the Corporations Act**

- (a) The replaceable rules in the Corporations Act do not apply to the company.
- (b) Where an expression is used in a manner consistent with a provision of the Corporations Act, the expression has the same meaning as in that provision.

### **1.4 Application of the ACNC Legislation**

If the company is registered as a charity by the Australian Charities and Not-for-profits Commission, the company must comply with the ACNC Legislation.

### **1.5 Exercising powers**

- (a) The company may exercise any power, take any action or engage in any conduct which the Corporations Act permits a company limited by guarantee to exercise, take or engage in.
- (b) A power conferred on a person to do a particular act or thing under this constitution includes, unless the contrary intention appears, a power (exercisable in the same way and subject to the same conditions) to repeal, rescind, revoke, amend or vary that act or thing.
- (c) A power conferred under this constitution to do a particular act or thing:
  - (i) may be exercised from time to time and subject to conditions; and
  - (ii) may, where the power concerns particular matters, be exercised for only some of those matters or as to a particular class of those matters, and to make different provision concerning different matters or different classes of matters.
- (d) Where a power to appoint a person to an office or position is conferred under this constitution (except the power to appoint a director under rule 6) the power includes, unless the contrary intention appears, a power to:
  - (i) appoint a person to act in the office or position until a person is appointed to the office or position;

- (ii) remove or suspend any person appointed (without prejudice to any rights or obligations under any contract between the person and the company); and
  - (iii) appoint another person temporarily in the place of any person removed or suspended or in the place of any sick or absent holder of the office or position.
- (e) Where this constitution gives power to a person to delegate a function or power:
- (i) the delegation may be concurrent with, or (except in the case of a delegation by the directors) to the exclusion of, the performance or exercise of that function or power by the person;
  - (ii) the delegation may be either general or limited in any way provided in the terms of delegation;
  - (iii) the delegation need not be to a specified person but may be to any person holding, occupying or performing the duties of a specified office or position;
  - (iv) the delegation may include the power to delegate; and
  - (v) where performing or exercising that function or power depends on that person's opinion, belief or state of mind about a matter, that function or power may be performed or exercised by the delegate on the delegate's opinion, belief or state of mind about that matter.

## **2 Objects**

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### **2.1 Objects of company**

- (a) The objects of the company are:
- (i) to be a charitable institution; and
  - (ii) to provide affordable housing to people in need, including:
    - (A) low income households;
    - (B) people with specific needs;
    - (C) households in housing stress;
    - (D) households denied access to general market housing; and
    - (E) households requiring a subsidised housing solution.
- (b) To achieve these objects, the company may, without limitation:
- (i) investigate, develop and provide a range of innovative and quality housing options to meet housing need;
  - (ii) promote and contribute to social inclusion and mixed income, mixed tenure neighbourhoods through the integration of affordable housing in mainstream residential developments;
  - (iii) work with governments, community groups and the private sector;

- (iv) improve access and choice for disadvantaged households and those in housing stress;
- (v) achieve a substantial balance between social, economic and environmental outcomes;
- (vi) efficiently and effectively manage the company in a viable and sustainable way; and
- (vii) act as trustee of any trust the purpose of which relates to the objects in rule 2.1(a);
- (viii) promote the objects of the company and do all other things incidental or conducive to the attainment of the objects.

## **2.2 Separate objects**

Each of the objects in rule 2.1(a) is a separate object of the company, and must not be construed by reference to any other object.

## **2.3 Exercise of powers to achieve objects**

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

# **3 Not for profit**

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## **3.1 Promotion of the objects**

The income and property of the company must only be applied towards promoting the company's objects set out in this constitution.

## **3.2 No income or property to a member**

- (a) No income or property of the company may be paid or transferred, directly or indirectly, to a member except as provided for under rule 5.2 or for payments to a member: in return for services rendered by, or goods supplied, by the member to the company in the ordinary and usual course of business;
- (b) for reasonable and proper rent for premises leased by a member to the company; or
- (c) as principal payments on money lent by the member, and interest payments if the interest is at a commercial rate.

## **3.3 No income or property to a director**

No income or property of the company may be paid or transferred, directly or indirectly, to a director on account of remuneration for services provided by the director in their capacity as a director.



## 4 Membership

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### 4.1 Members

- (a) The sole member of the company is NAHC.
- (b) The company is not required to hold general meetings, including an Annual General Meeting, where there is only one member, but the company must ensure it provides for other opportunities and mechanisms to remain accountable to the sole member.
- (c) The company may pass resolutions from time to time by the member recording it and signing the record where it only has one member.
- (d) The member through its authorised representative, being the Member Representative, may sign a document containing a resolution or may agree to a resolution by email or other electronic means.

### 4.2 Classes

The only class of membership is ordinary membership

### 4.3 Member Representative

- (a) Since the member is a body corporate, it must nominate an individual (**Member Representative**) to represent it in the company.
- (b) A Member Representative must consent to the nomination in writing.

### 4.4 Register of Members

The Company must establish and maintain a register of members which includes the full name and address for notices of each member, and any other particulars determined by the board.

## 5 Winding up

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### 5.1 Limited liability on winding up

- (a) If the company is wound up while a person is a member, or within one year after the person ceases to be a member, the person must contribute the guarantee amount to the assets of the company for the:
  - (i) payment of the debts and liabilities of the company contracted before the person ceased to be a member; and
  - (ii) costs of winding up.
- (b) Each member of the company agrees the guarantee amount under rule 5.1(a) is \$10.

### 5.2 No distribution of profits to members on a winding up

- (a) Where property remains after the winding up or dissolution of the company and satisfaction of all its debts and liabilities, it must not be distributed to a member or former member unless the member or former member is a charitable fund, authority or institution described in rule 5.2(b).

- (b) If the company is wound up, any surplus assets must be given to another charitable fund, authority or institution:
  - (i) with objects similar to the objects of the company; and
  - (ii) whose constitution prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the company under this constitution.
- (c) The charitable fund, authority or institution to receive property under rule 5.2(b) must be decided by the directors at or before the time of the winding-up or dissolution. If the directors do not wish to decide, or do not decide, the members by ordinary resolution must decide. If the members do not decide, the decision must be referred to the Supreme Court of the state or territory in which the company's registered office is located.

## **6 Directors**

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### **6.1 First directors**

The names of the first directors are those persons named as directors in the application for incorporation of the company.

### **6.2 Directors**

The board will consist of at least three and not more than ten directors appointed by NAHC as NAHC shall determine.

### **6.3 Retirement of directors**

Each director must retire from office as determined by NAHC.

### **6.4 Resignation**

A director may resign from the board by written notice delivered to the secretary. The resignation takes effect when the notice is received by the secretary, or on a later date specified in the notice.

### **6.5 Removal**

- (a) A director may be removed from office by resolution of the members present and entitled to vote at a general meeting of the company convened for that purpose. At the meeting the director must be given the opportunity to present his or her case orally or in writing.
- (b) A director removed under rule 6.5(a) retains office until the dissolution or adjournment of the general meeting at which he or she is removed.

### **6.6 Vacating office**

In addition to the circumstances prescribed by the Corporations Act and this constitution, the office of a director becomes vacant if the director:

- (a) becomes an insolvent under administration, suspends payment generally to creditors or compounds with or assigns the director's estate for the benefit of creditors;

- (b) becomes a person of unsound mind or a person who is a patient under laws relating to mental health or whose estate is administered under laws about mental health;
- (c) is absent from meetings of the directors during a period of three consecutive calendar months without leave of absence from the directors where the directors have not, within 14 days of having been served by the secretary with a notice giving particulars of the absence, resolved that leave of absence be granted;
- (d) resigns office by written notice to the company;
- (e) is removed from office under the Corporations Act, ACNC Legislation, or any other relevant legislation;
- (f) is prohibited from being a director by reason of the operation of the Corporations Act, ACNC Legislation, or any other relevant legislation; or
- (g) is convicted on indictment of an offence and the directors do not within one month after that conviction resolve to confirm the director's appointment or election (as the case may be) to the office of director.

#### **6.7 Casual vacancies**

- (a) The board has power to appoint a qualified person as a director to fill a casual vacancy among the board.
- (b) Any person appointed under this rule holds office until the next general meeting.

#### **6.8 Directors who are employees of the company**

A director who is an employee of the company or any of its subsidiaries, ceases to be a director of the company upon the director ceasing to be employed (so that they are no longer employed by the company or any subsidiary of the company) but the person concerned is eligible for reappointment as a director of the company.

#### **6.9 Directors who are unable to fulfil their duties due to illness or incapacity**

- (a) A director may be removed from office by the board if the board resolves under its policy that the director is unable to fulfil their duties due to physical or mental illness or other incapacity.
- (b) The board will implement a policy about directors who are unable to fulfil their duties due to physical or mental illness or other incapacity for the purpose of making a determination under rule 6.9(a).

#### **6.10 Directors interests**

- (a) A director is not disqualified by reason only of being a director (or the fiduciary obligations arising from that office) from:
  - (i) holding an office (except auditor) or place of profit or employment in the company or a related body corporate of the company;
  - (ii) holding an office or place of profit or employment in any other company, body corporate, trust or entity promoted by the company or in which it has interest;
  - (iii) being a member, creditor or otherwise being interested in any body corporate (including the company), partnership or entity, except as auditor of the company;

- (iv) entering into any agreement or arrangement with the company; or
  - (v) acting in a professional capacity (or being a member of a firm which acts in a professional capacity) for the company, except as auditor of the company.
- (b) Each director must comply with the Corporations Act on the disclosure of the director's interests.
- (c) The directors may make regulations requiring the disclosure of interests that a director, and any person taken by the directors to be related to or associated with the director, may have in any matter concerning the company or a related body corporate. Any regulations made under this constitution bind all directors.
- (d) No act, transaction, agreement, instrument, resolution or other thing is invalid or voidable only because a person fails to comply with any regulation made under rule 6.10(c).
- (e) A director who has a material personal interest in a matter that is being considered by the directors must not be present at a meeting while the matter is being considered nor vote on the matter, except where permitted by the Corporations Act.
- (f) If a director has an interest in a matter, then subject to rules 6.10(c), 6.10(g) and the constitution:
  - (i) that director may not be counted in a quorum at the board meeting that considers the matter that relates to the interest;
  - (ii) that director may not participate in and vote on matters that relate to the interest;
  - (iii) the company can proceed with any transaction that relates to the interest and the director may participate in the execution of any relevant document by or on behalf of the company;
  - (iv) the director may retain the benefits under the transaction that relates to the interest even though the director has the interest; and
  - (v) the company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- (g) If an interest of a director is required to be disclosed under rule 6.10(b), rule 6.10(f)(iv) applies only if the interest is disclosed before the transaction is entered into.
- (h) A contract or arrangement entered into by or on behalf of the company in which a director is in any way interested is not invalid or voidable merely because the director holds office as a director or because of the fiduciary obligations arising from that office.
- (i) A director who is interested in any arrangement involving the company is not liable to account to the company for any profit realised under the arrangement merely because the director holds office as a director or because of the fiduciary obligations arising from that office, if the director complies with the disclosure requirements applicable to the director under rule 6.10(a) and under the Corporations Act about that interest.
- (j) A director who is interested in any contract or arrangement may, despite that interest, witness the fixing of the company seal to any document evidencing or otherwise connected with that contract or arrangement.

## **7 Powers and duties of directors**

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### **7.1 Duties of directors**

Each director is subject to and must comply with the duties set out in Governance Standard 5.

### **7.2 General powers**

- (a) The directors are responsible for managing the business of the company and may exercise all powers and do all things that are within the company's power and are not expressly required by the Corporations Act or this constitution to be exercised by the company in a general meeting.
- (b) The board may make regulations, by-laws and policies consistent with the constitution, which in the opinion of the board are necessary or desirable for the proper control, administration and management of the company's finances, affairs and property, or are necessary for the convenience, comfort and well-being of the members (including the terms of entry of members to the company's premises and any event or function sponsored, promoted, facilitated or conducted by the company) and amend or rescind any regulations and by-laws.
- (c) A regulation, policy or by-law of the company made by the board may be disallowed by the company in a later general meeting. A resolution or regulation made by the company in general meeting cannot invalidate prior acts of the board which would have been valid if that resolution or regulation had not been passed or made.
- (d) A director is entitled to attend and speak at general meetings and at meetings of a class of members, even if he or she is not a member or a member of the relevant class.

### **7.3 Reserve powers**

Certain powers otherwise exercisable by the directors may be reserved to NAHC or be subject to consent by, consultation with or other reference to NAHC, by way of a resolution passed by the board of NAHC.

### **7.4 Power to borrow and give security**

- (a) The directors may exercise all the powers of the company to:
  - (i) borrow or raise money in any other way;
  - (ii) charge mortgage or otherwise encumber any of the company's property or business or any of its property; and
  - (iii) issue debentures or give any security for a debt, liability or obligation of the company or of any other person.
- (b) The directors may decide how cheques, promissory notes, banker's drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as applicable, by or on behalf of the company.

### **7.5 Powers of appointment**

The directors may:

- (a) appoint or employ any person as an officer, agent or attorney of the company for the purposes, with the powers, discretions and duties (including powers, discretions and

duties vested in or exercisable by the directors), for any period and on any other conditions they decide;

- (b) authorise an officer, agent or attorney to delegate any of the powers, discretions and duties vested in the officer, agent or attorney; and
- (c) remove or dismiss any officer, agent or attorney of the company at any time, with or without cause.

## **8 Proceedings of directors meetings**

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### **8.1 Meetings of directors**

- (a) The directors may meet together to attend to business and adjourn and otherwise regulate their meetings as they decide.
- (b) The contemporaneous linking together by telephone or other electronic means of a sufficient number of directors to constitute a quorum, constitutes a meeting of the directors. All the provisions in this constitution relating to meetings of the directors apply, as far as they can and with any necessary changes, to meetings of the directors by telephone or other electronic means.
- (c) A meeting by telephone or other electronic means is to be taken to be held at the place where the chairman of the meeting is or at any other place the chairman of the meeting decides on, if at least one of the directors involved was at that place for the duration of the meeting.
- (d) A director taking part in a meeting by telephone or other electronic means is to be taken to be present in person at the meeting.
- (e) If, before or during the meeting, any technical difficulty occurs where one or more directors cease to participate, the chairman may adjourn the meeting until the difficulty is remedied or may, where a quorum of directors remains present, continue with the meeting.

### **8.2 Calling meetings of directors**

- (a) A director may, whenever the director thinks fit, call a meeting of the directors.
- (b) A secretary must, if requested by a director, call a meeting of the directors.

### **8.3 Notice of meetings of directors**

- (a) Notice of a meeting of directors must be given to each person who is, at the time the notice is given a director, except a director on leave of absence approved by the directors.
- (b) A notice of a meeting of directors:
  - (i) must specify the time and place of the meeting;
  - (ii) need not state the nature of the business to be transacted at the meeting;
  - (iii) may, if necessary, be given immediately before the meeting; and

- (iv) may be given in person or by post or by telephone, fax or other electronic means.
- (c) A director may waive notice of a meeting of directors by giving notice to that effect in person or by post or by telephone, fax or other electronic means.
- (d) Failure to give a director notice of a meeting of directors does not invalidate anything done or any resolution passed at the meeting if:
  - (i) the failure occurred by accident or inadvertent error; or
  - (ii) the director attended the meeting or waived notice of the meeting (whether before or after the meeting).
- (e) A person who attends a meeting of directors waives any objection that person may have to a failure to give notice of the meeting.

#### **8.4 Quorum at meetings of directors**

- (a) No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.
- (b) Unless the directors decide otherwise, more than half of the directors constitute a quorum.
- (c) If there is a vacancy in the office of a director, the remaining directors may act. But, if their number is not sufficient to constitute a quorum, they may act only in an emergency or to increase the number of directors to a number sufficient to constitute a quorum or to call a general meeting of the company.

#### **8.5 Chair and deputy chair of directors**

- (a) The directors may elect, for any period they decide:
  - (i) a director to the office of chair of directors; and
  - (ii) may elect one or more directors to the office of deputy chair of directors.
- (b) The chair of directors is entitled (if present within ten minutes after the time appointed for the meeting and willing to act) to preside as chair at a meeting of directors.
- (c) If at a meeting of directors:
  - (i) there is no chair of directors;
  - (ii) the chair of directors is not present within ten minutes after the time appointed for the holding of the meeting; or
  - (iii) the chair of directors is present within that time but is not willing or declines to act as chair of the meeting,

the deputy chair if any, if then present and willing to act, is entitled to be chair of the meeting or if the deputy chair is not present or is unwilling or declines to act as chair of the meeting, the directors present must elect one of themselves to chair the meeting.

## **8.6 Decisions of directors**

- (a) The directors, at a meeting at which a quorum is present, may exercise any authorities, powers and discretions vested in or exercisable by the directors under this constitution.
- (b) Questions arising at a meeting of directors must be decided by a majority of votes cast by the directors present and entitled to vote on the matter.
- (c) Subject to rule 8.6(d), if the votes are equal on a proposed resolution, the chairman of the meeting has a casting vote, in addition to his or her deliberative vote.
- (d) Where only two directors are present or entitled to vote at a meeting of directors and the votes are equal on a proposed resolution:
  - (i) the chairman of the meeting does not have a second or casting vote; and
  - (ii) the proposed resolution is taken as lost.

## **8.7 Written resolutions**

- (a) A resolution in writing of which notice has been given to all directors and which is signed or consented to by all of the directors entitled to vote on the resolution is as valid and effectual as if it had been passed at a meeting of the directors duly called and constituted and may consist of several documents in the same form, each signed or consented to by one or more of the directors.
- (b) A director may consent to a resolution by:
  - (i) signing the document containing the resolution (or a copy of that document);
  - (ii) giving to the company a written notice (including by fax or other electronic means) addressed to the secretary or to the chairman of directors signifying assent to the resolution and either setting out its terms or otherwise clearly identifying them; or
  - (iii) telephoning the secretary or the chairman of directors and signifying assent to the resolution and clearly identifying its terms.

## **8.8 Committees of directors**

- (a) The directors may delegate their powers to a committee of directors.
- (b) The committee must exercise the powers delegated in accordance with any directions of the directors.
- (c) The provisions of this constitution applying to meetings and resolutions of directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of directors, except to the extent they are contrary to any direction given under rule 8.8(b).

## **8.9 Appointment of advisory group**

- (a) The directors may establish an advisory group. The directors may appoint and remove members of the advisory group and terminate an advisory group at any time.
- (b) The functions of the advisory group will be decided by the directors.



- (c) The directors may specify:
  - (i) the manner in which proceedings of an advisory group are conducted;
  - (ii) the matters which the advisory group must consider in carrying out its functions; and
  - (iii) any other matters concerning the advisory group or its functions that the directors decide.
- (d) For the avoidance of doubt, an advisory group established under rule 8.9(a) will not be delegated with any power of the board.

### **8.10 Delegation to a director**

- (a) The directors may delegate any of their powers to one director.
- (b) A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.

### **8.11 Validity of acts**

All acts done at any meeting of the directors or by a committee or by any person acting as a director are, notwithstanding that it is afterwards discovered:

- (a) that there was some defect in the appointment of any of the directors; or
- (b) the committee or the person acting as a director or that any of them were disqualified,

valid as if every person had been duly appointed and was qualified and continued to be a director or a member of the committee (as the case may be).

## **9 Secretary and Executive officer**

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### **9.1 Secretary**

- (a) The company must have at least one secretary appointed by the directors.
- (b) The directors may suspend or remove a secretary from that office.

### **9.2 Executive officers**

- (a) The directors may appoint an executive officer for a period, at the remuneration and on the conditions the directors decide.
- (b) The remuneration payable by the company to an executive officer must not include a commission on, or percentage of, operating revenue.
- (c) The directors may:
  - (i) delegate to an executive officer any powers, discretions and duties they decide;
  - (ii) withdraw, suspend or vary any of the powers, discretions and duties given to an executive officer; and

- (iii) authorise the executive officer to delegate any of the powers, discretions and duties given to the executive officer.
- (d) An act done by a person acting as an executive officer is not invalidated by:
  - (i) a defect in the person's appointment as an executive officer;
  - (ii) the person being disqualified to be an executive officer; or
  - (iii) the person having vacated office,
 if the person did not know that circumstance when the act was done.

## 10 Indemnity and insurance

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### 10.1 Officer's right of indemnity

Rules 10.2 and 10.4 apply:

- (a) to each person who is or has been a director, secretary or executive officer of the company;
- (b) to any other officers or former officers of the company or of its related bodies corporate as the directors in each case determine; and
- (c) if the directors so determine, to any auditor or former auditor of the company or of its related bodies corporate,

each an **Officer** for the purposes of this rule.

### 10.2 Indemnity

The company must indemnify each Officer on a full indemnity basis and to the full extent permitted by law against all losses, liabilities, costs, charges and expenses (**Liabilities**) incurred by the Officer as an officer of the company or of a related body corporate.

### 10.3 Scope of indemnity

The indemnity in rule 10.2:

- (a) does not operate in respect of any Liability of the Officer to the extent that Liability is covered by insurance;
- (b) is enforceable without the Officer having to first incur any expense or make any payment; and
- (c) is a continuing obligation and is enforceable by the Officer even though the Officer may have ceased to be an officer or auditor of the company or its related bodies corporate.

### 10.4 Insurance

The company may, to the extent the law permits:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for each Officer against any Liability incurred by the Officer as an officer or auditor of the company or of a related body corporate including, but not limited to:

- (a) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
- (c) a Liability arising from negligence or other conduct.

## **10.5 Savings**

Nothing in rule 10.2 or 10.4:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any Liability referred to in those rules;
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom those rules do not apply; or
- (c) limits or diminishes the terms of any indemnity conferred or agreement to indemnify entered into before the adoption of this constitution.

## **10.6 Contract**

The company may enter into an agreement with any Officer to give effect to the rights conferred by this rule or the exercise of a discretion under this rule on any terms as the directors think fit which are not inconsistent with this rule.

# **11 Financial records and auditor**

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## **11.1 Keeping of financial records**

- (a) The financial year of the company begins on 1 July and ends at 30 June in the following calendar year.
- (b) Proper books and financial records must be kept recording the financial affairs of the company. The company must comply with the relevant accounting, financial reporting, review and audit requirements of the ACNC Legislation and any other legislation which applies to the company.
- (c) The board must:
  - (i) notify the member at the end of each financial year of their entitlement to receive copies of the financial report prepared by the company including a copy of the auditor's report, if any, and any other documentation as determined by the board or required by relevant legislation; and
  - (ii) lay before the member the financial statements each years and allow an opportunity for the member to ask questions in respect of the accounts.

## **11.2 Appointment of auditor or reviewer**

If required by relevant legislation, the company must appoint a qualified auditor or reviewer. No Member may act as auditor or reviewer of the company.

## **12 Minutes**

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### **12.1 Contents of minutes**

The board must ensure that minutes are duly recorded in any manner it thinks fit and include:

- (a) the names of the directors present at each meeting of the company, the board and of committees;
- (b) any declared conflicts of interest; and
- (c) details of all resolutions and proceedings of general meetings of the company and of meetings of the board and committees.

### **12.2 Signing of minutes**

The minutes of a meeting of the board or of a committee or of the company, if signed by the chairman of the meeting or by the chairman of the next meeting, are prima facie evidence of the matters stated in the minutes.

## **13 Inspection of records**

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### **13.1 Inspection by member**

Except as provided by law, this constitution or as authorised by a directors' resolution, a person who is not a director does not have the right to inspect any of the board papers, books, records or documents of the company.

### **13.2 Access by director**

The company may enter into contracts, and procure that its subsidiaries enter into contracts, on any terms the directors think fit, to grant a director or former director continuing access for a specified period after the director ceases to be a director to board papers, books, records and documents of the company which relate to the period during which the director or former director was a director of the company.

## **14 Notices**

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### **14.1 Method of service**

- (a) The company may give a notice to a member by:
  - (i) delivering it personally;
  - (ii) sending it by prepaid post to the member's address in the register of members or any other address the member gives the company for notices; or
  - (iii) sending it by fax or other electronic means to the fax number or electronic address the member gives the company for notices.
- (b) Where a member does not have a registered address or where the company believes that member is not known at the member's registered address, all notices are taken to be:
  - (i) given to the member if the notice is exhibited in the company's registered office for a period of 48 hours; and

- (ii) served at the commencement of that period,  
unless and until the member informs the company of the member's address.

#### **14.2 Time of service**

- (a) A notice from the company properly addressed and posted is taken to be given and received on the day after the day of its posting.
- (b) A notice sent or given by fax or other electronic transmission:
  - (i) is taken to be effected by properly addressing and transmitting the fax or other electronic transmission; and
  - (ii) is taken to have been given and received on the day of its transmission.
- (c) Where a given number of days' notice or notice extending over any other period must be given, the day of service is not to be counted in the number of days or other period.

#### **14.3 Evidence of service**

A certificate signed by a director or secretary stating that a notice has been given under this constitution is conclusive evidence of that fact.

#### **14.4 Other communications and documents**

Rules 14.1 to 14.3 (inclusive) apply, so far as they can and with any necessary changes, to serving any communication or document.

### **15 General**

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#### **15.1 Submission to jurisdiction**

Each member submits to the non-exclusive jurisdiction of the Supreme Court of the state or territory in which the company is taken to be registered for the purposes of the Corporations Act, the Federal Court of Australia and the courts which may hear appeals from those courts.

#### **15.2 Prohibition and enforceability**

Any part of this constitution which is prohibited or unenforceable in any place is, in that place, ineffective only to the extent of that prohibition or unenforceability.

#### **15.3 Amendment to the constitution**

Any amendment to this constitution must be approved by a special resolution of the members.