

Mid North Coast Community College Limited

Constitution

9 November 2018

CORPORATIONS ACT 2001

A Public Company Limited by Guarantee

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PRELIMINARY

1. Company Name

- 1.1 The name of the company is Mid North Coast Community College Limited ("the Company").

2. Company Type

- 2.1 The Company is a company limited by Guarantee and the liability of the Members is limited as provided in this document.

3. Objects

- 3.1 The Objects of the Company are to:

- a) enhance, enliven and enrich our community by providing quality education, training, out of school hours care and associated services and activities to various members of the community;
- b) provide direct relief in the form of training, education and the provision of other services which provide learning and development outcomes that enhance opportunities for people in necessitous circumstances;
- c) provide direct relief to unemployed people with diagnosed disabilities and those in necessitous circumstances by providing assistance in the form of activities and programs to develop their capacity for resilience during periods of unemployment and to gain skills for employment and work experience opportunities;
- d) provide direct relief to members of the community suffering mental illness through engagement with creative arts for recovery and providing pathways to re-engage with employment and the community;
- e) support initiatives by government, business and community groups to increase employment opportunities in the community;
- f) provide direct relief for those who are aged and isolated through disability by the promotion of and training in information technology;
- g) provide direct relief through support and interaction with local indigenous communities to identify and respond to education and training issues and needs in a culturally appropriate manner;
- h) pursue activities and services that contribute to the wellbeing of communities, create sustainable growth, reflect quality and value in the range of services offered which are consistent with the vision of the College; and
- i) provide specialised education in a school environment for young people who are unable to obtain or continue education in mainstream schools as a result of:
 - i. A diagnosed mental health disorder or disability including a learning disability;

- ii. Homelessness;
 - iii. Drug or alcohol dependency;
 - iv. Domestic violence or abuse;
 - v. Any combination of the above;
- j) provide Out of School Hours Care, or care for children of students and others consistently with the Education and Care Services National Law.

3.2 In furtherance of the objects of the Company, the Company may:

- a) Purchase, take on lease or in exchange, hire and otherwise acquire any lands, buildings, easements, or property, real and personal, and any rights or privileges which may be requisite for the purposes, of, or capable of being conveniently used in connection with, any objects of the Company. Provided that in case the Company may take or hold any property that may be subject to any trusts, the Company may only deal with the same in such manner as is allowed by law, having regard to such trusts;
- b) Enter into any arrangements with any Government or authority, supreme, municipal, local or otherwise, that may seem conducive to the Company's objects or any of them; and to obtain from any such Government or authority, any rights, privileges and concessions which the Company may think it desirable to obtain; and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;
- c) Appoint, employ, remove or suspend, such managers, clerks, secretaries, servants, agents, workmen and other persons as may be necessary or convenient for the purposes of the Company and to remunerate other persons, organisations, companies or entities in return for services rendered to the Company;
- d) Construct, improve, maintain, develop, work, manage, carry out, alter or control any houses, buildings, works or conveniences which may seem calculated directly or indirectly to advance the Company's interests and to contribute to, subsidise or otherwise assist and take part in the construction, improvement, maintenance, development, working, management, carrying out, alteration or control thereof;
- e) Invest and deal with the money of the Company not immediately required in such manner as the Board of Directors may determine from time to time;
- f) Borrow or raise or secure the payment of money in such manner as the Company may think fit, and to secure the same or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the Company in any way and in particular by the issue of debentures, perpetual or otherwise charged upon all or any of the Company's property (both present and future), and to purchase, redeem, or pay off any such securities;
- g) Make, draw, accept, endorse, discount, execute, and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- h) Sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company;
- i) Act solely or jointly as trustees or custodian of any property or fund;
- j) Take or hold mortgages, liens, and charges to secure payment of the purchase price or any unpaid balance of the purchase price, or any part of the Company's property of whatsoever kind sold by the Company, or any money due to the Company from purchasers and others;

- k) Take any gift of property whether subject to any special trust or not, for any one or more of the objects of the Company;
- l) Take such steps by person or written appeals, public meetings or otherwise, as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Company, in the shape of donations, annual subscriptions or otherwise;
- m) Print and publish any newspaper, papers, periodicals, books or leaflets that the Company may think desirable for the promotion of its objects, and to adopt such means of making known and advertising the Company as may seem expedient;
- n) Amalgamate or affiliate with any companies, institutions, societies or associations having objects altogether or in part similar to those of the Company;
- o) Make donations for charitable purposes;
- p) Guarantee the payment of moneys or debts or the performance of any contract by any person, firm or corporation and to give bonds and indemnities;
- q) Incorporate, or be a member of, any company or association; and
- r) Transfer all or any part of the property, assets, liabilities and engagements of the Company to any one or more of the companies, institutions, societies or associations with which this Company is authorised to amalgamate.

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

- a) Carry out the objects of the Company; and
- b) Do all things incidental or convenient in relation to the exercise of its powers.

3.4 The income and property of the company may only be applied towards the promotion of the objects of the Company and, further, any revenue earned in the company's capacity as the operator of a non-government school must only be used for the purposes of the school.

3.5 No income or property of the Company may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of the Company. However, nothing in this Constitution prevents payment in good faith to a Member:

- a) as an employee, in relation to their employment;
- b) In return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
- c) Of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company; or
- d) Of reasonable and proper rent for premises leased by any Member to the Company.

4. Definitions and Interpretations

4.1 In this Constitution, unless there is something in the subject or context which is inconsistent:

Act means the *Corporations Act 2001* as in force and amended from time to time, and where appropriate, includes any regulations issued under the Act.

AGM means Annual General Meeting.

Board or Board of Directors means the Board of Directors of the Company.

Chair or Deputy Chair means the persons elected by the Directors of the Company to those roles.

Chief Executive Officer means the person appointed by the Company's Board of Directors who has the primary responsibility for the day to day running of the services on behalf of the Company.

Committee means a committee of Directors established in accordance with clause 17.4.

Company means Mid North Coast Community College Limited.

Company Secretary means the person elected to that position by the Directors of the Company.

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

Deductible Gift Recipient is an organisation authorised by the Australian Taxation Office to receive Income tax deductible gifts and deductible contributions.

Director means any person holding the position of a Director of the Company and "Directors" means the Directors for the time being of the Company or as the context permits each number of them as have authority to act for the Company.

Funding Agreement means any agreement between the Company and a Funding Body.

Funding Body means any relevant State or Federal Department from which the Company receives funds and/or gifts.

General Meeting means a meeting of the Members of the Company called in accordance with this Constitution and includes both Special General Meeting and Annual General Meetings.

Gift Fund means a separate gift fund account where donations and deductible contributions are deposited.

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

Liability of a Person means any liability incurred by that person as an Officer of the Company or subsidiary of the Company.

Member means a member of the Company pursuant to clause 7.

Member present means in connection with a meeting of Members, a Member being present in person or by proxy or attorney or, in the case of a corporation, by a Representative.

Minute Secretary means the person elected or appointed to that position by the Directors of the Company for the purpose of taking minutes at all Board Meetings.

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

Officer includes the Directors, Company Secretary, Chief Executive Officer and any other person deemed to be an officer of a corporation under the Act.

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

Special Resolution has the meaning set out in the Act.

- 4.2 In this Constitution, unless there is something in the subject or context which is inconsistent:
- a) The singular includes the plural and vice versa;
 - b) Each gender includes the other two genders;
 - c) The word "person" means a natural person and any partnership, association, body or entity whether incorporated or not;
 - d) The words "writing" and "written" include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
 - e) Where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
 - f) A reference to any clause or schedule is to a clause or schedule of this Constitution;
 - g) A reference to a statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.
- 4.3 An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.
- 4.4 The provisions in this Constitution displace the replaceable rules (but not replaceable rules which mandatorily apply to a public company) contained in the Act.
- 4.5 Headings do not form part of or affect the construction or interpretation of this Constitution.

5. Powers

- 5.1 Subject to the Act and this Constitution, the Company has all the powers of a natural person.

6. Winding Up and Loss of Deductible Gift Recipient Status

- 6.1 If the company is wound up, then subject to clause 6.4:
- a) each Member; and
 - b) each person who ceased to be a Member in the preceding year undertakes to contribute to the property of the Company for the:
 - i. payment of the debts and liabilities of the Company (but only those contracted before the person ceased to be a Member) and payment of the costs, charges and expenses of winding up; and
 - ii. adjustment of the rights of the contributories amongst themselves,such amount as may be required but not exceeding \$10.00.

- 6.2 If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another institution or corporation which has:
- a) objects which are similar to the objects of the Company;
 - b) a Constitution which requires its income and property to be applied in promoting its objects; and
 - c) a Constitution which prohibits it from paying or distributing its income and property amongst its Members to an extent at least as great as imposed on the Company. The identity of the corporation or institution is to be determined by the Members at or before the time of dissolution and failing such determination being made, by application to the Supreme Court for determination.

6.3 Funding Agreements

- a) To the extent permitted by law, any assets referred to in a funding agreement must be dealt with in accordance with the provisions of that Funding Agreement (and in that regard the provisions of clause 6.3b) apply) and as such assets may include but are not limited to:
 - i. any monies received through a Funding Agreement including any interest accrued on those monies;
 - ii. any assets purchased by the Company using monies received through a Funding Agreement and any monies derived from the sale, loss or disposal of such assets; and
 - iii. any project generated fees including any charges to Service users.
- b) The Company must consult with each Funding Body and seek their written consent (if required under the relevant Funding Agreement) prior to assigning or otherwise disposing of any assets or its interests under a Funding Agreement under the provisions of this clause 6.

6.4 Loss of Deductible Gift Recipient Status

If a Gift Fund or the Company is wound up or the Company's endorsement as a deductible gift recipient is revoked (whichever occurs first), then any surplus:

- a) gifts of money or property for the principal purpose of the Company;
- b) contributions made in relation to an eligible fundraising event held for the principal purpose of the Company; and
- c) money received by the Company because of such gifts and contributions,

must be transferred to another organisation to which income tax deductible gifts and contributions can be made.

MEMBERSHIP

7. Membership & Eligibility

- 7.1 Any person is eligible to be a Member of the Company, but only if they provide the guarantee described in clause 9.3.

7.2 There will only be one class of Member comprising of:

- a) All persons who are Members of the Company at the time this Constitution is adopted and who have provided the guarantee described in clause 9.3 and support the objectives of the Constitution; and
- b) Other persons admitted to membership pursuant to clause 9.3 and clause 13.

8. Membership

8.1 The directors may, from time to time, determine:

- a) various classes of membership for the Company;
- b) any restriction on the number of Members, including the number of members within each class;
- c) the qualifications for admission to each class; and
- d) the rights attached to being a Member in each class.

8.2 Subject to the *Corporations Act 2001* and the terms of a particular class of membership, the company may:

- a) vary or cancel rights attached to being a Member of that class; or
- b) convert a member from one class to another, by special resolution of the Company.

8.3 The Company may:

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

8.4 The classes of membership are:

- a) Ordinary membership;
- b) Life membership;
- c) Non-voting membership.

9. Ordinary Membership – Rights & Responsibilities

9.1 Each ordinary Member of the Company will have all rights conferred by this Constitution including the right to attend and vote at General Meetings of the Company.

- 9.2 Any rights, privileges and obligations, which a person has by reason of being an ordinary member of the Company,
- a) Are personal and cannot be transferred or transmitted to any other person or entity and;
 - b) Subject only to clause 9.3, cease upon cessation of the person's membership.
- 9.3 Each ordinary Member must provide a written guarantee in the form required by the Company from time to time, that the ordinary Member will contribute up to \$10.00 to the property of the Company for payment of outstanding debts and liabilities of the Company should it be wound up while the person is an ordinary Member or within 12 months of the person ceasing to be an ordinary Member except where the reason the person ceases to be an ordinary Member is because the person has died.
- 9.4 The liability of an ordinary Member to contribute towards the payment of debts and liabilities of the Company on the cost, charges and expenses of the winding up of the Company will be limited to the amount of the guarantee.

10. Life Membership – Rights & Responsibilities

- 10.1 An ordinary Member may nominate another ordinary Member who has rendered distinguished service to the Company and it personifies the professional values ordinary Members respect and encourage, for election as a life Member of the Company. The directors must consider the nomination for election as a life Member at a meeting of directors and may recommend election as a life Member at an Annual General Meeting.
- 10.2 Election to life membership may happen by ordinary resolution at an Annual General Meeting.
- 10.3 Election to life membership requires the approval of at least 75% of the Members present and voting.
- 10.4 Each life Member is entitled to all privileges and is subject to all duties of a Member during that life Member's life without any further payment of fees, subscriptions or levies.
- 10.5 A certificate of life membership may be given to the life Member to commemorate the life Member's election to that position.

11. Non-voting Membership – Staff member or Student

- 11.1 A person is participating as a staff member or student of the Company who has consented to becoming a Member may apply to the directors for non-voting membership.
- 11.2 The directors may from time to time determine the qualifications of a non-voting Member. A non-voting Member is not entitled to hold any elected office in the Company and is not entitled to any voting rights. A non-voting Member becomes ineligible to remain a non-voting Member if they cease to be a staff member or student of the Company.

12. Staff Ineligibility

- 12.1 Employees of the Company (other than the Chief Executive Officer) are ineligible to be directors of the Company.

13. Becoming and Remaining a Member

- 13.1 The Board of Directors must determine by ordinary resolution whether or not to approve a membership application provided:
- a) An application by an eligible person to become a Member of the Company has been made by completing and signing a written membership form; and
 - b) The application has been proposed and seconded by a current member of the Company.
- 13.2 The Board is not required to provide reasons for accepting or rejecting a membership application.
- 13.3 A person whose application for membership is approved becomes a member from the date the Board approves the application.
- 13.4 As soon as practicable after the Board determines an application for membership, it must notify the applicant whether or not their application has been approved.
- 13.5 The Board of Directors may determine the amount of the membership fee for each financial year by ordinary resolution at the Annual General Meeting held in the immediately preceding financial year. Where no determination has been made at the preceding Annual General Meeting, the amount of the membership fee for a given financial year will be \$10.00 per annum.
- 13.6 A life member is not required to pay a membership fee and is entitled to one vote.
- 13.7 The Board may make such by-laws or rules as considered appropriate for continuation or renewal of membership, including the payment of any membership fee.

14. Register of Members

- 14.1 The Company Secretary must maintain a register of names, showing each Member's name, home address, any other address or contact information provided by the Member and the date of commencement of membership.

15. Disciplining of Members

- 15.1 The Company may serve a Member with a discipline notice, where the Board passes a resolution stating that in the Boards' opinion the Member:
- a) has refused or neglected to comply with a provision of this Constitution; or
 - b) has acted in a manner prejudicial to the interests or reputation of the Company; or
 - c) is no longer a fit and proper person to be a Member of the Company.
- 15.2 A discipline notice must detail the Board's concerns and invite the Member to make submissions in respect of those concerns within 14 days. Where the Board suspends the Member's membership pending the making of a disciplinary decision, the discipline notice

must include notification of such suspension.

15.3 Where the Board has served a Member with a discipline notice and has allowed the Member 14 days within which to respond, the Board may, within 7 days, make a disciplinary decision by:

- a) suspending the Member's membership;
- b) expelling the Member from the Company; or
- c) imposing such conditions upon the Member's membership as the Board deems appropriate in the circumstances.

15.4 A disciplinary decision will apply from the date it is made.

15.5 Where the Board decides to discipline a Member in accordance with clause 15.3 it will inform the Member of its decision in writing within 7 days.

16. Suspension and/or Cessation of Membership

16.1 The period of a suspension made pursuant to a disciplinary decision is not to exceed 12 months.

16.2 The Board may suspend a Member's membership for the period between service of a disciplinary notice and the making of a disciplinary decision. The period of such suspension is not to exceed 21 days.

16.3 Where the Board suspends a Member's membership, it will notify the Member in writing of the suspension (including the term of the suspension) as soon as practicable.

16.4 Any Member will cease to be a Member if they:

- a) die; or
- b) resign membership by notice in writing served upon the Company; or
- c) revoke (or purports to revoke) the guarantee described in clause 9.3; or
- d) do not provide a membership continuation by the required date (where applicable); or
- e) commit an act of bankruptcy or are declared bankrupt or insolvent or their estate or otherwise becomes liable to be dealt with under the law relating to bankruptcy or insolvency; or
- f) are expelled pursuant to a disciplinary decision.

16.5 Where a person ceases to be a Member, they automatically forfeit any right or claim they had (or may have had) upon the Company, arising from their membership.

MANAGEMENT OF MID NORTH COAST COMMUNITY COLLEGE LIMITED BY THE BOARD

17. Powers of the Board

- 17.1 The affairs of the Company are controlled and managed by a group of Directors known as the Board.
- 17.2 Subject to the Act, this Constitution and any resolution passed by the Company in a General Meeting, the Board:
- a) may exercise all such functions as may be exercised by the Company except those functions that this Constitution requires to be exercised by a General Meeting; and
 - b) has the power to perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper management of the affairs of the Company.
- 17.3 The Board may make such by-laws (as are not inconsistent with this Constitution or Act) as it deems necessary for the proper and effective management of the Company and may alter or repeal any such by-laws. Any such by-laws will be valid and binding upon Members unless and until revoked by the Board or amended or revoked by the Members in a General Meeting.
- 17.4 The Board may by resolution, delegate to a Director or Committee or employee any of its powers (subject to any conditions it deems suitable) other than this power of delegation, provided:
- a) the Board adopts a written delegation policy; and
 - b) such delegation is made in writing and in accordance with the delegation policy.
- 17.5 Where the Board by resolution delegates any of its powers, such delegation will be immediately revocable (either wholly or in part) by ordinary resolution of the Board. Despite any delegation, the Board may continue to exercise any function delegated. Any act or thing done or suffered by a delegate acting in the exercise of a delegation has the same force and effect as it would have if it had been done or suffered by the Board.
- 17.6 The Board may make such by-laws (as are not inconsistent with this Constitution or the Act) as it deems necessary for the proper and effective management of the Company and may alter or repeal any such by-laws. Any such by-laws will be valid and binding upon members unless and until revoked by the Board or amended or revoked by the members in a General Meeting.

18. Composition of the Board

- 18.1 The Board must consist of no fewer than 3 and no more than 10 Directors, being Members of the Company each of whom has either been elected as a Director at the AGM or otherwise appointed as a Director pursuant to this Constitution.
- 18.2 In addition to any requirements or prohibitions imposed by the Act, to be eligible to serve as a Director, a person must meet the minimum criteria set out in any policy adopted by the Board in relation to eligibility of a person to be a director and must not be subject to any matter, which would disqualify that person pursuant to the policy.

- 18.3 At the first Board meeting after each AGM, the Board must elect a Chair and Deputy Chair from among its own number.
- 18.4 The persons specified in the application for registration as a Company as persons who consent to becoming Directors constitute the first Directors. Those persons must all retire at the first Annual General Meeting but are eligible for re-election.

19. Terms of Office

- 19.1 Directors will be appointed for a two (2) year term.
- 19.2 The maximum term of any individual in the role of Chair will be five (5) consecutive Years, however, if there are no nominations received for the vacant position of Chair, then the incumbent may nominate for a further 12 month term.
- 19.3 The maximum term of any individual in the role of Director will be ten (10) consecutive years, however, if there are no nominations received for the vacant position of Director, then the incumbent may nominate for a further 12 month term.
- 19.4 Without limiting a person's eligibility for re-election and subject to the Act and the provision of clause 19.1, a Director's term in office will extend until such time as the election or appointment of Directors is conducted at the AGM following the Director's appointment or election.
- 19.5 The Board may grant a Director a temporary leave of absence from office for a specified period. However, no Director will be entitled to appoint an alternate Director to act in their stead during such leave of absence.
- 19.6 If a Director is absent for three consecutive meetings or fails to attend 4 or more Board meetings in any 12 month period without leave of absence, the Board may by ordinary resolution declare their office to be vacant.

20. Election of Directors

- 20.1 At least half of the Board will retire at each Annual General Meeting. The Directors who retire in any year must be those who have been longest in office since their last election or appointment. The order of retirement of elected members who became Directors on the same day must be determined by a resolution of the Board which may adopt any method to select retiring Directors, including by random ballot.
- 20.2 Any Member may nominate any other Member (including any outgoing Director), as a candidate for election as a Director by serving a written notice upon the Company nominating the candidate (in the form required by the Company) at least 7 days prior to the AGM. As a minimum, this notice must be signed by:
- a) The Member nominating the candidate and;
 - b) At least one other Member who, by signing, agrees to second the nomination and;
 - c) The candidate who, by signing,
 - i. Indicates their consent to act as a Director if elected or appointed and;

- ii. Declares that they meet the minimum criteria required by the policy referred to in clause 18.2 and;
- iii. Declares that they are not subject to any matter that would disqualify them from being a Director pursuant to any policy as referred to in clause 18.2.

20.3 Election of Directors will be resolved by vote at the AGM in accordance with clauses 20.4, 32, 34, 35 and 36, except that:

- a) Where there is only one candidate for a particular position; or
- b) Where the number of candidates is equal to or less than the number of available positions, they will be taken to be appointed automatically without the need for a resolution, with such appointment to operate from the time at which a vote would have been conducted if required but for this clause.

20.4 Where a vote is conducted for the election of one or more Directors, such vote will be conducted by a single poll. Each Member will be entitled to one vote in which the Member selects their preferred candidate (up to the number of candidates as there are positions to be filled) with no particular preference being afforded to each candidate selected by the voter. The Candidates who receive the highest number of selections overall will be elected to the available positions, except that where, after an initial poll:

- a) Votes are tied for the final positions available; or
- b) Not all the positions have been filled;

only the candidates who clearly received more votes than the other candidates will be elected and a further poll will be conducted from among the remaining unelected candidates to fill the remaining positions. Where required, this process will be repeated until all the available positions have been filled.

21. Appointment of Directors

21.1 Any Directorship which:

- a) is not filled by election at the AGM; or
- b) subsequently becomes vacant;

may be filled by any Member appointed by the Board.

21.2 Before appointing any person as a Director, the Board must ensure that it considers the appropriateness of any potential appointee based on the criteria contained in the policy referred to in clause 18.2.

21.3 An appointment of a Director by the Board must be made in writing and will be effective from the date set out in the written instrument.

21.4 Appointments made pursuant to this clause must be confirmed by ordinary resolution of the Company at the next General Meeting.

17.4 If a director is confirmed by the General Meeting, their term is deemed to commence at that time for the purpose of clause 19.1.

17.5 No payment may be made to a person in connection with their role as a director unless it is

in reimbursement for a payment made by the person in connection with the operational activities of the Company.

22. Vacancy on the Board

- 22.1 A Directorship will become vacant where:
- a) the position is offered for election at an AGM is not filled; or
 - b) a Director ceases to hold office by operation of clause 22.2 or by operation of law.
- 22.2 A Director ceases to hold office and their office becomes vacant when the Director:
- a) ceases to be a Member of the Company;
 - b) becomes bankrupt or enters into any arrangement or composition with their creditors or any of them;
 - c) resigns office by notice in writing served upon the Company;
 - d) enters into an arrangement that would cause him or her to contravene clause 18.2;
 - e) is deemed to be a mentally ill person under the Mental Health Act 2007 (NSW) (or similar legislation in other relevant jurisdictions) or a protective order is made for that person under that Act or that person or their estate is liable to be dealt with in any way under the laws relating to mental health; or
 - f) is removed from office pursuant to the Act.
- 22.3 In addition to any requirements under a binding agreement or by Law, any Director that ceases to hold office must:
- a) immediately return all property (including any documentation) of the Company in their possession to the Company;
 - b) do all such acts, matters and things which are reasonably necessary or expedient, including signing any documents, so as to assist the Company in extinguishing any interest or right arising from their former Directorship; and
 - c) do all other things as reasonably required in the best interests of the Company.
- 22.4 Despite any vacancy on the Board, the Board will continue to act in accordance with this Constitution.

23. Board Meetings and Resolutions

- 23.1 The Board will meet at least four (4) times in each calendar year for the dispatch of business.
- 23.2 Unless otherwise authorised by the Act, where a Director has a material personal interest in a matter that is being considered at a Board meeting, such Director must not:

- a) be present while the matter is being considered at the meeting; or
 - b) vote on the matter.
- 23.3 The Chair at any time and the Company Secretary on the requisition of any Director may call a meeting of the Board. Notice of a meeting must be given to each Director at least 48 hours (or such other period as is unanimously agreed on by the Board) before the time appointed for the holding of the meeting, except that a Director need not be notified where:
- a) the Board has granted the Director a leave of absence for the period during which the meeting is to be held; or
 - b) the Director is absent from Australia and has not left a telephone number, fax number, email address or other address at which they may be contacted.
- 23.4 A Board meeting may be held by means of telephone, audio-visual or other instantaneous communication method ("a tele-meeting"), provided that where a tele-meeting is held:
- a) all of the Directors taking part in the meeting announce their presence to all the other Directors taking part; and
 - b) All of the Directors taking part in the meeting confirm at the commencement of the meeting that they can communicate clearly with each of the other Directors present.
- 23.5 During a tele-meeting:
- a) a Director is not to leave the meeting by disconnecting the means of communication without notifying the Chair of the meeting;
 - b) a Director who has announced their presence and confirmed communication is deemed to be present at the tele-meeting until its conclusion unless or until they notify the Chair of the meeting that they are leaving the meeting.
- 23.6 To constitute a quorum at a Board meeting, the number of persons present (in person or using such technology as is permitted) is three (3). No business is to be transacted (i.e. no resolutions are to be passed) unless a quorum is present at the meeting. Where a Director leaves a meeting part way through and those remaining do not constitute a quorum, the meeting may continue, but no business is to be transacted unless or until a quorum is again present.
- 23.7 If within half an hour of the time appointed for a Board meeting a quorum is not present the meeting is to stand adjourned to a time and date announced by the Chair.
- 23.8 The Chair is to chair all Board meetings, except that, where they are not present within 10 minutes of the time appointed for a Board meeting, the Deputy Chair is to chair such meetings (or where the Deputy Chair is also not present within 10 minutes, such other Director as is chosen by the Directors present). The person who commences as Chair of the meeting will continue as Chair of the meeting, even where:
- a) a person other than the Chair is required to chair a meeting pursuant to this provision and the Chair subsequently attends the meeting; or
 - b) a new Chair is elected during the meeting
- 23.9 A resolution of the Board will be passed by simple majority vote of Directors present and entitled

to vote at the meeting unless a Special Resolution is required by this Constitution or the Act. No proxy votes will be allowed. Where the votes are equal for and against, the Chair of the meeting will have a casting vote.

- 23.10 In all other respects, the Board may determine the procedure for, regulate and adjourn its meetings as it thinks fit.

24. Circular Resolutions by Directors

- 24.1 Notwithstanding clause 23.9, a resolution in writing signed by a majority of the Directors for the time being entitled to vote in relation to the resolution (not being less than a quorum) and stating that the signatories are in favour of the resolution will be as valid and effectual from the time it is signed by the last Director as if it had been passed at a duly convened meeting of Directors.
- 24.2 A resolution in writing may consist of several documents in like form each signed by one or more Directors.
- 24.3 Every such resolution is deemed to have been passed on the day and at the time at which the document was last signed by a Director.
- 24.4 An email, scanned electronic image or facsimile transmission which is received by the Company and which purports to have been signed by a Director is, for the purpose of this clause, taken to be in writing and signed by that Director, unless the contrary is proved, at the time of the receipt, in legible form, of the facsimile transmission or scanned electronic image by the Company.

25. Minutes

- 25.1 The Directors must cause minutes to be kept in accordance with the Act for the purposes of recording:
- a) the names of the Directors present at each meeting of the Directors and of Directors present at each meeting of any Committee;
 - b) all orders, resolutions and proceedings of General Meetings and meetings of Directors and of Committees; and
 - c) such matters as are required by the Act to be recorded in the record books of the Company including without limitation all declarations made or notices given by any Director of their interest in any contract or proposed contract or the holding of any office or property or any other matter whereby any conflict of duty or interest may arise.
- 25.2 Such minutes must be signed by the Chair of the meeting, or the Chair of the next such meeting and the minutes which purport to be signed accordingly may be received in evidence without any further proof as sufficient evidence that the matters and things recorded by such minutes actually took place or happened as recorded and of the regularity of such matters and things and that the same took place at a meeting duly convened and held.

THE COMPANY IN GENERAL MEETING

26. Quorum

- 26.1 No business may be transacted at any General Meeting unless a quorum of Members is present at all times during the meeting.
- 26.2 Five (5) Members Present and entitled to vote constitute a quorum for all General Meetings.
- 26.3 If within 30 minutes after the time appointed for holding a General Meeting a quorum is not present:
- a) the meeting, if convened upon the requisition of Members, must be dissolved; and
 - b) in any other case:
 - i. it will stand adjourned to the same day in the next week at the same time and place or to such other day time and place as the Directors may by notice to the Members appoint; and
 - ii. if at such adjourned meeting a quorum is not present within 30 minutes after the time appointed for the holding of the meeting the meeting is dissolved.

27. Chair

- 27.1 The Chair is entitled to preside as Chair at every General Meeting.
- 27.2 Where a General Meeting is held and:
- a) there is no Chair; or
 - b) the Chair is not present within 30 minutes after the time appointed for the holding of the meeting or if present is unwilling to act as Chair of the meeting, the Deputy Chair may preside as Chair of the meeting or, if the Deputy Chair is not present or is unwilling to act then the other Directors present may choose another Director as chair of the meeting. If no Director is so chosen or if all the Directors present decline to take the chair the Members Present may choose one of their number to be Chair of the meeting.
- 27.3 The rulings of the Chair of a General Meeting on all matters relating to the order of business, procedure and conduct of the meeting are final and no motion of dissent from such rulings will be accepted.

28. Adjournments

- 28.1 The Chair of a General Meeting at which a quorum is present:
- a) may adjourn a meeting with the consent of the meeting; and
 - b) must adjourn the meeting if the meeting so directs to a time and place as determined.
- 28.2 No business may be transacted at any adjourned General Meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 28.3 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

- 28.4 It is not necessary to give any notice of an adjournment of a General Meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for 30 days or more in which case notice of the adjourned meeting must be given as in the case of the original meeting.

29. Annual General Meeting

- 29.1 The Company must hold an AGM within 18 months of its registration as a public company and, thereafter, at least once in each calendar year (within 5 months after the end of the Financial Year).
- 29.2 The business of the AGM will include:
- a) the election of Directors;
 - b) the consideration and approval (or otherwise) of the annual financial report, Directors' report and auditor's report;
 - c) the appointment of the auditor (where applicable);
 - d) the fixing of the auditor's remuneration (where applicable); and
 - e) any other business referred to in the notice of meeting.

30. Special General Meetings

- 30.1 All meetings of Members other than Annual General Meetings will be called Special General Meetings and may be called by:
- a) the Chair acting on a resolution of the Board; or
 - b) any other person(s) permitted to call such meeting pursuant to the Act.

31. Notice of General Meetings

- 31.1 No business will be transacted at any General Meeting unless, at least 21 days prior to the date fixed for the meeting (unless the Act allows a lesser time period), each Member has been served with a notice which complies with the notice requirements set out in the Act.

32. Voting on Resolutions

- 32.1 At any General Meeting a resolution to be considered at the meeting is decided on a show of hands unless a poll is demanded by:
- a) the Chair of the meeting;
 - b) at least two (2) Members present entitled to vote on the resolution.

- 32.2 Before a vote on a resolution is taken, the Chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- 32.3 A declaration by the Chair of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of the Company which has been signed by the Chair of the meeting 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.
- 32.4 The election of Directors will at all times be by poll. Further the election of Directors will be conducted according to the procedure set out in clause 20.4.

33. Polls

- 33.1 A poll may be demanded:
- a) before a vote on a resolution is taken;
 - b) before the voting results on a show of hands are declared; or
 - c) immediately after the voting results on a show of hands are declared.
- 33.2 If a poll is demanded it must be taken in such a manner and at such time and place as the Chair of the meeting directs.
- 33.3 The result of the poll will be taken to be the resolution of the meeting at which the poll was demanded.
- 33.4 The 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.
- 33.5 A poll demanded on the election of a Chair or any question of adjournment of the meeting must be taken immediately.
- 33.6 The demand for a poll may be withdrawn.

34. Rights to Vote

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

35. No Rights to Vote

- 35.1 A Member is not entitled to be present or to vote at any General Meeting if any amount payable by the Member in respect to their membership is more than one month in arrears at the date of the meeting.

36. Challenges to Voting Rights

- 36.1 Any challenge as to the qualification of a person to vote at a General Meeting or the validity of any vote tendered may only be raised at the meeting and must be determined by the Chair

whose decision is final and conclusive and a vote allowed by the Chair is valid for all purposes.

37. Casting Vote on Equality

- 37.1 In the case of an equality of votes whether on a show of hands or on a poll the Chair of the meeting at which the show of hands is taken or at which the poll is demanded is entitled to a casting vote in addition to their vote as a Member.

38. Non-Member Invitation

- 38.1 The Chair of a General Meeting may invite any person who is not a Member to attend and address a meeting.
- 38.2 Any auditor of the Company is entitled to attend and address a General Meeting.

PROXIES

39. Appointment of Proxies

- 39.1 A Member who is entitled to attend and vote at a General Meeting of the Company may appoint a person as the Member's proxy to attend and vote for the Member at the meeting and such person need not be a Member.
- 39.2 If a Member appoints a proxy the proxy is entitled to vote on a show of hands or a poll.

40. Instrument of Appointment

- 40.1 The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney duly authorised in writing.
- 40.2 The instrument of proxy is valid if it contains the information required by the Act that at the date of this Constitution is the following information:
- a) the name and address of the Member;
 - b) the name of the Company;
 - c) the proxy's name; and
 - d) the meetings at which the instrument of proxy may be used.
- 40.3 An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.
- 40.4 An instrument of proxy is not invalid merely because it does not specify all of the information required by clause 40.2
- 40.5 An instrument of proxy may be revoked at any time by notice in writing to the Company.

40.6 The Chair of any meeting may conclusively determine any question as to the validity of a proxy.

41. Lodgement of Proxies

41.1 An instrument appointing:

- a) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
- b) an attorney to exercise a Member's voting rights at a General Meeting or a certified copy of that power of attorney,

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

41.2 For the purposes of this clause it will be sufficient that any document required to be lodged by a Member be received in legible form by facsimile or other electronic means at the place at which the document is required to be delivered by the Member and the document is regarded as received at the time the facsimile or other electronic means was received at that place.

42. Validity of Proxies

42.1 A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:

- a) the death or unsoundness of mind of the Member;
- b) the Bankruptcy or Liquidation of the Member;
- c) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument of power was granted,

if the Company has not received at its Office written notice of the death, unsoundness of mind, bankruptcy, liquidation or revocation prior to the time appointed for the holding of the General Meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

43. If Proxy is not a Member

43.1 A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member only if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

44. Voting Rights of Proxies

44.1 The instrument appointing a proxy confers authority to demand or join in demanding a poll.

44.2 Unless a Member by the instrument of proxy directs the proxy to vote in a certain manner the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise the proxy must

follow the voting instructions contained in the instrument of proxy.

- 44.3 A proxy is not revoked by the appointor attending and taking part in any General Meeting but if the appointor votes on a resolution either on a show of hands or on a poll the person acting as proxy for the appointor is not entitled to vote in that capacity in respect of the resolution.
- 44.4 The Chair of a General Meeting may require any person acting as a proxy to establish to the satisfaction of the Chair that they are the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish their identity they may be excluded from voting either upon a show of hands or upon a poll.

45. Postal Ballots

- 45.1 Subject to the provisions of the Act and this clause, the Board may, if it thinks fit, submit any question or resolution to the vote of all Members entitled to vote at a general meeting of the Company by means of a postal ballot in such form and returnable in such manner as the Board decides.
- 45.2 A resolution approved by a majority of the Members competent to pass such a resolution voting by such ballot will have the same standing as a resolution carried by such a majority at a duly constituted general meeting of the Company.
- 45.3 The Board must appoint a returning officer who is responsible for the conduct of the ballot.
- 45.4 Any postal ballot must be conducted in such a way as to properly and fairly ensure:
- a) all persons entitled to vote may vote;
 - b) persons not entitled to vote do not vote;
 - c) notice, including its timing, is given in accordance with the requirements of the Act and this constitution;
 - d) voting papers are not duplicated;
 - e) a person may only cast the votes they are lawfully entitled to cast under this constitution;
 - f) Ballot papers are secured;
 - g) votes are counted accurately;
 - h) votes are declared and, in the case of special resolutions, notified to members promptly; and
 - i) records are retained for eight weeks after the ballot has been declared.
- 45.5 For the purposes of this constitution, a postal ballot includes an electronic ballot which may use any electronic medium that may reasonably replicate a ballot conducted by post. It is to be conducted in accordance with the principles of this constitution adapted as far as is practicable to ensure the rights of all members under this constitution in relation to the ballot are protected as if it were a ballot conducted by post.

GENERAL

46. Execution of Documents

- 46.1 Without limiting the manner in which the Company may execute any contract, including as permitted under Section 126 of the Act, the Company may execute any agreement, deed or other document by:
- a) two Directors signing the same; or
 - b) one Director and one Secretary signing the same; or
 - c) one Director and the Chief Executive Officer signing the same; or
 - d) otherwise in accordance with a Policy adopted by the Board from time to time, but such a Policy must be in compliance with the Act.
- 46.2 Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.
- 46.3 42.3 The assets and income of the Company will be applied solely in furtherance of its objects and no portion will be distributed directly or indirectly to its Members except as bona fide compensation for services rendered or expenses incurred on behalf of the Company.

47. Accounts and Inspection

- 47.1 The Directors must:
- a) keep proper financial records;
 - b) distribute copies of the financial reports of the Company and a Director's report in accordance with the requirements of the Act; and
 - c) from time to time determine whether and to what extent, at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of Members not being Directors.
- 47.2 The Directors will ensure the accounts of the Company are audited in accordance with the requirements of the Act and Funding Bodies.

48. Service of Notices and Documents

- 48.1 A notice may be given by the Company to any Member by:
- a) serving it on the Member personally;
 - b) sending it by post to the Member or leaving it at the Member's address shown in the Register or otherwise the address supplied by the Member to the Company for the giving of notices;

- c) facsimile to the facsimile number supplied by the Member to the Company for the giving of notices; or
 - d) sending it to the electronic address supplied by the Member to the Company for the giving of notices.
- 48.2 Any Member who has not left at or sent to the Office their place of address for inclusion in the Register as the place at which notices may be given to the Member is not entitled to receive any notice.
- 48.3 Where a notice is sent by post, service of the notice is taken to be effected by properly addressing, prepaying and posting a letter containing the notice and is deemed to have been received on the day after the date of posting. Service of a notice to a Member outside Australia is deemed to have been received at the time it would ordinarily be received in the ordinary course of the post.
- 48.4 Where a notice is sent by facsimile or other electronic means, service of the notice is taken to be effected by properly addressing and sending the notice and is taken to have been received on the business day after it is sent.
- 48.5 Evidence of service of a notice may be established by proving that:
- a) the envelope containing the notice and stamped appropriately was properly posted;
 - b) a facsimile was properly sent;
 - c) an email was properly sent; or
 - d) some other electronic means of communication was used,
- and, in the absence of any evidence to the contrary, a certificate given by any Officer of the Company to that effect is sufficient and conclusive evidence of service.

49. Chief Executive Officer

- 49.1 The Directors of the Company may appoint a person to the office of Chief Executive Officer (CEO) of the Company for the period, and on terms as the Directors see fit.
- 49.2 The CEO may be appointed as a Director of the Company.
- 49.3 The Directors may revoke or vary:
- a) an appointment; or
 - b) any of the powers conferred on the Chief Executive Officer.
- 49.4 Subject to the Act, any compensation payable to a person in respect of the revocation of that person's appointment as Chief Executive Officer will be governed by the terms of any agreement between the Company and that person.
- 49.5 No remuneration may be paid to the CEO for their position as a Director. Any remuneration paid to the CEO must be exclusively in relation to their employment as CEO.
- 49.6 If the employment of the CEO is terminated for any reason, then they immediately also cease to hold office as a Director and their office as a Director becomes vacant.

50. Company Secretary

- 50.1 The Board will appoint the Company Secretary.
- 50.2 The Company Secretary will hold office on such terms and conditions as the Board determines.

51. Amendment of Constitution

- 51.1 This Constitution may only be altered, rescinded or added to by a Special Resolution of the Company in a General Meeting.

52. Notices of General Meeting

- 52.1 Subject to clause 48.2, notice of every General Meeting must be given in any manner authorised by this Constitution to:
- a) every Member; and
 - b) the auditor for the time being of the Company.

53. Indemnity

- 53.1 Every Officer (and former Officer) of the Company is entitled to be indemnified to the full extent permitted by law against any liabilities incurred as such by an Officer or employee (or former Officer or employee) in that capacity. The Company agrees to:
- a) Indemnify the Director and Officers against certain liabilities (set out in the following clauses) that the Director or Officer may incur or for which they may become liable by reason of their position or activities with the Company;
 - b) Provide the Directors and Officers with access to Board papers; and
 - c) Pay a premium in respect of contracts of insurance to protect Directors and Officers against such liability.
- 53.2 The Company agrees to indemnify the Directors and Officers to the full extent permitted by law against each and every liability they may incur or for which they may become liable to another person or entity in connection with any act of the Director or Officer in the discharge of their duties or the performance of their functions as Directors or Officers of the Company.
- 53.3 The Company also agrees to indemnify the Directors and Officers to the full extent permitted by law against any costs and expenses incurred (or for which they become liable to pay to another person or entity) in connection with any act of the Director or Officer in the discharge of their duties or the performance of their functions as Director or Officer of the Company.
- 53.4 The Company agrees to reimburse the Directors and Officers for any reasonable costs incurred at the request of the Company to avoid, resist or defend any action brought against them, including the rendering of assistance and co-operation in the conduct of a claim, and/or any actions necessary to enable the Company to be subrogated to and enjoy the benefits of the

Directors or Officers rights to cross claim against any third party.

- 53.5 No Director or Officer will be indemnified by the Company in respect of any liability where it is proven that there has been conduct involving a lack of good faith, willful misconduct or reckless behavior on the part of the Director or Officer.
- 53.6 A Director or Officer may engage separate legal representation where the Company has refused to authorise the representation or participation by lawyers other than the lawyers acting also for the Company, and there is a reasonable likelihood that the interests of the Director and the Company would conflict were the same lawyers to act on behalf of both the Director and the Company.
- 53.7 The Company is required to keep a complete set of Board papers, in chronological order, in suitable secure custody for a period of at least 7 years after a Director or Officer ceases to hold office. If a Director or Officer asks to inspect or for a copy of a Board paper the Company must within 14 days of receiving such request allow such inspection to take place, or provide a copy of the Board papers at no charge.
- 53.8 The Company must maintain Directors and Officers liability insurance for the duration of the tenure of any Director or Officer, and for at least 7 years after a Director or Officer ceases to hold office. Where the Director or Officer ceases to hold office, the Company must ensure that such insurance contains terms which are substantially similar to those contained in the insurance contract arranged whilst the Director or Officer held their position with the Company.

