

# DRAGONS ABREAST AUSTRALIA

## Constitution of Dragons Abreast Australia Ltd

ACN 104 261 029

A Company limited by guarantee

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A company limited by guarantee

Constitution of Dragons Abreast Australia Ltd ACN 104 261 029

## 1 General

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### 1.1 Name of Company

The name of the Company is Dragons Abreast Australia Ltd.

### 1.2 Liability of Members

The liability of Members is limited.

### 1.3 Replaceable Rules

The Replaceable Rules do not apply to the Company.

## 2 Definitions and interpretation

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### 2.1 Definitions

In this document:

- |                           |  |
|---------------------------|--|
| <b>Advisory Panel</b>     | means the people who have been appointed to serve as members of the Advisory Panel and who will provide advice to the Board and the wider membership.  |
| <b>Application Fee</b>    | means the fee determined in accordance with rule 5.11.   |
| <b>Approved Candidate</b> | means a person who has been issued with a certificate from the Secretary within six months of the relevant date that states that: <ul style="list-style-type: none"><li>(a) the Candidate has provided a declaration to the Company that he/she has read and agreed to the terms of:<ul style="list-style-type: none"><li>(i) the Constitution;</li><li>(ii) the Code of Ethics; and</li><li>(iii) the Policies adopted by the Board, and is wishing to take on the duties and responsibilities of being a director of the Company;</li></ul></li><li>(b) the Candidate has provided the Company with a curriculum vitae for the Candidate with a signed declaration that the contents are true and correct; and</li><li>(c) either:</li></ul> |

- (i) the Candidate has been a member of the Company for at least five years; or
- (ii) the Candidate has the support of at least one half of the Directors of the Company.

<b>ASIC</b>	means the Australian Securities and Investments Commission.
<b>Board</b>	means the board of directors of the Company.
<b>Business Day</b>	means a day that is not a Saturday, Sunday or public holiday where the Office is located.
<b>Chairman</b>	includes an acting chairman under rule 8.5.
<b>Committee</b>	means a committee to which powers have been delegated by the Board under rule 15.8.
<b>Company</b>	means Dragons Abreast Australia Ltd ACN 104 261 029.
<b>Constitution</b>	means the constitution of the Company.
<b>Corporations Act</b>	means Corporations Act 2001 (Cth) and Corporations Regulations 2001 (Cth).
<b>Director</b>	means a person appointed or elected to the office of director of the Company and includes an alternate director appointed to the Board.
<b>Executive Officer</b>	for the purposes of rule 23 means a person who is concerned, or takes part in, the management of the Company (regardless of the person's designation and whether or not the person is a director of the Company).
<b>Fee Date</b>	means 1 October each year.
<b>Gift</b>	means a donation, gift, settlement, benefaction or other voluntary transfer or disposition of money, money's worth, property or benefits.
<b>Gift Fund</b>	means the fund maintained under rule 19.
<b>Insolvency Event</b>	means (in respect of a member of any class of membership) an event which occurs where: <ul style="list-style-type: none"><li>(a) any judgment obtained against a Member remains unsatisfied for more than 30 days or a Member's property is seized under any distress or execution;</li><li>(b) a Member makes any arrangements with or assignment for the benefit of its creditors;</li></ul>

(c) a Member is the subject of any winding up proceedings, is wound up or makes any arrangements or compositions with its creditors; or

(d) a Member has a receiver, a receiver and manager or provisional liquidator appointed or a mortgagee takes possession over the whole or any part of a Member's property or undertaking or has an administrator or controller appointed under the Corporations Act, or any similar relevant legislation in Australia relating to associations or incorporated associations;

**Liability** for the purposes of rule 23, includes any claim, action suit, proceeding, investigation, inquiry, damage, loss, cost or expense.

**Member Group** means any person who becomes a member under the Corporations Act or this Constitution.

**Members Present** means Members present in person (whether or not at more than one venue when technology is used for the conduct of the meeting) at a general meeting of the Company, or by their appointed representative, proxy or attorney.

**Membership Fee** means a fee set by the Board in accordance with rule 5.12.

**Office** means the registered office of the Company.

**Officeholders** means those officers described in rule 12.1.

**Officer** for the purposes of rule 23 means a director or Secretary of the Company or a person:

(a) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company;

(b) who has the capacity to affect significantly the Company's financial standing; or

(c) under whose instructions or wishes the Board is accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the Board or the Company).

**Ordinary Member** means a Member who has complied with rule 5.3

**Proceedings** for the purposes of rules 23.2 and 23.4 has the meaning set out in rule 23.5.

<b>Register</b>	means the register of Members of the Company established under the Corporations Act.
<b>Registered Address</b>	means the address of the Member specified in the Register or other address notified by the Member to the Company as the place they will accept service of notices.
<b>Replaceable Rules</b>	means the replaceable rules under the Corporations Act and includes any replaceable rules that become or may become a provision of the Corporations Act.
<b>Seal</b>	means the common seal of the Company if any.
<b>Secretary</b>	means a person appointed as secretary of the Company and includes a person appointed to perform the duties of secretary.
<b>Supporter Members</b>	means a Member who has complied with rule 5.4.
<b>Voting Member</b>	means a Member entitled to vote under this Constitution and which has paid the Company all money due by the Member to the Company as at the relevant date.

## 2.2 Interpretation

In this document:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other gender;
- (c) a reference to a clause, rule, schedule, annexure or party is a reference to a clause of, rule of and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (d) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) 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;
- (g) a reference to this document includes the agreement recorded by this document;



- (h) 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;
- (i) 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;
- (j) 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; and
- (k) a reference to 'month' means calendar month.

### **3 Objects and powers**

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#### **3.1 Objects of Company**

The objects of the Company are:

- (a) to raise awareness of breast cancer in the Australian community, primarily but not exclusively through the sport of dragon boat racing;
- (b) to demonstrate that people can be actively involved in life after breast cancer;
- (c) to encourage the diversity, empowerment, personal safety and well being of people who have lived with breast cancer or have a genetic predisposition to developing breast cancer (as recognised by The Royal Australasian College of Physicians);
- (d) to harness the resources of the community to make a positive difference in the lives of people who have lived with breast cancer or have a genetic predisposition to developing breast cancer (as recognised by The Royal Australasian College of Physicians);
- (e) to assist people who have lived with breast cancer and their families and carers and supporters voice their interests and concerns;
- (f) to seek or receive donations and legacies (whether subject to any special trusts or not) to apply to these objects; and
- (g) to promote the objects of the Company in any manner the Board considers appropriate, and to do things incidental or conducive to the attainment of these objects.

#### **3.2 Separate objects**

Each of the objects in rule 3.1 is a separate object of the Company, but should be construed having regard to the other objects.

#### **3.3 Powers of the Company**

The Company has all the powers of an individual and a body corporate, subject to rule 3.4 so that it might do anything which is necessary, incidental or conducive to the attainment of the objects.

### **3.4 No power to issue shares**

The Company has no power to issue or allot shares.

## **4 Non-profit nature of the Company**

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### **4.1 Non-profit**

- (a) The income and property of the Company must only be applied towards the promotion of the objects of the Company set out in this Constitution.
- (b) No income or property may be paid or transferred, directly or indirectly, to a Member except for payments to a Member:
  - (i) in return for services rendered by or goods supplied by the Member to the Company in the ordinary and usual course of business (including, as an example, rent on premises let by a Member to the Company); or
  - (ii) as principal payments on money lent by the Member, and interest payments if the interest is at a commercial rate.
- (c) To remove any doubt, except in respect of remuneration:
  - (i) to an Executive Officer; or
  - (ii) which has been approved under legislation relating to charities and charity fundraising as required by that legislation,

a Director will not be paid any fee, commission, honorarium or other remuneration for acting as a Director.

### **4.2 No distribution of profits to Members on 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 among the Members.
- (b) Subject to 4.3 property referred to in rule 4.2(a) must be given to another fund, authority or institution with objects similar to the objects of the Company and a prohibition on 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 fund, authority or institution to receive property under rule 4.2(b) must be decided by the Members at or before the time of the dissolution.

### **4.3 No distribution of profits to members on winding up a deductible gift recipient organisation**

- (a) If the Company is a deductible gift recipient and is either wound up or if the endorsement of the organisation as a deductible gift recipient is revoked, the following assets, remaining after the payment of the organisation's liabilities shall be transferred to a fund, authority or institution to which income tax deductible gifts can be made:
  - (i) gifts of money or property for the principal purpose of the Company;
  - (ii) contributions made in relation to an eligible fundraising event held for the principal purpose of the Company; and
  - (iii) money received by the Company because of such gifts and contributions.

#### **4.4 Limited liability on winding up**

- (a) The liability of the Members is limited.
- (b) 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 to the assets of the Company for:
  - (i) the payment of the debts and liabilities of the Company contracted before the person ceased to be a Member;
  - (ii) the costs of winding up; and
  - (iii) the adjustment of the rights of the contributors among themselves.
- (c) The maximum liability of each Member under rule 4.4(b) is \$10.

## **5 Membership**

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### **5.1 Types of membership**

Membership of the Company will be divided into the following classes:

- (a) Ordinary Member;
- (b) Supporter Member;
- (c) Member Group; and
- (d) Life Member.

### **5.2 Appointment to Life Membership**

- (a) An individual may be nominated to the Board at any time for Life Membership of the Company. The criteria for appointment to Life Membership and the conditions of and the rights and privileges of Life Membership shall at all times be at the absolute discretion of the Board.
- (b) Appointment to Life Membership shall be by Special Resolution of the Company.
- (c) A Life Member is not entitled by virtue of his or her Membership to receive notice of or attend at or vote at a meeting of the Company.

### **5.3 Application for Ordinary Membership**

- (a) An individual who:
  - (i) is not less than 18 years of age at the date of application;
  - (ii) provides evidence (which is reasonably acceptable to the Board) of having had breast cancer or a prophylactic mastectomy; and
  - (iii) declares that he or she is supportive of the objects of the Company,
- (b) may apply for Ordinary Membership of the Company. For clarity, an applicant for Ordinary Membership is not required to be associated with a Member Group.
- (c) An Ordinary Member is not entitled to receive notice of or attend or vote at a general meeting of the Company.
- (d) (Ordinary Membership does not require the Ordinary Member to participate in paddling. Ordinary Membership can be either paddling or non-paddling.

### **5.4 Application for Supporter Membership**

- (a) An individual who:
  - (i) is not less than 18 years of age at the date of application; and
  - (ii) declares that he or she is supportive of the objects of the Company,may apply for Supporter Membership of the Company. For clarity, an applicant for Supporter Membership is not required to be associated with a Member Group.
- (b) A Supporter Member is not entitled to receive notice of or attend or vote at a general meeting of the Company.
- (c) Supporter Membership does not require the Supporter Member to participate in paddling and Supporter Membership can be either paddling or non-paddling.

### **5.5 Application for Membership as a Member Group**

- (a) An incorporated association or other legal entity approved by the Board from time to time that:
  - (i) has rules or a constitution in a form approved by the Board;
  - (ii) declares that it is supportive of the objects of the Company;
  - (iii) agrees in writing to comply with the Terms and Conditions relating to Member Groups (including such terms as to financial reporting) as may be determined by the Board from time to time; and
  - (iv) signs a Trademark User Agreement in such form as is approved from time to time by the Boardmay apply for Membership of the Company as a Member Group.

- (b) A Member Group that has paid all current fees as and when due and that otherwise continues to comply with all requirements for admission to Membership as a Member Group is entitled to receive notice of and attend at and vote at a general meeting of the Company.

## **5.6 Form of Application**

An application for Membership must:

- (i) be in writing in a form approved by the Board;
- (ii) be signed by the applicant;
- (iii) state the class of Membership the applicant nominates or is nominated for;
- (iv) be accompanied by any other documents or evidence as to qualification for the class of Membership which the Board requires; and
- (v) (be accompanied by the Application Fee (if any) and the Membership Fee (which would be payable for the first year of membership) for the class of Membership applied for.

## **5.7 Admission to Membership**

- (a) The Board may, in accordance with the law, accept or reject or defer the consideration of any application for Membership.
- (b) The Board need give no reason for the rejection or deferral of consideration of an application.
- (c) If an application for Membership is rejected, the Secretary must notify the applicant in writing and the Application Fee (if any) and Membership Fee must be refunded to the applicant as soon as reasonably possible.
- (d) If an applicant is accepted for Membership, the name and details of that person must be entered in the Register and the Secretary must notify the applicant in writing of such acceptance.

## **5.8 Notification by Members**

Each Member must promptly notify the Secretary in writing of any change:

- (a) in their qualification to be a Member of the class of Membership into which the Member has been admitted; and
- (b) in their details to be entered in the Register.

## **5.9 Register**

- (a) The Secretary must ensure that a Register is kept by the Company in accordance with the Corporations Act.
- (b) The following details must be entered in the Register in respect of each Member:

- (i) full name;
  - (ii) the address, facsimile number and electronic mail address (if any);
  - (iii) the class of Membership; and
  - (iv) the date of admission to Membership.
- (c) Each Member must notify the Secretary in writing of any change in that person's name, address, facsimile number or electronic mail address within one month after the change.
- (d) The Register must also show the name and details of each person who stopped being a member of the Company within the previous seven years and the date upon which that person stopped being a member.

#### **5.10 Membership not transferrable**

Membership is not transferrable. All rights and benefits of membership cease upon the person ceasing to be a Member.

#### **5.11 Application Fee**

The Application Fee payable by an applicant for Membership is the sum the Board determines from time to time for the relevant class of Membership.

#### **5.12 Membership Fee**

- (a) The Membership Fee payable by a Member is the sum the Board determines from time to time for the relevant class of Membership.
- (b) As at the Adoption Date, the annual Membership Fees for each Member are due and payable in advance on 1 October each year.
- (c) If a person is admitted to Membership as a Member Group, Ordinary Member or Supporter Member of the Company during the months of July to September, the Board may (but need not) reduce the annual Membership Fees payable by the applicant in respect of their initial period of Membership (being the remainder of the period until the following 1 October).
- (d) The Members will pay such other fees in the amount and at times as the Board determines.
- (e) In order to provide additional funds for the operation of the Company, the Board may determine that levies are to be paid by Members (or those Members of a specific class of Membership) and may fix the amount and times for payment.
- (f) To avoid any doubt, the Board may differentiate between the classes of Members as to the amounts of fees or levies payable and the times or terms for payment.

#### **5.13 Unpaid Membership Fees**

If the Membership Fees (including any fees or levies determined by the Board) of a Member remain unpaid for two months after the fees become payable, the Member ceases to be entitled to any of the rights or privileges of Membership. The rights or privileges of Membership may be reinstated at the absolute discretion of the Board, upon payment of all arrears (including for example any levy in the nature of a late payment fee).

#### **5.14 Variation of rights of Members**

Where membership is divided into different classes, the rights attached to any class (unless otherwise set out in this Constitution or the application for membership of that class) may, whether or not the Company is being wound up, be varied by a special resolution of the Company.

#### **5.15 End and Suspension of Membership**

This rule applies to any class of Membership of the Company

- (a) A Member ceases to be a Member if they:
- (i) resign in writing;
  - (ii) are subject to an Insolvency Event;
  - (iii) die;
  - (iv) become of unsound mind or become liable to be dealt with in any way under a law relating to mental health;
  - (v) are convicted of a criminal offence; or,
  - (vi) being a Member Group, the Member Group breaches the Terms and Conditions relating to Member Groups or breaches the Trade Mark User Agreement or the Trade Mark User Agreement is terminated or not renewed for any reason.
- (b) If a Member is in arrears by at least two (2) months past the due date for payment of a Membership fee or other monies due and fails to pay such arrears within one (1) month of a written notice issued by the Secretary to do so, the Board may at the time in its discretion:
- (i) suspend the Member from all privileges of Membership including attendance or voting at any meeting of Members, the Board or any Committee (as relevant);  
or
  - (ii) cancel the Member's membership.
- (c) The Board may resolve to censure, fine, suspend or expel a Member if the Member:
- (i) has engaged in conduct which in the opinion of the Board:
    - a. is unbecoming of a Member;
    - b. is prejudicial to or not in the best interests of the Company; or

- c. brings discredit on the Company;
  - (ii) in the opinion of the Board, has engaged in derogatory or discriminatory conduct or harassment;
  - (iii) has failed to observe a proper standard of professional care, skill or competence;
  - (iv) no longer meets the criteria for Membership of the Company or class of Membership of the Company;
  - (v) has failed to comply with a written direction issued by the Board in accordance with the Constitution or any rules and regulations of the Company regarding good conduct or administration of the Company;
  - (vi) in any civil proceedings in a court in Australia or elsewhere, has been found to have acted dishonestly; or
  - (vii) fails in the opinion of the Board (for any reason) to comply with this Constitution, or any rules and regulations of the Company.
- (d) Any Member whose Membership has been suspended or cancelled is not entitled to enjoy any of the privileges of Membership including receiving notice of, attendance and voting at, any meeting of Members or use or display any trade mark or logo of the Company.
- (e) Any Member whose Membership has been suspended or cancelled continues to remain liable for:
- (i) all money owing by the Member to the Company as at the date of suspension of cancellation including any subscription; and
  - (ii) the liability of the Member under rule 4.4.
- (f) The Board may reinstate a Member whose membership has been suspended on the satisfaction of such terms and conditions as the Board thinks fit to apply from time to time, including the payment of all money owing by the Member to the Company as at the date their Membership was suspended.
- (g) Before the Board makes a resolution referred to in rule 5.15(c), the Board must:
- (i) meet to consider the allegation being made;
  - (ii) provide the Member against whom the allegation has been made with at least seven (7) days written notice of this meeting of the Board and details of:
    - a. the time and place of the Board meeting;
    - b. what is alleged against him or her; and
    - c. the intended resolution if the Board determines, after due consideration of all relevant material and any oral or written explanation or defence submitted to the Board, that the allegation has been substantiated,



and confirmation that he or she has the right to give such oral or written explanation or defence as he or she may think fit at the Board meeting; and

- (iii) provide the Member with a reasonable opportunity to give such oral or written explanation or defence as the Member may reasonably think fit during the Board meeting and before the Board passes its resolution on the allegation.
- (h) Legal advisors are not permitted to attend the Board meeting referred to in this rule.
- (i) A support person may attend the Board meeting referred to in this rule, but a support person may not be or act as a legal representative, and is to attend in the capacity of support person only, and shall not be permitted to make representations or deliver argument in respect of the matter being considered by the Board.
- (j) Whenever any person ceases to be a Member, the Board shall direct that his or her name shall be removed from the Register of Members.

## **6 Financial records**

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### **6.1 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 and auditing requirements of the Corporations Act.
- (c) The Board must distribute to all Member Groups after the end of each financial year, copies of the financial report including a copy of the directors' report and auditor's report and must also distribute any other documentation as required by the Corporations Act.
- (d) The Board must lay before the Member Groups at each annual general meeting the financial reports required under rule 6.1(c).

### **6.2 Banking of money**

All the money of the Company must be deposited in an account in the name of the Company at a bank chosen by the Board.

### **6.3 Appointment of auditor**

The Company must appoint a qualified auditor as required by the Corporations Act.

### **6.4 Inspection of records of the Company**

- (a) Subject to rule 6.4 the Board may decide whether and to what extent, and at what time and place and under what conditions the financial records and other documents of the Company or any of them will be open to the inspection by any of the Members other than any Director.

- (b) No Member other than a Director has the right to inspect any document of the Company except as set out in the Corporations Act or as authorised by the Board or by an order of a court.

## **7 General meetings**

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### **7.1 General meetings**

- (a) General meetings of the Company may be called and held at the times and places and in the manner decided by the Board.
- (b) Except as permitted by the Corporations Act, the Members may not convene a meeting of the Company.
- (c) By resolution of the Board, any general meeting (other than a general meeting which has been requisitioned or called by Members under the Corporations Act) may be cancelled or postponed before the date on which it is to be held.

### **7.2 Power of Chairman**

The Chairman of a general meeting may exclude from the meeting any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of an object considered by the Chairman to be dangerous, offensive or liable to cause disruption;
- (d) who refuses to produce or to permit examination of any object, or the contents of any object or container, in the person's possession;
- (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner;  
or
- (f) who is not a Member entitled to attend the meeting (or a proxy, attorney or representative of a Member who is entitled to attend the meeting), a Director or the auditor of the Company.

### **7.3 Visitors**

A person, whether or not a Member entitled to attend the meeting, who is invited by the Board or the Chairman to attend a general meeting, may be present at the general meeting (until asked to leave by their inviter).

### **7.4 Circulating resolutions**

- (a) This rule 7 applies to resolutions which the Corporations Act or this Constitution requires or permits to be passed at a general meeting, except:
  - (i) a resolution to remove a director under section 203D of the Corporations Act or to appoint a director in place of a director removed under that section; or

- (ii) (a resolution under section 329 of the Corporations Act to remove an auditor.
- (b) The Company may pass a resolution without a general meeting being held if at least 95% of all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (c) Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- (d) The resolution is passed when the last member to sign the document signs.
- (e) If the Company receives by facsimile transmission a copy of a document referred to in this rule 7 it is entitled to assume that the copy is a true copy.

### **7.5 Calling of general meeting**

- (a) A majority of directors or a majority of the Member Groups may call a general meeting whenever they see fit.
- (b) Except as permitted by law, a general meeting, to be called the annual general meeting, must be held at least once in every calendar year.

### **7.6 Notice of meeting**

- (a) Subject to the provisions of the Corporations Act as to short notice, at least 21 days' notice of a general meeting must be given in writing to those persons who are entitled to receive those notices from the Company.
- (b) The accidental omission to give notice of any general meeting to or the non-receipt of the notice by any person entitled to receive notice of a general meeting under this Constitution does not invalidate the proceedings at or any resolution passed at the meeting.
- (c) Subject to the Corporations Act, if the general meeting is to be held at two or more places, the notice must set out details of the technology used to conduct the meeting.

### **7.7 Persons entitled to notice of general meeting**

Written notice of a general meeting must be given to:

- (a) each Member entitled to vote at the meeting;
- (b) each Director; and
- (c) the Company's auditor,

and no other person is entitled to receive notice of general meetings.

### **7.8 Contents of notice**

A notice of a general meeting must:

- (a) 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);
- (b) state the general nature of the meeting's business;
- (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
- (d) contain a statement setting out the following information:
  - (i) that a Voting Member has a right to appoint a proxy; and
  - (ii) that the proxy must be a Director, or a Member Group of the Company.

## **7.9 Notice of adjourned meeting**

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

## **8 Proceedings of meetings**

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### **8.1 Business of general meetings**

- (a) The business of an annual general meeting is:
  - (i) to receive and consider the financial and other reports required by the Corporations Act to be laid before each annual general meeting;
  - (ii) to elect Directors in the place of those retiring;
  - (iii) (when relevant, to appoint an auditor; and
  - (iv) to transact any other business which, under this document, is required to be transacted at an annual general meeting.
- (b) All other business transacted at an annual general meeting and all business transacted at other general meetings is special business.
- (c) Except with the approval of the Board, with the permission of the Chairman or as permitted under the Corporations Act, no person may move at any meeting either:
  - (i) any resolution or any amendment of a resolution about any special business of which appropriate notice has not been given under these rules; or
  - (ii) any other resolution which does not constitute part of special business of which appropriate notice has been given under these rules,unless appropriate notice of the resolution or amendment has itself been given under these rules.
- (d) The auditors and their representative may attend and be heard on any part of the business of a meeting concerning the auditors. The auditors or their representative, if present at the meeting, may be questioned by the Voting Members, as a whole, about the audit.

## **8.2 Quorum**

- (a) The number of Voting Members Present required to constitute a quorum at a general meeting is one half of the Voting Members of the company at any time plus one. If the Company at any time has only one Voting Member the quorum is one.
- (b) If the requisite quorum is not present at the time for commencement of the business, no business can be transacted except the election of a chairman and the adjournment of the meeting.

## **8.3 Adjournment in absence of quorum**

If within 15 minutes after the time specified for a general meeting a quorum is not present, the meeting, if convened upon a requisition or called by Members, is to be dissolved, and in any other case, it is to be adjourned to the same day in the next week (or, where that day is not a Business Day, the Business Day next following that day) at the same time and place and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time specified for holding the meeting, the meeting is to be dissolved.

## **8.4 Chairman**

- (a) The Chairman of the Board has the right to be chairman at every general meeting.
- (b) If at any general meeting:
  - (i) the Chairman of the Board is not present at the specified time for holding the meeting; or
  - (ii) the Chairman of the Board is present but is unwilling to act as chairman of the meeting,

the deputy Chairman of the Board has the right to be chairman at the meeting.

- (c) If at any general meeting:
  - (i) there is no Chairman of the Board or deputy Chairman of the Board;
  - (ii) the Chairman of the Board and deputy Chairman of the Board are not present at the specified time for holding the meeting; or
  - (iii) (the Chairman of the Board and the deputy Chairman of the Board are present but each is unwilling to act as chairman of the meeting,

the Directors present may choose another Director as chairman of the meeting and if no Director is present or if each of the Directors present are unwilling to act as chairman of the meeting, a Voting Member chosen by the Voting Members Present may act as chairman of the meeting.

## **8.5 Acting Chairman**

If during any general meeting the chairman acting under rule 8.4 is unwilling to act for any part of the proceedings, the chairman may withdraw from the chair during the

relevant part of the proceedings and may nominate any person who immediately before the general meeting was a Director or who has been nominated for election as a Director at the meeting to be acting chairman of the meeting during the relevant part of the proceedings. Upon the conclusion of the relevant part of the proceedings, the acting chairman is to withdraw and the chairman is to retake the chair.

## **8.6 General conduct of meeting**

- (a) Except as set out in the Corporations Act, the general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as decided by the chairman of the meeting.
- (b) The chairman of the meeting may at any time he or she considers it necessary for the proper and orderly conduct of the meeting demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members Present.
- (c) The chairman of the meeting may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for the proper and orderly casting or recording of votes at any general meeting of the Company, whether on a show of hands or on a poll.

## **8.7 Adjournment**

- (a) The chairman of the meeting may at any time during the course of the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion and may adjourn any business, motion, question, resolution, debate or discussion either to a later time at the same meeting or to an adjourned meeting.
- (b) If the chairman of the meeting exercises a right of adjournment of a meeting under this rule, the chairman has the sole discretion to decide whether to seek the approval of the Members Present to the adjournment and, unless the chairman exercises that discretion, no vote may be taken by the Members Present in respect of the adjournment.
- (c) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

## **8.8 Voting**

- (a) Each question submitted to a general meeting must be decided in the first instance by a show of hands of the Members Present and entitled to vote. In the event of an equality of votes being cast for and against a motion then the motion will be lost and the resolution will not be passed.

- (b) On a show of hands, where the chairman of the meeting has two or more appointments that specify different ways to vote on a resolution, the chairman must not vote as a proxy but may demand a poll in accordance with rule 8.9 (b).

### **8.9 Declaration of vote on a show of hands – when poll demanded**

- (a) At any meeting, unless a poll is demanded, a declaration by the chairman of the meeting that a resolution has been passed or lost, having regard to the majority required, and an entry to that effect in the book to be kept of the proceedings of the Company signed by the chairman of that or the next succeeding meeting, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution. A poll may be demanded:
  - (i) before a vote 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) A poll may be demanded by:
  - (i) the chairman of the meeting;
  - (ii) at least two Members Present entitled to vote on the resolution.
- (c) No poll may be demanded on the election of a chairman of a meeting.

### **8.10 Taking a poll**

- (a) If a poll is demanded under rule 8.9 it must be taken in the manner and at the time and place the chairman of the meeting directs, and the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded.
- (b) The demand for a poll may be withdrawn.
- (c) In the case of any dispute about the admission or rejection of a vote, the chairman's decision is final.

### **8.11 Continuation of business**

A demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting immediately and without adjournment.

### **8.12 Special meetings**

Rules about general meetings apply to any special meeting of any class of Members held under this document or the Corporations Act.

## **9 Votes of members**

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### **9.1 Voting rights**

- (a) The entitlement of Members to vote on a show of hands and on a poll is as set out in rule 5.5(b).
- (b) If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law about mental health, his committee or trustee or other person who has the management of his estate may exercise any rights of the Member about a general meeting as if the committee, trustee or other person were the Member.
- (c) A Member who owes money to the Company which is more than one month in arrears at the date of the general meeting is not entitled to vote at that meeting.
- (d) Subject to rule 9.1(e), where a person may vote in more than one capacity, that person is entitled only to one vote on a show of hands.
- (e) For clarity, a Member Group will have one vote per Member Group.
- (f) If the person appointed as proxy has two or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands.

## **9.2 Appointment of proxies**

- (a) Any Member entitled to vote at a general meeting may appoint one proxy.
- (b) A proxy must be either
  - (iii) a Member that is entitled to vote at a general meeting of the Company voting through the Member's representative appointed under rule 9.3; or
  - (iv) the chairman of the meeting at which the proxy is to be exercised, or an adjourned meeting at which the proxy is to be exercised; or
  - (v) (iii) a director of the Company.
- (c) The document appointing a proxy (and the power of attorney, if any, under which it is signed or proof of the power of attorney to the satisfaction of the Board) must be deposited duly stamped (if necessary) at the Office, faxed to the Office or deposited, faxed or sent by electronic mail to any other place specified in the notice of meeting, at least 48 hours (or a lesser period as the Board may decide and stipulate in the notice of meeting) before the time for holding the meeting or adjourned meeting or poll at which the person named in the document proposes to vote.
- (d) The document appointing a proxy may be valid for all or any stipulated meetings of the Company until revocation and subject to its terms, is to expire 12 months after the date of its execution.

## **9.3 Voting by corporation**

- (a) Any corporation or incorporated association, being a Member and entitled to vote, may by resolution of its directors or other governing body or by proxy document,



authorise any person, though not a Member, or any person occupying a particular office, to act as its representative.

- (b) That representative is entitled to exercise for the corporation or incorporated association the same powers at meetings as the corporation.

#### **9.4 Validity of vote**

- (a) A vote given as required by the terms of an proxy document or power of attorney is valid despite:

- (vi) the previous death or unsoundness of mind of the principal; or

- (vii) the revocation of the proxy document or power of attorney in respect of which the vote is given,

if no written notice of the death, unsoundness of mind or revocation has been received at the Office before the meeting or any adjourned meeting.

- (b) A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes on the resolution for which the proxy is proposed to be used.

#### **9.5 Form and execution of proxy document**

- (a) A document appointing a proxy must be in writing signed by the appointor or his or her attorney. If the appointor is a corporation, the appointment must be signed by a duly authorised officer, in a form acceptable to the Board.

- (b) Any duly signed proxy which is incomplete may be completed by the Secretary on authority from the Board and as permitted by the Corporations Act and the Board may authorise completion of the proxy by the insertion of the name of any Director as the person in whose favour the proxy is given.

- (c) The proxy document is deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specifically directed to vote for or against any proposal) the power to act generally at the meeting for the person giving the proxy.

- (d) A document appointing a proxy, unless the contrary is stated, is valid for any adjournment of the meeting, as well as for the meeting to which it relates.

#### **9.6 Board to issue forms of proxy**

- (a) The Board may authorise the issue, with any notice of general meeting of Members or any class of Members, forms of proxy for use by the Members.

- (b) Each form must enable the Member to write in the proxy's name. It may provide that if the Member leaves this blank, the proxy is to be a person named on the form.

- (c) The form may include the names of any of the Directors, or of any other suitably qualified person, as a suggested proxy.

- (d) The forms must allow the Member to direct the proxy to vote for or against (or abstain from voting on) any proposed resolution.

## **9.7 Attorneys of members**

A Member may appoint an attorney to act on the Member's behalf at all or specified meetings of the Company. The power of attorney or proof of the power of attorney must be delivered to the Office or elsewhere as directed, with evidence to the satisfaction of the Board of the due execution of the power of attorney. The attorney may appoint a proxy for the Member.

## **10 The Board**

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### **10.1 Positions**

The Board consists of that number as determined by the Board being at least three, but not more than nine persons, to be elected Directors in general meeting or otherwise appointed Directors in accordance with this Constitution (and to avoid doubt, excludes any Alternate Directors).

### **10.2 Election of Directors**

- (a) The Directors are elected at an annual general meeting of the Company and hold office until they resign or are removed or cease to be a director under the Constitution.
- (b) Elections take place as follows:
- (i) two Members entitled to vote may nominate an Approved Candidate to serve as a Director;
  - (ii) an Approved Candidate is not eligible for election as a Director unless the nominee gives written consent to the Company in the form approved by the Board;
  - (iii) unless the Board otherwise consents, the nomination and consent must be left at the Office at least 30 days, and at most 60 days, before the general meeting at which the election is to take place;
  - (iv) the candidates' names (in alphabetical order) and the proposers' and seconders' names must be forwarded to the Member Groups either with the notice of annual general meeting or at least 21 days before the date on which the annual general meeting is to be held;
  - (v) for the purposes of the annual general meeting, each Member Group is entitled to cast a vote 'for' or 'against' the election of an Approved Candidate for a vacant position on the Board and the Approved Candidates receiving the highest number of votes 'for' are elected, in progressive order, until all vacant positions are filled and:

- a. where the number of candidates is equal to or less than the number of available positions, no vote is necessary, and each of the Approved Candidates is automatically appointed; and
- b. if there are insufficient nominations of Approved Candidates for available positions, the Chairman may seek the nomination of an Approved Candidate as a candidate at the general meeting.

### **10.3 Casual vacancies**

- (a) The Board has power to appoint an Approved Candidate as a Director either to fill a casual vacancy on the Board or as an addition to the existing members but so that the total number of Directors must not exceed the number fixed under this Constitution.
- (b) An appointed Director is appointed by the elected Directors for a term expiring at the next annual general meeting when an election must be held to fill the vacancy. A Director appointed under this rule is eligible for election at that annual general meeting.

## **11 Vacation of office**

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### **11.1 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 at the Office, or on a later date specified in the notice.

### **11.2 Removal**

- (a) A Director may be removed from office by ordinary resolution of the Members voting 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 11.2(a) retains office until the dissolution or adjournment of the general meeting at which he or she is removed.

### **11.3 Retirement of Director**

An elected Director will be appointed for a term of three (3) years at the end of which he or she must retire. Such Director will be eligible for re-election as a Director for up to two (2) further three (3) year terms. For clarity, a retiring Director is eligible for re-election for up to three consecutive terms from the time when the Director was first elected to the Board (in addition to any period served filling a casual vacancy).

### **11.4 Disqualification**

The office of a Director is vacated:

- (a) upon a Director becoming an insolvent under administration, suspending payment to creditors, or compounding with or assigning the Director's estate for the benefit of creditors;
- (b) upon a Director becoming a person of unsound mind or is a patient under laws about mental health or whose estate is administered under laws about mental health;
- (c) upon a Director being absent from meetings of the Board for three consecutive calendar months without leave of absence from the Board where the Board has 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 given;
- (d) upon a Director resigning office by written notice to the Company (through the Secretary or to the Office);
- (e) upon a Director being removed from office under the Corporations Act; or
- (f) upon a Director being prohibited from being a director by reason of the operation of law.

### **11.5 Directors who are employees of the Company**

An executive Director (that is who is an employee of the Company or any of its subsidiaries) ceases to be a Director when the Director ceasing to be employed (so that they are no longer employed by the Company or any subsidiary of the Company) but, if an Approved Candidate, the person concerned is eligible for reappointment or election as a Director of the Company.

## **12 Officeholders**

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### **12.1 Appointment to office**

- (a) Subject to this rule 12.1 the Officeholders are chosen by the Board from the Directors at the first meeting of the Board after any annual general meeting.
- (b) The Officeholders continue to hold office until the earlier of:
  - (i) their resignation under rule 12.2;
  - (ii) their removal under rule 12.1(c);
  - (iii) their office as Director becomes vacant under this Constitution; and
  - (iv) the date of the first meeting of the Board after the next annual general meeting.
- (c) The Board has the power to appoint one of its members as an Officeholder, and to remove a Director as an Officeholder, but not from the office of director.

### **12.2 Resignation**

Any Officeholder may resign by written notice delivered to the Secretary. The resignation takes effect when the notice is received by the Secretary or to the Office or on a later date specified in the notice.

## **13 Exercise of voting power**

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### **13.1 Exercise of voting power in other corporations**

The Board may exercise the voting power conferred by the shares in any corporation owned by the Company at the Board's discretion (including voting in favour of any resolution appointing any of the Directors as directors of that corporation). A Director may vote in favour of the exercise of those voting rights even if the Director is, or may be about to be appointed, a director of that other corporation or may be interested in the exercise of those voting rights.

## **14 Alternate Directors**

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### **14.1 Non executive Director may appoint an alternate**

- (a) Subject to this document, a non executive Director may appoint a person to act as their alternate, whether for a stated period or a specified event happens, whenever the non executive Director is unable to attend to their duties.
- (b) The appointment must be in writing and signed by the non executive Director. A copy of the appointment must be delivered or sent to the Office.
- (c) The non executive Director must obtain the prior consent of the Board to the appointment, and this consent must not be unreasonably withheld or delayed.
- (d) The appointment takes effect on receipt of the appointment at the Office and the granting of the Board's consent.

### **14.2 Conditions of office of alternate**

The following provisions apply to an alternate Director:

- (a) an alternate may be removed or suspended from office on receipt at the Office of written notice from the appointing non executive Director;
- (b) the alternate must be given notice of meetings of the Board and may attend and vote at the meetings if the appointing non executive Director is not present;
- (c) the alternate may exercise all the powers (except the power to appoint an alternate) and perform all duties of a non executive Director, in so far as the appointing Director had not (to the knowledge of the Company) exercised or performed them;
- (d) the office of the alternate is vacated upon vacation of office by the appointing non executive Director (including written resignation to the Company by the appointing Director);
- (e) the alternate is not to be taken into account in deciding the number of Directors ;
- (f) an alternate must be a Member of the Company; and

- (g) the alternate is, while acting as a Director, responsible to the Company for the alternate's own acts and defaults and is not to be deemed to be the agent of the non executive Director by whom the alternate was appointed.

## **15 Proceedings of the Board**

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### **15.1 Procedures about Board meetings**

- (a) The Board may meet together, upon each Director being given reasonable notice, for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- (b) Until otherwise decided by the Board, four Directors form a quorum.
- (c) Notice is considered given to a Director, and all Directors are considered to have consented to the method of giving notice, if notice is sent by mail, personal delivery, facsimile transmission or by electronic mail to the usual place of residence, fax number or electronic address of the Director (if any fax number or electronic address is notified to the Company) or at any other address given to the Secretary by the Director subject to the right of the Director to withdraw their consent within a reasonable period before a notice is issued.

### **15.2 Meetings by telephone or other means of communication**

- (a) The Board may meet either in person or by telephone or by other means of communication consented to by all Directors subject to the right of a Director to withdraw their consent within a reasonable period before a meeting.
- (b) All persons participating in the meeting must be able to hear and be heard by all other participants.
- (c) A meeting conducted by telephone or other means of communication is deemed to be held at the place agreed upon by the Directors attending the meeting, if one or more of the Directors present at the meeting is at that place for the duration of the meeting.

### **15.3 Votes at meetings**

Questions arising at any Board meeting are decided by a majority of votes. The Chairman has a casting vote if the votes are equal.

### **15.4 Convening of meetings**

A meeting of the Board must be convened if:

- (a) called by the Chairman or the Board at any time, or
- (b) called by the Secretary, upon the request of any Director.

### **15.5 Chairman**

If no Chairman or Deputy Chairman is elected (e.g. under another provision of this Constitution), the Board may elect a chairman and a deputy chairman of its meetings and decide the period for which each is to hold office. If no Chairman or Deputy Chairman is elected or if at any meeting the Chairman and the Deputy Chairman are not present at the time specified for holding the meeting (or, if being present, the relevant Directors refuse to act as chairman or deputy chairman), the Directors present may choose one of their number to be chairman of the meeting.

## **15.6 Powers of meetings**

A meeting of the Board or any adjournment of a meeting at which a quorum is present is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board.

## **15.7 Advisory Panel**

The Board may appoint an Advisory Panel. The Advisory Panel will consist of any persons the Board thinks fit for appointment to the Advisory Panel. Members of the Advisory Panel will report directly to the Board. The Board may establish terms of reference for the operation of the Advisory Panel.

- (a) The Advisory Panel may provide advice to the Board or the wider membership upon request.
- (b) The Board and Member Groups may nominate suitable persons for consideration for appointment to the Advisory Panel.
- (c) Appointment to the Advisory Panel will be for a term of one year. The appointment may be extended for further one year terms at the discretion of the Board;
- (d) A person nominated for appointment to the Advisory Panel will be appointed to the Advisory Panel if a majority of the Board vote in favour of the appointment of the nominated person.
- (e) An outgoing chair of the Board, upon retirement from the position, may be appointed to the Advisory Panel.
- (f) No member of the Advisory Panel has any voting rights in the Company by virtue of their position on the Advisory Panel.
- (g) A position on the Advisory Panel is voluntary.
- (h) Receipted expenses pre-approved by the Board and incurred by an Advisory Panel member are reimbursable to the Advisory Panel member.
- (i) A member of the Advisory Panel may resign at any time by notice in writing to the Board.
- (j) The Board may at any time by resolution remove a member of the Advisory Panel and give notice thereof in writing to such member of the Advisory Panel.

## **15.8 Delegation of powers to Committees**

- (a) The Board may, subject to the law, delegate any of its powers to Committees consisting of one or more Directors or any other person the Board thinks fit.
- (b) A delegate of the Board may be authorised to sub-delegate any of the powers for the time being vested in the delegate.
- (c) Appointment to a Committee will be on a voluntary basis.

### **15.9 Proceedings of Committees**

- (a) Committee proceedings are to be governed by the provisions in this document that apply to meetings and proceedings of the Board, so far as they are applicable and are not superseded by an instruction of the Board.
- (b) A Committee must follow instructions of the Board.
- (c) A Committee is under the control and direction of the Board and has no power in the management of the Company.

### **15.10 Validity of acts**

- (a) Acts of the Board, a Committee or a Director, even if it is afterwards discovered that there was some defect in the appointment of any of the Directors or the Committee or that any of them were disqualified, are valid as if each person was duly appointed and qualified, and continued to be a Director or a member of the Committee (as the case may be).
- (b) If the number of Directors is reduced below the minimum number fixed under this document, the continuing Directors may act to increase the number of Directors to that number, or to call a general meeting of the Company, but for no other purpose.

### **15.11 Resolution in writing**

- (a) A resolution in writing of which notice has been given to all Directors and which is signed by all the Directors entitled to vote on the resolution is as valid and effectual as if it had been passed at a meeting of the Board. It may consist of several documents in the same form each signed by one or more of the Directors.
- (b) A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with their apparent authority is deemed to be a document in writing signed by that Director.
- (c) For the purposes of this rule, the references to 'Director' include any alternate for the time being present in Australia who is appointed by a Director not for the time being present in Australia but does not include any other alternate Director.

## **16 Powers of the Board**

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### **16.1 General powers of the Board**



- (a) The management and control of the business and affairs of the Company are vested in the Board, which (in addition to the powers and authorities conferred upon them by this document) may exercise all powers and do all things as are within the power of the Company and are not by this document or by the Corporations Act directed or required to be exercised or done by the Company in general meeting.
- (b) The Board may make regulations and by-laws consistent with this 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 or by-law of the Company made by the Board may be disallowed by the Company in a later general meeting.
- (d) 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.

## **16.2 Directors may contract with Company**

- (a) A Director is not disqualified by the office of director from contracting or entering into any arrangement with the Company or any other person either as buyer, seller or otherwise. No contract or arrangement with the Company or any other person by a Director or any contract or arrangement by or for the Company or any other person in which a Director is in any way interested may be avoided for that reason.
- (b) A Director need not account to the Company for any profit realised by any contract or arrangement, by reason of holding the office of or of the fiduciary relationship established by the office.
- (c) No Director may as a director vote in respect of any contract or arrangement in which the Director has directly or indirectly any material personal interest if to do so would be contrary to the Corporations Act and if the Director does vote his vote may not be counted. The Director must not be counted in the quorum present at the meeting. These prohibitions may be relaxed or suspended by ordinary resolution passed at a general meeting, subject to the Corporations Act.
- (d) A Director interested in any contract or arrangement may, despite the interest, attest the affixing of the Seal to, or otherwise sign any document evidencing or otherwise connected with the contract or arrangement.

## **16.3 Appointment of Patron**

- (a) An individual may be nominated to the Board at any time for appointment as a Patron of the company. The criteria for appointment as Patron, the term of the appointment and the conditions of and the rights and privileges of appointment as

Patron shall at all times be at the absolute discretion of the Board and shall be reviewed annually by The Board in consultation with the appointee.

- (b) Appointment as Patron shall be by Special Resolution of the Company.
- (c) A Patron is not entitled by virtue of his or her appointment to receive notice of or attend at or vote at a meeting of the Company.

## **17 Company Secretary**

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- (a) The Secretary is to be appointed by the Board.
- (b) Only a natural person who has provided the Company with a signed consent may be appointed Secretary.
- (c) The Secretary holds office on the terms and conditions the Board decides.

## **18 Other salaried officers**

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The Board may appoint and dismiss officers and employees on the terms and conditions it thinks fit.

## **19 Gift Fund**

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### **19.1 Establishment of Gift Fund**

- (a) The Company may establish and maintain a public fund which will be exclusively, or at least chiefly, for the relief of Australian persons in necessitous circumstances:
  - (i) to which Gifts received by the Company for the purposes of the Gift Fund must be made;
  - (ii) to which any money received by the Company for the purpose of the Gift Fund because of those Gifts must be credited; and
  - (iii) that does not receive any other money or property.
- (b) The Gift Fund comprises:
  - (i) all money, investments, property and other assets paid or transferred to and accepted by the Company as additions to the Gift Fund;
  - (ii) all accretions to the Gift Fund;
  - (iii) all accumulations of income; and
  - (iv) the money, investments, property and assets described above or into which they are converted.

### **19.2 Purpose of Gift Fund**

The Company is trustee for the Gift Fund, an asset of the Company and must be applied:

- (a) consistent with the purposes of the Constitution; and

(b) as limited by the requirements of section 30-45 of Income Tax Assessment Act 1997.

### **19.3 Responsible Persons**

(c) The Company, as trustee for the Fund, must consist of a majority of directors whom have a degree of responsibility to the general public and as such are a Responsible Person.

(d) A 'Responsible Person' means an individual who:

- (i) performs a significant public function;
- (ii) is a member of a professional body having a code of ethics or rules of conduct;
- (iii) is officially charged with spiritual functions by a religious institution;
- (iv) is a director of a company whose shares are listed on the Australian Securities Exchange;
- (v) has received formal recognition from government for services to the community; or
- (vi) is approved as a Responsible Person by the Commissioner of Taxation.

### **19.4 Bank account**

The trustee must establish and maintain a separate bank account for the Gift Fund.

### **19.5 Winding up of Gift Fund**

(a) Where the Gift Fund is endorsed as a deductible gift recipient (DGR) and in the event its endorsement is revoked, any surplus:

- (i) gifts of money or property for the principal purpose of the Gift Fund;
- (ii) contributions made in relation to an eligible fundraising event held for the principal purpose of the Company; and
- (iii) money received by the Gift Fund because of such gifts or contributions, must be transferred to a fund, authority or institution to which income tax deductible gifts can be made.

(b) If the Gift Fund is wound up, any surplus over its liabilities will be transferred to another organisation or fund in Australia to which income tax deductible gifts can be made.

### **19.6 Name of Gift Fund**

The name of the Gift Fund is 'Dragons Abreast Gift Account' or another name determined by the Board.

## **20 The Seal**

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### **20.1 Company Seal is optional**

The Company may have a Seal.

## **20.2 Affixing the Seal**

- (a) The Seal must only be used with the authority of the Board.
- (b) Every document to which the Seal is affixed must be signed by a Director and countersigned by the Secretary or by a second Director, or another person appointed by the Board for the purpose.
- (c) The Board may affix a signature by mechanical means.

## **20.3 Execution of documents without a Seal**

The Company may sign a document without a seal, including a deed, by having the document signed by:

- (a) two Directors; or
- (b) a Director and the Secretary.

## **20.4 Other ways of executing documents**

Despite rules and any document, including a deed, may also be signed by the Company in any other manner permitted by law.

# **21 Minutes**

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## **21.1 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; and
- (b) details of all resolutions and proceedings of general meetings of the Company and of meetings of the Board and Committees.

## **21.2 Signing of minutes**

The minutes of a meeting of a Committee or of the Board 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.

# **22 Notices**

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## **22.1 Service of notices**

- (a) A notice may be given by the Company to a Member, or in the case of joint Members, if any, to the Member whose name stands first in the Register:

- (i) personally;
  - (ii) by leaving it at the Member's Registered Address;
  - (iii) by sending it by prepaid post or facsimile transmission to the Member's Registered Address; or
  - (iv) by sending it to the electronic address (if any) nominated by the Member.
- (b) All notices sent by prepaid post to Members whose Registered Address is not in Australia may be sent by airmail or some other way that ensures that it will be received quickly.

## **22.2 When notice deemed to be served**

- (a) A notice sent by post is considered served at the expiration of 48 hours after the envelope containing the notice is posted. It is sufficient to prove that the envelope containing the notice was properly addressed and posted.
- (b) A notice served on a Member personally or left at the Member's Registered Address is considered served when delivered.
- (c) A notice served on a Member by facsimile transmission is considered served when the transmission is sent. A facsimile is considered sent when the facsimile system utilised by the Company for the transmission generates a message confirming successful transmission of the total number of pages of the notice to the addressee.
- (d) A notice served on a Member by electronic means is considered served when the electronic message is sent.

## **22.3 Member not known at Registered Address**

Where a Member does not have a Registered Address or where the Company has bona fide reason to believe that a Member is not known at the Member's Registered Address, all future notices are considered given to the Member if the notice is exhibited in the Office, for a period of 48 hours (and is considered served at the commencement of that period), until the Member informs the Company of a Registered Address.

## **22.4 Signature to notice**

The signature on any notice given by the Company may be written or printed.

## **22.5 Reckoning of period of notice**

Subject to the Corporations Act and this Constitution where a specified number of days' notice or notice extending over any period is required to be given, the day of service is excluded, and the day upon which the notice expires is included.

## **22.6 Service on deceased Members**

A notice delivered or sent by post to the Registered Address of a Member under these rules is (despite that the Member is then dead and whether or not the Company has

notice of the Member's death) considered served and the service is for all purposes deemed to be sufficient service of the notice or document on the Member's heirs, executors or administrators.

## **22.7 Notification of change of address**

Every Member must notify the Company of any change of his or her address and any new address must be entered in the Register. Upon entry, it becomes the Member's Registered Address.

## **23 Indemnity and insurance**

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### **23.1 Indemnity in favour of Directors, Secretaries and Executive Officers**

Subject to the Corporations Act and rule 23.2 the Company must indemnify each Director, Secretary and Executive Officer to the maximum extent permitted by law, against any Liability incurred by them because of their holding office as, and acting in the capacity of, Director, Secretary or Executive Officer of the Company, other than:

- (a) a Liability owed to the Company or a related body corporate of the Company;
- (b) a Liability for a pecuniary penalty order under section 1317G Corporations Act or a compensation order under section 1317H Corporations Act; or
- (c) a Liability owed to a person other than the Company that did not arise out of conduct in good faith.

### **23.2 Indemnity for legal costs**

The Company must indemnify each Director, Secretary and Executive Officer to the maximum extent permitted by law, against any Liability for legal costs incurred by them in respect of a Liability incurred by them because of their holding office as, and acting in the capacity of, Director, Secretary or Executive Officer of the Company other than for legal costs incurred:

- (a) in defending or resisting Proceedings, in which the Director, Secretary or Executive Officer is found to have a Liability for which they could not be indemnified under rule 23.1;
- (b) in defending or resisting criminal Proceedings in which the Director, Secretary or Executive Officer is found guilty;
- (c) in defending or resisting Proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this rule 23.2(c) does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing Proceedings for the court order); or
- (d) in Proceedings for relief to the Director, Secretary or Executive Officer under the Corporations Act in which the court denies the relief.

### **23.3 Indemnity for employees**

Subject to the Corporations Act and rule 23.4 the Company may indemnify an employee, who is not a Director, Secretary or Executive Officer of the Company, to the maximum extent permitted by law, against any Liability incurred by them because of their holding office as, and acting in the capacity of, an Officer of the Company, other than:

- (a) a Liability owed to the Company or a related body corporate of the Company;
- (b) a Liability for a pecuniary penalty order under section 1317G Corporations Act or a compensation order under section 1317H Corporations Act; or
- (c) a Liability owed to a person other than the Company that did not arise out of conduct in good faith.

### **23.4 Indemnity for legal costs of employees**

The Company may indemnify an employee other than a Director, Secretary or Executive Officer to the maximum extent permitted by law, against any Liability for legal costs incurred in respect of a Liability as, or because of their holding office as, and acting in the capacity of, an Officer of the Company other than for legal costs incurred:

- (a) in defending or resisting Proceedings, in which the Officer is found to have a Liability for which they could not be indemnified under rule 23.3;
- (b) in defending or resisting criminal Proceedings in which the Officer is found guilty;
- (c) in defending or resisting Proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this rule 23.4 does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing Proceedings for the court order); or
- (d) in proceedings for relief to the Officer under the Corporations Act in which the court denies the relief.

### **23.5 Proceedings**

For the purposes of rules 23.2 and 23.3 'proceedings' includes the outcomes of the proceedings and any appeal about the proceedings.

### **23.6 Insurance for the benefit of Directors, Secretaries and Executive Officers**

Subject to the Corporations Act, the Company may pay a premium for a contract insuring a person who is or has been a Director, Secretary or Executive Officer of the Company acting in that capacity against:

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

**23.7 Insurance for other Officers**

Subject to the Corporations Act, the Company may pay a premium for a contract insuring a person who is or has been an employee and also an Officer of the Company, acting in that capacity, but who is not a Director, Secretary or Executive Officer of the Company against:

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

**23.8 When insurance may not be provided by the Company**

The Company must not pay, nor agree to pay, a premium for a contract insuring a person who is or has been a Director, Secretary or Executive Officer or an employee who is also an Officer of the Company, against a Liability (other than one for legal costs) arising out of:

- (a) conduct involving a willful breach of duty about the Company; or
- (b) a contravention of section 182 or section 183 Corporations Act.

**23.9 Definitions for rule 23**

In rule 23:

<b>Term</b>	<b>Definition</b>
Executive Officer	means a person who is concerned, or takes part in, the management of the Company (regardless of the person’s designation and whether or not the person is a Director of the Company).
Liability	for the purposes of rule includes any claim, action, suit, proceeding, investigation, inquiry, damage, loss, cost or expense.
Officer	for the purposes of rule 23 means: <ul style="list-style-type: none"> <li>(a) a Director or Secretary of the Company;</li> <li>(b) a person:               <ul style="list-style-type: none"> <li>(i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company;</li> <li>(ii) who has the capacity to affect significantly the Company’s financial standing; or</li> </ul> </li> </ul>



- (iii) under whose instructions or wishes the Board is accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the Board or the Company).

## **24 Transitional arrangements**

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### **24.1 Continuing Directors**

Each of the persons who are Directors as at the Adoption Date remains a Director so long as he or she remains qualified to act as a Director until they resign, are removed or cease to be a Director under the Constitution.

### **24.2 Continuing Members**

As at the Adoption Date, each of those persons who were Members of the Company will be classified by the Board, acting on the material available to the Board at that time, as either:

- (a) A Member Group;
- (b) an Ordinary Member; or
- (c) a Supporter Member,

and, if on the Adoption Date, the Member had paid all amounts due to the Company, will be considered financial until 30 September 2016.

### **24.3 Board to determine**

Any issues concerning classification of a person's Membership will be determined by the Board.

### **24.4 Appointment to Advisory Panel**

As at the Adoption Date, each Executive Member will be, ex officio, appointed to the Advisory Panel.

### **24.5 Adoption Date**

In this document, 'Adoption Date' means the date upon which the Constitution is adopted (by special resolution of the Members).