
awabakal

OUR PEOPLE

Awabakal Ltd

ACN 602 605 881

A Public Company Limited by Guarantee

Constitution

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1 Definitions and Interpretation

1.1 Definitions

In this Constitution, unless the context otherwise requires:

- (a) **ABN** means Australian Business Number.
- (b) **ACN** means Australian Company Number.
- (c) **ACNC** means Australian Charities and Not-for-profit Commission.
- (d) **Act** means the *Corporations Act 2001*(Cth) and includes any statutory modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- (e) **AGM** means an annual General Meeting of the Company held in accordance with section 250N of the Act.
- (f) **ASIC** means the Australian Securities and Investments Commission.
- (g) **Auditor** means the auditor of the Company.
- (h) **Board** means the board of Directors of the Company as constituted from time to time.
- (i) **Business Day** means a day on which banks as defined in the *Banking Act 1959* (Cth) are generally open for business in Sydney, New South Wales, Australia.
- U) **Cash Rate Target** means the interest rate used by the Reserve Bank of Australia as the cash rate target also known as the interbank overnight interest rate.
- (k) **CBD** means Central Business District.
- (l) **Chairperson** means the person appointed as chairperson by the Board as set out in clause 14 of this Constitution and includes an acting Chairperson under clause 10.5. Reference to 'the Chair' in this Constitution is a reference to the Chairperson.
- (m) **Code of Conduct** means the policy adopted by the Board from time to time, and as may be amended from time to time by the Board, which governs the manner in which the Directors, Members and Employees of the Company are required to conduct themselves in the discharge of their duties.
- (n) **Committee** means a committee to which powers have been delegated by the Board pursuant to clause 18.7.
- (o) **Company** means Awabakal Ltd (ACN 602 605 881)

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- (p) **Company Information** means all communications, correspondence, reports, minutes and other papers and documents relating to any of the affairs or business of the Company.
- (q) **Constitution** means this Constitution and any supplementary, substituted or amended Constitution in force from time to time.
- (r) **Deductible Contribution** means a donation of money or property as described in item 1, item 7 or item 8 of the table in section 30-15 of the ITAA 97.
- (s) **DGR** means an entity endorsed by the Australian Taxation Office or other applicable regulatory authority as a deductible gift recipient pursuant to subdivision 30-BA of the ITAA 1997, permitting gifts to the entity to be tax deductible.
- (t) **Director** means a director of the Company from time to time.
- (u) **Donor** means the donor of a Deductible Contribution or other donation to the Company.
- (v) **Financial year** means the financial year of the Company, as specified in clause 8.2 of this Constitution.
- (w) **General Meeting** means a General Meeting of the Members.
- (x) **Gift Fund** means a fund established under section 30-130 *Income Tax Assessment Act 1997* into which donations of property or money, received by the Company from the public, that qualify as allowable deductions are placed. The fund is to be administered as specified in clause 26 of this Constitution.
- (y) **Guarantee** means the maximum amount each Member agrees to pay the Company in accordance with clause 5;
- (z) **ITAA 97** means the *Income Tax Assessment Act 1997* (Cth).
- (aa) **Member** means any person who becomes a member of the company in accordance with the Act, this Constitution and whose name is entered on the Register of Members.
- (bb) **Members present** means Members present at a General Meeting of the Company in person or, if applicable, by duly appointed proxy or attorney.
- (cc) **Newcastle Area** means Newcastle, New South Wales 2300 and surrounding areas traditionally occupied by the Awabakal people.
- (dd) **Not-for-profit Organisation** means an organisation not acting for the profit or gain of its Members as defined by the Australian Taxation Office, ACNC or other applicable regulatory authority within Australia.
- (ee) **Officer** means an officer of the Company within the meaning of section 9 of the Act and includes a Director or Secretary of the Company.

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- (ft) **Principal Purpose(s)** means the purpose(s) of the Company as described in clause 6 of this Constitution.
- (gg) **Register** means the register of Members of the Company to be kept pursuant to the Act.
- (hh) **Registered address** means the address of a Member specified in the Register or any other address of which the Member notifies the Company as a place at which the Member will accept service of notices.
- (ii) **Registered Office** means the registered office from time to time of the Company.
- (ij) **Replaceable Rules** means all or any of the replaceable rules contained in the Act from time to time and includes any replaceable rule that was or may become a provision of the Act.
- (kk) **Responsible Persons** means persons having a degree of responsibility to the community as a whole as specified in clause 13 of this Constitution.
- (ll) **Review** means a review of a financial report conducted for the purposes of the Act and in compliance with the *Australian Charities and Not-for-profits Commission Act 2012*.
- (mm) **Reviewer** means an individual or entity who undertakes a review of a financial report of the Company for the purposes of the Act and in compliance with the *Australian Charities and Not-for-profits Commission Act 2012*.
- (nn) **Seal** means the common seal, if any, from time to time of the Company.
- (oo) **Secretary** means any person appointed by the Board to perform the duties of a secretary of the Company as set out in clause 15 of this Constitution.
- (pp) **Securities** include shares, rights to shares, options to acquire shares and other securities with rights of conversion to equity.
- (qq) **Special Resolution** means a resolution at a General Meeting of the Company, of which 21 days notice of the proposed resolution has been given, and being a resolution passed by a majority of 75% of the votes cast by Members entitled to vote on the resolution.
- (n') **Treasurer** means the person appointed as Treasurer of the Company by the Board as set out in clause 14 of this Constitution.
- (ss) **Voting Member** is a Member who under this Constitution is entitled to vote at any General Meeting.

1.2 Interpretation

In this Constitution, unless the context indicates a contrary intention:

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- (a) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning.
 - (b) **(documents)** a reference to this Constitution or another document includes any document which varies, supplements, replaces, assigns or notates this Constitution or that other document.
 - (c) **(gender)** words importing one gender include all other genders.
 - (d) **(headings)** headings and the table of contents are inserted for convenience only and do not affect interpretation of this Constitution.
 - (e) **(including) including** and **includes** are not words of limitation.
 - (f) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.
 - (g) **(month)** a reference to a month is a reference to a calendar month.
 - (h) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity, and a reference to a person includes their personal representatives, successors and entitled assigns.
 - (i) **(references)** a reference to the background, a party, clause, paragraph, schedule or annexure is a reference to the background, a party, clause, paragraph, schedule or annexure to or of this Constitution.
 - G) (replacement bodies)** a reference to a body (including an institute, association or authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.
 - (k) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done.
 - (l) **(singular)** the singular includes the plural and vice-versa.
 - (m) **(writing)** a reference to a Notice, consent, request, approval or other communication under this Constitution or an agreement between the parties means a written Notice, request, consent, approval or agreement.
 - (n) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

2 General

2.1 Name of Company

The name of the Company is Awabakal Limited.

2.2 Replaceable rules

This Constitution takes the place of the Replaceable Rules contained in the Act.

2.3 Constitution

- (a) This Constitution contains provisions setting out the manner in which the Members of the Company have agreed to conduct the internal administration of the Company.
- (b) This Constitution shall have effect as a contract:
 - (1) between the Company and each Member;
 - (2) between the Company and each Director;
 - (3) between the Company and each Member who performs an executive position of the Company; and
 - (4) between a Member and each other Member,pursuant to which each Member agrees to accept and comply with the provisions of this Constitution, so far as they apply to that Member.
- (c) A Special Resolution is required to alter this Constitution in accordance with section 136(2) of the Act and the Company must lodge a copy of the Special Resolution passed with ASIC within 14 days of that Special Resolution being passed.
- (d) A Special Resolution making a material alteration to Clauses 3, 4, 5, 6, 13 and 26 of this Constitution has no effect unless approved in writing by the Australian Taxation Office, the ACNC or other applicable regulatory authority.

3 The Company

3.1 Public Company limited by Guarantee

The Company is a public company limited by guarantee.

3.2 Restriction on shares

The Company does not have the power to issue or allot shares of any kind.

3.3 Powers of the Company

Subject to the provisions of this Constitution and provided that its capacities and powers are exercised, directly or indirectly, in the furtherance of its purposes, the Company has the legal capacity and powers set out in section 124 of the Act.

4 Income and Property

4.1 Not-for-profit

- (a) The Company is a Not-for-profit Organisation.
- (b) The assets, income, profits and financial surpluses of the Company, whenever derived, must be applied solely towards the furtherance of the purposes of the Company including its Principal Purposes as set out in this Constitution and no portion there of may be paid, distributed or transferred directly or indirectly to any of the Members, Directors, or their relatives, except as bona fide compensation for services rendered or expenses incurred on behalf of the Company as provided for by this Constitution.
- (c) The Company must not carry on business for the purpose of profit or gain to its Members.
- (d) Nothing in this Constitution prevents:
 - (1) the payment, in good faith, of reasonable and proper remuneration to any officer or employee of the Company, or to any Member or Director, in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual course of business;
 - (2) the payment of interest on money borrowed from a Member at a rate not exceeding the Reserve Bank of Australia Cash Rate Target; or
 - (3) payment of costs pursuant to clause 21 of this Constitution; or
 - (4) payment of rent that does not exceed that which is reasonable and proper for premises demised or let by any Member to the Company.

4.2 No distribution of profits to Members on winding up

- (a) If the Company is wound up or dissolved, or its DGR endorsement is revoked, the assets and property remaining available for distribution after satisfaction of all the Company's debts and liabilities are to be distributed in the following manner:-
 1. All remaining community housing assets in a participating jurisdiction on winding up are to be transferred to another registered community housing provider or to a housing agency in the jurisdiction in which the asset is located.
 2. All remaining assets and property other than remaining community housing assets, remaining available for distribution after satisfaction of all the company debts and liabilities are to be given or transferred to some other institution or institutions not carried on for the profit or gain of its individual members; and

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- (i) which have objects similar to the Principal Purposes of the Company;
 - (ii) whose Constitution prohibits the distribution of its income and properly to an extent at least as great as that imposed by this Constitution; and
 - (iii) which are charitable at law, exempt from income tax and are a DGR under the ITAA 97.
- (b) The Board may determine the identity of the institution or institutions for the purpose of clause 4.2(a) at the time of dissolution.
 - (c) If the Board fails to determine the identity of the institution or institutions under clause 4.2(b), the Supreme Court of New South Wales may make that determination.
 - (d) Notwithstanding paragraphs 4.2(a)-(c) above, all remaining assets held by the Company which were provided by, or acquired using, funding or supplied of a Government department or agency, whether state or federal, to meet a stated community need must be transferred to an institution or institution which also receives funding or support of that department or agency for the same purpose or otherwise in accordance with any conditions imposed or directions given by the department or agency or imposed by legislation.

5 Guarantee of Members

In the event that the Company is wound up, each Member undertakes to contribute a maximum of twenty dollars (\$20.00) to the Company for payment of:

- (a) the debts and liabilities of the Company;
- (b) the costs, charges and expenses of any winding up; and
- (c) the adjustment of the rights of Members among themselves

while the Member is a Member or within one year after the Member ceases to be a Member.

6 Purposes of the Company

- (a) The Principal Purposes of the Company are:
 - (1) to acquire land for use and development by the Company and the Aboriginal community in the Newcastle Area including use by Members;
 - (2) to acquire, construct, manage and maintain housing and other buildings and facilities by the Company for the use and benefit of the Aboriginal community in the Newcastle Area including use by Members;

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- (3) to carry out agricultural, pastoral, fishing, forestry, mining and any other primary producing activities or projects for the use, benefit or development of the Company or the Aboriginal community in the Newcastle Area;
 - (4) to process, manufacture or distribute any products of the above or any other enterprises, activities or projects deemed by the Company to be of use, benefit or for the development of the Company or Aboriginal community in the Newcastle Area;
 - (5) to provide training in any of the above activities or in any other areas necessary for the benefit of the Aboriginal community in the Newcastle Area including the Members;
 - (6) to provide primary health care services for the benefit of the Aboriginal community in the Newcastle Area including Members;
 - (7) to provide any services including recreational, sporting, medical, and transport for the use, benefit or development of Aboriginals generally in the Newcastle Area including the Members; and
 - (8) to strengthen and foster the development of Aboriginal and Islander identity and culture in the Newcastle Area.
- (b) To solicit and accept from individuals, Government, the private sector, institutions, common interest groups, non-profit organisations and other organisations:
- (1) such grants, donations and other contributions as may be made to and managed by the Company as a trustee of a necessitous circumstances or similar fund; and
 - (2) such monetary and in-kind contributions as may be made to the Company.

7 Membership

7.1 Number of Members

- (a) At all times, there must be at least seven (7) Members of the Company.

7.2 Admission to membership

- (a) The Board may from time to time in its absolute discretion accept any written application for Membership of the Company made in accordance with clauses 7.3 and 7.4 by any Aboriginal or other person residing or working in the Newcastle Area provided that person is more than 18 years of age.
- (b) The Board may in its absolute discretion and without giving reasons, decline or refuse any applicant for Membership. If the applicant is not admitted as a Member, any monies paid to the Company by that applicant must be returned in full.

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- (c) The Board may fix a Membership entrance fee (if any) and/or an annual subscription payable by Members established pursuant to clause 7.3 of this Constitution. The Board may not deal with any application for Membership unless the prescribed entrance fee and annual subscription payable (if any) in respect of the application has been first received by the Company.

7.3 Applications for membership

- (a) Applications to be a Member must be on a form similar to that set out in Schedule I of this Constitution and be:
 - (1) signed by the applicant;
 - (2) lodged with the Secretary; and
 - (3) accompanied by any entrance, membership or subscription fees payable as may have been fixed or otherwise prescribed by the Board.
- (b) The Board will consider applications for Membership as soon as practicable following receipt by the Secretary.
- (c) Where the Board decides to accept an application for Membership, the Secretary will advise the applicant and will enter the applicant's name upon the Register of Members within 28 days of the Board's decision.

7.4 Amount of fees and subscriptions payable

Entrance fees, annual subscription fees for Membership and other periodical payments from Members will be in such amounts and due at such times as the Board may from time to time determine.

7.5 Address of Member

- (a) Each Member is required to provide to the Secretary details of an address in Australia where the Company can send notices to that Member.
- (b) If a Member fails to provide an address in accordance with clause 7.5(a), the address of the Member is deemed to be the registered office of the Company.

7.6 Register of Members

- (a) A register of Members must be kept in accordance with the Act.
- (b) The following must be entered in the register of Members in respect of each Member:
 - (1) the full name of the Member;
 - (2) the residential address, facsimile number and/or electronic mail address, if any, of the Member;
 - (3) the Member's date of admission to and cessation of membership;

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- (4) the date of last payment of the Member's annual subscription (if any is applicable); and
 - (5) such other information as the Board requires.
- (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 1 month after the change.

7.7 Cessation of membership

A Member ceases to be a Member if they:

- (a) die;
- (b) resign in writing to the Secretary;
- (c) become bankrupt under the Bankruptcy Act;
- (d) are expelled from membership by the Board in accordance with the provisions of this Constitution; or
- (e) are convicted of an indictable offence.

7.8 Non-payment of Subscription

If any subscription or other membership fee of a Member remains unpaid, the Member will be debarred from all privileges of Membership including voting as a Member. The Board may, if it thinks fit, reinstate the Member's privileges on payment of all arrears.

7.9 Board's powers in respect of a Member's conduct

- (a) If any Member:
- (1) wilfully refuses or neglects to materially comply with the provisions of this Constitution or the Company's Code of Conduct; or
 - (2) is guilty of any conduct which, in the opinion of the Board, is unbecoming of a Member or materially prejudicial to the interests of the Company or the other Members as a whole,

the Board has the power to censure, fine, suspend or expel the Member from the Company pursuant to a resolution of the Board subject to this Constitution and the Company's Code of Conduct.

- (b) At least one week before the meeting of the Board, at which a resolution under clause 7.9(a) is passed, the Company must provide the Member with:
- (1) notice of the required Board meeting;
 - (2) reasonable detail of any allegations against them;
 - (3) the intended Board resolution; and
 - (4) advice that the Member may, at the proposed Board meeting and prior to the passing of the intended Board resolution, have an opportunity to

give, orally or in writing, any explanation or defence that Member may think fit.

- (c) Any Member referred to in clause 7.9(a) may, by notice in writing lodged with the Secretary at least 24 hours before the time for holding the Board meeting at which the resolution is to be considered, elect to have the question dealt with by the Company in General Meeting.
- (d) If an election is made under clause 7.9(c):
 - (1) a General Meeting must be convened and the resolution considered; and
 - (2) if the resolution is passed by a majority of two-thirds of those present and voting (such vote to be taken by ballot), the Member concerned will be dealt with accordingly.
- (e) No person who has previously been expelled from Membership shall be re-admitted as a Member except by Special Resolution of the Members.

7.10 Effect of cessation or termination of Membership

A Member who ceases to be a Member or has their Membership terminated in accordance with this Constitution continues to be liable for:

- (a) any subscription and all arrears due and unpaid at the date of cessation;
- (b) all other moneys due by them to the Company; and
- (c) the Members Guarantee, provided for by clause 5.

8 Financial Records

8.1 Keeping of Accounting and financial records

- (a) The Board must cause the Company to keep accounting and other financial and business records explaining the Company's transactions and financial position to enable true and fair profit and loss accounts and balance sheets to be prepared and to permit preparation of any other documents as required by the Act or this Constitution.
- (b) The Company's financial records must be kept:
 - (1) in such manner as to enable them to be conveniently and properly reviewed or audited;
 - (2) for seven (7) years after the completion of the transactions or operations to which they relate; and
 - (3) at the Company's registered office or at such other place as the Board may from time to time determine.

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- (c) The Company's financial records must at all times be open to inspection by the Board.
 - (d) The Board must cause the Company to ensure the relevant accounting, reviewing or auditing requirements of the Act are duly complied with.
 - (e) The Board must distribute to all Members at the end of each financial year, copies of the financial report including a copy of the Reviewer or Auditor's report and any other documentation as required under the Act.

8.2 Financial year and financial reports

- (a) The financial year of the Company commences on the first day of July and ends on the 30th day of June in the following calendar year.
- (b) Prior to the end of each financial year, the Board must prepare, or caused to be prepared for the Board's consideration and adoption, a budget for the Company for the coming financial year by 30 May or by another date adopted by resolution of the Board.
- (c) Each financial year, the Board must cause the Company to prepare a financial report and a Board's report in accordance with the Act.
- (d) The financial report for each financial year must consist of:
 - (1) the financial statements for the financial year;
 - (2) the notes to the financial statements; and
 - (3) the Board's declaration about the financial statements and the notes.
- (e) The financial statements for the relevant financial year will consist of:
 - (1) a profit and loss statement for the financial year of the Company;
 - (2) a balance sheet at the date to which the profit and loss account is made up;
 - (3) a statement of cash flows for the year; and
 - (4) if required by applicable accounting standards, a consolidated profit and loss statement, balance sheet and statement of cash flows.
- (f) The notes to the financial statements will consist of:
 - (1) disclosures required by the Act and any applicable regulations;
 - (2) the notes required by applicable accounting standards (if any); and
 - (3) if required, any other information necessary to give a true and fair view of the financial position and performance of the Company.

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- (g) The Board's declaration made pursuant to clause 8.2(d)(3) is a declaration by the Board:
- (1) that the financial statements, and the notes required by applicable accounting standards comply with those accounting standards;
 - (2) that the financial statements and the attached notes give a true and fair view of the financial position and performance of the Company;
 - (3) whether, in the Board's opinion, there are reasonable grounds to believe that the Company will be able to pay its debts as and when they become due and payable; and
 - (4) whether, in the Board's opinion, the financial statements and attached notes are in accordance with the Act.

8.3 Banking of monies

All the monies of the Company are to be banked in the name of the Company in a bank account or accounts at such bank as the Board may from time to time determine.

8.4 Appointment of Reviewer or Auditor

The Board must cause the Company to appoint and retain a properly qualified Reviewer or Auditor to Review or audit the Company's financial statements and whose duties will be regulated in accordance with the Act.

8.5 Inspection of the Company's financial records

- (a) The Board will, subject to any requirements of the Act, regulate the manner and extent to which the Company's financial records and other documents will be open to the review and inspection of Members other than Directors.
- (b) No Member, other than a Director, has the right to inspect any document of the Company except as provided by the Act (or other applicable laws) or as authorised by the Board.

9 General Meetings

9.1 Calling of General Meetings by the Board

The Board may call a General Meeting in accordance with Part 2G.2 of the Act including an AGM which must be held at least once in every calendar year:

- (a) within five (5) months of the end of the Company's financial year;
and
- (b) in addition to any other General Meetings held in the year.

9.2 Calling of General Meetings by Members

Voting Members together having at least 5% of the votes that may be cast at a General Meeting may call and arrange to hold a General Meeting in accordance with section 249F of the Act.

9.3 Calling of General Meetings by the Board when requested by Members

The Board must call and arrange to hold a General Meeting in accordance with section 249D (l) of the Act, on the request of:

- (a) Voting Members together having at least 5% of the votes that may be cast at a General Meeting; or
- (b) at least 100 Members who are entitled to vote at the General Meeting.

9.4 Failure of a Board to call General Meeting

Voting Members together having more than 50% of the votes of all Members who make a request under section 249D of the Act, may call and arrange to hold a General Meeting where the Board does not do so within 21 days after the request is given to the Company (in accordance with section 249E of the Act).

9.5 Calling of Meetings by the Court

The Court may order a General Meeting in accordance with section 249G of the Act if it is impracticable to call the meeting in any other way.

9.6 Amount of notice of meetings

- (a) Subject to the Act, at least 21 days prior notice must be given of a General Meeting.
- (b) Subject to clause 9.6(c), the Company may call on shorter notice:
 - (1) an AGM, if all the Members entitled to attend and vote at the AGM agree beforehand; and
 - (2) any other General Meeting, if Members with at least 95% of the votes that may be cast at the General Meeting agree beforehand.
- (c) At least 21 days prior notice must be given of a General Meeting at which a resolution will be moved to remove or appoint Board Directors or remove a Reviewer or Auditor.

9.7 Notice of meetings of Members

- (a) Written notice of General Meetings must conform to the requirements of section 249L of the Act and must be given individually to each Member entitled to vote at the meeting and to each Director, Secretary and Reviewer or Auditor.

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- (b) The Company may give the notice of a General Meeting to a Member:
- (1) personally, and is deemed to have been served when delivered;
 - (2) by sending it by post to the address of the Member in the register of Members or the alternative address (if any) nominated by the Member, and is deemed to have been served 3 days after the date of posting;
 - (3) by sending it to the fax number or electronic address (if any) nominated by the Member, and is deemed to have been served the day after it is sent; or
 - (4) by any other means authorised by the Act.

9.8 Meetings may be cancelled or postponed

The Directors may at any time after notice of a General Meeting has been given, postpone or cancel the General Meeting by giving notice to all persons entitled to receive notice of that General Meeting except that a meeting convened on the requisition of a member or members can only be cancelled with the consent of that member or those members.

9.9 Notice of adjourned meetings

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

9.10 Members' rights to put resolutions at a General Meeting

- (a) Members may propose a resolution to be moved at a General Meeting only in accordance with the provisions of Division 4 of part 2G.2 of the Act.
- (b) Only a Voting Member may seek to place an item of business or resolution (**Matter**) before a General Meeting. Any Voting Member who wishes to place a Matter before a General Meeting, must, at least 35 days before the next General Meeting, give the Board written notice of the Matter and the Board may determine in its absolute discretion whether to include that Matter as part of the business of the General Meeting.

9.11 Time, place and technology for General Meetings

General Meetings may be held at such time and at two or more venues simultaneously as determined by the Board, using any technology that gives all Members attending a reasonable opportunity to participate in the meeting.

10 Proceedings of General Meetings

10.1 Business of General Meetings

- (a) The accidental omission to give Notice of a General Meeting to, or the non-receipt of such Notice by any Member will not invalidate the proceedings at any such General meeting.

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- (b) The Chairperson of a General Meeting may refuse admission to, or require to leave and remain out of, the General Meeting any person:
- (1) in possession of any image or sound-recording or sound-recording device;
 - (2) in possession of an object considered by the Chairperson to be dangerous, offensive or liable to cause disruption;
 - (3) who refuses to produce or to permit examination of any object, or the contents of any object or container, in the person's possession;
 - (4) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
 - (5) who is not:
 - (A) a Member or a duly appointed proxy, or an attorney of a Member;
 - (B) a Director; or
 - (C) the Reviewer or Auditor of the Company.
- (c) Except with the approval of the Board, with the permission of the Chairperson or pursuant to the Act, no person may move at any meeting either:
- (1) in regard to any special business of which notice has not been given under clause 9.7, any resolution or any amendment of a resolution; or
 - (2) any other resolution which does not constitute part of special business of which notice has been given under clause 9.7.
- (d) The Reviewer or Auditor or their representative are entitled to attend and be heard on any part of the business of a General Meeting concerning a Review or audit in their capacity as Reviewer or auditor. The Reviewer or Auditor or their representative, if present at the meeting, may be questioned by the Members, as a whole, about the Review or audit.

10.2 Quorum and decision-making

- (a) A quorum for a General Meeting is constituted by at least five (5) Voting Members being present. No business may be transacted at any General Meeting except the election of a Chairperson and the adjournment of the meeting unless the requisite quorum is present at the commencement of the business. The quorum must be present at all times during the meeting.
- (b) In determining whether a quorum is present, individuals attending as proxies are to be counted. If a Member has appointed more than one proxy or representative, only one of them is to be counted.

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- (c) Except where the Act requires a resolution to have a special majority, questions arising at a General Meeting must be decided by a majority of votes cast by the Members present at the meeting. Such a decision is for all purposes a decision of the Members.
 - (d) Where votes on a proposed resolution are equal:
 - (1) the Chairperson of the meeting has a casting vote in addition to any deliberative vote he or she has had in relation to the proposed resolution; and
 - (2) the Chairperson has discretion both as to whether or not to use their casting vote and as to the way in which that casting vote is used.

10.3 Adjournment in absence of quorum

- (a) A meeting that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is to be adjourned to a date, time and place as the Chairperson specifies.
- (b) If the Chairperson does not specify one or more of those requirements, the meeting is to be adjourned to the same day in the next week, at the same time and same place.
- (c) If no quorum is present at the adjourned meeting within 30 minutes after the time for the adjourned meeting, the meeting is dissolved.

10.4 Chairing General Meetings

- (a) The Chairperson of the Board is entitled to take the chair at a General Meeting.
- (b) If at any General Meeting:
 - (1) there is no Chairperson of the Board; or
 - (2) the Chairperson of the Board is not present at the specified time for holding the General Meeting; or
 - (3) the Chairperson of the Board is unwilling to act as Chairperson of the General Meeting,

the Directors present may choose another Director as Chairperson of the General Meeting and if no Director is present or if each of the Directors present are unwilling to act as Chairperson of the meeting, a Member chosen by the Members present is entitled to take the chair at that General Meeting.

10.5 Acting Chairperson

If during any General Meeting the Chairperson acting pursuant to clause 10.4 is unwilling to act as Chairperson for any part of the proceedings, the Chairperson may withdraw as chair during the relevant part of the proceedings and may nominate any person:

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- (a) who immediately before the General Meeting was a Director; or
 - (b) who has been nominated for election as a Director at the meeting to be acting Chairperson of the meeting during the relevant part of the proceedings. On conclusion the acting Chairperson is to withdraw and the Chairperson is to resume as chair of that meeting.

10.6 General conduct of meeting

- (a) Subject to the requirements of the Act, the conduct of each General Meeting and the procedures to be adopted at the meeting are determined by the Chairperson of the meeting.
- (b) The Chairperson may, as considered necessary for the proper conduct of the General 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 Chairperson may require the adoption of any procedure that, in the Chairperson's opinion, is necessary or desirable for the proper and orderly casting or recording of votes at any General Meeting, whether on a show of hands or on a poll.

10.7 Adjournment

- (a) Subject to the provisions of clause 10.7(d), the Chairperson may at any time during the course of the meeting adjourn any business, motion, question, resolution, debate or discussion either to a later time at the same meeting or to an adjourned meeting.
- (b) Subject to the provisions of clause 10.7(d), if the Chairperson exercises a right of adjournment of a meeting pursuant to clause 10.7(a), the Chairperson has the discretion to decide whether to seek the approval of the Members present to the adjournment. Unless the Chairperson exercises that discretion, no votes regarding the adjournment can be taken by the Members present.
- (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.
- (d) The Chairperson must adjourn the meeting if the Members present with a majority of votes at the meeting agree or direct that the Chairperson must do so.

10.8 Voting

- (a) Subject to any rights or restrictions attached to any class of Member, at a meeting of Members:
 - (1) on a show of hands each Voting Member has one vote; and
 - (2) on a poll, each Voting Member has one vote.

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- (b) A challenge to a right to vote at a meeting of Members:
 - (1) may only be made at the meeting; and
 - (2) must be determined by the Chairperson whose decision is final.
 - (c) Each question submitted to a General Meeting is to be decided in the first instance by a show of hands of the Voting Members present and entitled to vote. Subject to paragraph (b) of this clause, in the case of equal votes, the Chairperson has, both on a show of hands and at a poll, a casting vote in addition to the vote or votes to which the Chairperson may be entitled as:
 - (1) a Voting Member;
 - (2) a proxy; or
 - (3) an attorney of a Voting Member.
 - (d) On a show of hands, where the Chairperson has 2 or more appointments that specify different ways to vote on a resolution, the Chairperson cannot vote but has a casting vote in the case of an equality of votes cast by Voting Members.

10.9 Declaration of vote on a show of hands; when poll demanded

- (a) At any meeting, unless a poll is demanded, a declaration by the Chairperson that a resolution has been passed or lost, having regard to the majority required, and an entry to that effect in the minute book signed by the Chairperson for 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.
- (b) A poll may be demanded:
 - (1) before a vote is taken;
 - (2) before the voting results on a show of hands are declared; or
 - (3) immediately after the voting results on a show of hands are declared.
- (c) A poll may be demanded by:
 - (1) the Chairperson;
 - (2) at least 5 Voting Members present entitled to vote on the resolution.
- (d) No poll may be demanded on the election of a Chairperson of a meeting or the adjournment of a meeting.

10.10 Taking a poll

If a poll is demanded as provided in clause 10.9(b), it is to be taken in the manner and at the time and place as the Chairperson directs, and the result of the poll is deemed to

be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. In the case of any dispute as to the admission or rejection of a vote, the Chairperson's determination in respect of the dispute made in good faith is final.

10,11 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.

10,12 Circular resolutions of members

- (a) Subject to the Act, and except in the case of a resolution to remove a Reviewer or Auditor, the Company may pass a resolution without a general meeting being held if 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.
- (b) If a share is held jointly, each of the joint members must sign the document referred to in section 10.12(a) to pass the resolution.

10,13 Circular resolutions on separate documents

Separate copies of a document referred to in rule 10.12 may be used for signing by members if the wording of the resolution and statement is identical in each copy.

10,14 Special meetings

All the provisions of these clauses as to General Meetings apply to any special meeting of any class of Members that may be held pursuant to the operation of this Constitution or the Act.

11 Votes of Members

11.1 Voting rights

- (a) Each Member has the right to one vote.
- (b) A Member whose annual subscription (if any) is more than one month in arrears or not paid in accordance with a schedule approved by the Board, at the date of the General Meeting, is not entitled to vote at that meeting.
- (c) Subject to clause 11.1(d), where a person is entitled to vote in more than one capacity, that person is entitled only to one vote on a show of hands; and
- (d) If the person appointed as proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands.

11.2 Appointment of proxies

- (a) Any Voting Member entitled to attend and cast a vote at a General Meeting may appoint a proxy to attend and cast a vote at that meeting.
- (b) A proxy must be a Voting Member of the Company who is entitled in their own right to vote at a General Meeting of the Company.
- (c) A proxy or representative appointed under this clause 11.2 must be appointed in the manner set out in, and has the rights set out in, Division 6 of Part 2G.2 of the Act.

11.3 Validity of vote

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

11.4 Form and execution of instrument of proxy

- (a) Unless the Company otherwise determines, an instrument appointing a proxy:
 - (1) required to be in writing signed by the appointer or the attorney of the appointer or, if the appointer is a corporation, under its Seal or signed by a duly authorised officer.
 - (2) 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.
 - (3) valid for any adjournment of the meeting, as well as for the meeting to which it relates. Any signed proxy that is incomplete may be completed by the Secretary on authority from the Board and as permitted by the Act. The Board may authorise completion of the proxy by the insertion of the Director's name as the person in whose favour the proxy is given provided that the Director is also entitled to vote at the General Meeting as required by clause 11.2(b).
 - (4) not valid after the expiration of 12 months after the date of its execution, except where a Member may deposit at the Office an instrument duly stamped (if necessary) appointing a proxy and the appointment is valid for all or any stipulated meetings of the Company until revocation.

11.5 Attorneys of members

Any Member may, by duly executed power of attorney, appoint an attorney to act on the Member's behalf at all or certain specified meetings of the Company. Before the attorney is entitled to act under the power of attorney, the power of attorney or proof of

the power of attorney to the satisfaction of the Board must be produced for inspection at the Office or any other place the Board may determine from time to time together, in each case, with evidence of the due execution of the power of attorney as required by the Board. The attorney may be authorised to appoint a proxy for the Member granting the power of attorney.

12 AGMs

12.1 Holding of AGM

- (a) The Board must cause the Company to hold an AGM within 18 months after its registration.
- (b) The Board must cause the Company to hold an AGM at least once in each calendar year and within five months after the end of its financial year.
- (c) An AGM is to be held in addition to any other meetings held by the Company in a year.
- (d) If the Company only has one Member, it is not required to hold an AGM.

12.2 Extension of time for AGM

The Company may lodge an application with ASIC to extend the period within which it is required to hold the AGM in accordance with section 250P of the Act.

12.3 Consideration of Reports at AGM

The Board must lay before an AGM:

- (a) the financial report;
- (b) the Board's report; and
- (c) the Reviewer or Auditor's report,

for the last financial year that ended before the AGM completed in accordance with the requirements of Part 2M.3 of Chapter 2M of the Act.

12.4 Business of the AGM

The business of the AGM may include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report. Board's report and Reviewer or Auditor's report;
- (b) the election of Directors;
- (c) the appointment of the Reviewer or Auditor; and
- (d) the fixing of the Reviewer or Auditor's remuneration.

12.5 Questions by Members of the Company

The Chairperson of the AGM must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Company.

12.6 Questions by Members of the Reviewer or Auditor

If the Reviewer or Auditor or their representative is at the AGM, the Chairperson must allow a reasonable opportunity for the Members as a whole at the meeting to ask the Reviewer or Auditor or their representative questions relevant to the conduct of the Review or audit and the preparation and content of the Reviewer or Auditor's report

12.7 Reviewer or Auditor's right to be heard at meetings of Members

- (a) The Reviewer or Auditor is entitled to attend and be heard at meetings of Members.
- (b) The Reviewer or Auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the Reviewer or Auditor in their capacity as Reviewer or Auditor.
- (c) The Reviewer or Auditor is entitled to be heard even if:
 - (1) the Reviewer or Auditor retires at the meetings; or
 - (2) the meeting passes a resolution to remove the Reviewer or Auditor from office.
- (d) The Reviewer or Auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any General Meeting.

13 The Board

13.1 Members of the Board

- (a) The names of the first Board are those seven (7) persons named as Directors as specified in the application for registration of the Company lodged with ASIC.
- (b) The Board must comprise seven (7) Directors, being:
 - (1) the Chairperson;
 - (2) Deputy Chairperson;
 - (3) the Treasurer;
 - (4) the Secretary; and
 - (5) three other Directors.

13.2 Obligations and duties of Directors

Each Director (including the Chairperson, the Treasurer and Secretary) is subject to, and must comply with, the requirements, obligations and duties imposed on Boards under the Act, this Constitution, the Company's Code of Conduct (as amended) and at common law.

13.3 Term and Election of the Board

- (a) At the first AGM, three (3) of the Directors must retire and at the AGM in each subsequent year the Directors must retire in rotations of four (4) and three (3) with the longest serving Directors retiring first.
- (b) Vacancies on the Board occurring by virtue of a Director's retirement pursuant clause 13.3(a) are to be filled by the Members voting in an election conducted in one of the following two ways as determined by the Board, namely either:
 - (I) by an election conducted at the AGM at which the vacancy by retirement comes into effect with such election to be conducted in accordance with the relevant provisions of clause 13.4 and the Act; or
 - (2) by postal ballot to be conducted in accordance with clause 13.5 prior to such AGM at which the vacancy by retirement comes into effectwith the result of such election to be announced at that AGM and Directors so elected by either method will take office as Director at the conclusion of that AGM and may, remain in office for up to three (3) years subject to clause 6.
- (c) A Director retiring pursuant to clause 13.3(a) may seek re-election to the Board at the conclusion of their term in office as set out in clause 13.3(b).
- (d) Any 2 Voting Members (or if there is only one Voting Member, that Voting member) may nominate any eligible person to serve as a Director.

13.4 Election at AGM

- (a) No person is eligible for election to the Board at an AGM or General Meeting unless the person, or a Member intending to nominate that person, has given notice in writing of the nomination and, for the validity of the nomination where there is more than 1 Voting Member, has sought the endorsement of a seconder. For validity, the notice is also required to be left at the Company's registered office not less than 14 days, and not more than 35 days, before the meeting.
- (b) The nomination must state the nominee's age and such other information as the nominee wishes to include but must not exceed 250 words in length;
- (c) A list of the nominees' names in alphabetical order with the proposers' and, where applicable, seconders' names and the other information provided by the nominee are to be forwarded to all Members of the Company at least 7 days

immediately preceding the day of the AGM or General Meeting at which the election is to take place.

- (d) Each Member present at the AGM is entitled to vote for any number of such nominees not exceeding the number of vacancies.
- (e) Where there are an insufficient number of nominations to fill the number of vacancies, those persons nominating must be declared to be elected unopposed. The Board must then fill any further vacancy or vacancies as casual vacancies in accordance with clause 13.7.

13.5 Election by postal ballot

- (a) Where the Board determines that the election to fill vacancies occurring by virtue of a retirement or retirements pursuant to clause 13.3(a) is to be by postal ballot:
 - (1) the Board will appoint a "**Returning Officer**" 55 days prior to the next AGM for which the election is to be held. If the Board fails to appoint a Returning Officer, then the Secretary is deemed to have been so appointed;
 - (2) the Returning Officer must cause notice of the election to be given and call for nominations no less than 45 days prior to the AGM. This notice must be in accordance with clause 24 and must state that nominations must be received no later than the date 35 days prior to the AGM;
 - (3) every nomination for Director must be in the form determined by the Board from time to time and signed by the nominee. The nomination must state the nominee's name, age and such other information as the nominee wishes to include but must not exceed 250 words in length;
 - (4) the Returning Officer must not accept nominations received after the date 35 days prior to the AGM;
 - (5) if there are insufficient nominations for Director, the Returning Officer must declare the persons nominated to be elected unopposed. The Board must then fill any further vacancy or vacancies as casual vacancies in accordance with clause 13.7;
 - (6) the Returning Officer must cause ballot papers to be prepared in the form determined by the Board and sent to Members no later than 21 days prior to the AGM;
 - (7) each Member is to complete the ballot paper and place it in the ballot envelope addressed to the Returning Officer but otherwise unmarked (**Interior Envelope**). This envelope in turn must be placed in a further envelope (**Exterior Envelope**) also addressed to the Returning Officer but bearing the voting Member's name and address;

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- (8) upon being satisfied that the person named on the Exterior Envelope is a Voting Member then entitled to vote, the Returning Officer must remove the Interior Envelope and place it in a sealed container, ensuring always that the Interior Envelope is unmarked and the voter cannot be identified;
 - (9) the ballot must close on the date 7 days prior to the AGM and all ballot papers must be posted or otherwise delivered to reach the Returning Officer at the Company's Registered Office by that date;
 - (I 0) the Returning Officer must keep full and verifiable records such that the number of ballot papers distributed to Voting Members can be reasonably reconciled with the number of ballot papers printed and the number of ballot papers retained;
 - (II) following the close of the ballot and prior to the AGM, the Returning Officer must appoint two scrutineers (not being nominees in the election) who together with the Returning Officer must count the votes cast. If any question arises as to a Member's entitlement to vote or as to the propriety of any vote that question is to be determined by the Returning Officer acting reasonably.

13.6 Qualification for membership of the Board

- (a) A Director must be a paid up Voting Member of the Company;
- (b) All Directors are required to be natural persons at least 18 years of age;
- (c) The Reviewer or Auditor is ineligible to be elected or appointed as a Director; and
- (d) An employee of the Company is ineligible to be elected or appointed as a Director.

13.7 Casual vacancies

- (a) The Board has the power at any time and from time to time to appoint a qualified person as a Director either to fill a casual vacancy on the Board or as an addition to the existing Board members. However, the total number of Directors may not at any time exceed the number fixed in accordance with this Constitution.
- (b) Any person appointed under this clause 13.7 holds office until the next General Meeting when an election will be held to fill the vacancy. However, such person is not to be taken into account in detennining the number of Directors who are to retire by rotation at the meeting. Any person appointed under this clause is eligible for election at that General Meeting.
- (c) The Members in General Meeting may by ordinary resolution elect a qualified person as a Director. However, the total number of Directors may not at any time exceed the number fixed in accordance with this Constitution.

14 Chairperson and Treasurer

14.1 Appointment to office

- (a) Subject to clause 14.1(b), the Chairperson, Deputy Chairperson and Treasurer:
 - (1) must be a Director elected at the AGM;
 - (2) appointed by resolution of the Board at the first Board meeting after any AGM;and
 - (3) subject to this Constitution, will have functions and duties as may be detennined by the Board from time to time.
- (b) The Chairperson, Deputy Chairperson and Treasurer continue to hold office until the earlier of:
 - (1) their resignation from that office in accordance with clause 16.1;
 - (2) their removal from that office in accordance with clause I6.2;
 - (3) their office as Director becoming vacant in accordance with this Constitution or he or she resigns or is removed from that office; or
 - (4) the date of the first Board meeting after the first anniversary of their appointment to that office.
- (c) The Board has the sole power at any time to appoint any Director as Chairperson and Treasurer and to remove any Director appointed under this Constitution from any of those offices, but not from the office of Director.

15 Secretary

15.1 Appointment

The Board must appoint a Secretary in accordance with Part 2D.4 the Act.

15.2 Terms and conditions of office

The Secretary holds office on such terms and conditions in relation to remuneration and otheI wise as the Board determines.

16 Resignation and Removal

16.1 Resignation

- (a) Any Director may resign from the Board by notice in writing delivered to the Secretary.

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- (b) Resignation takes effect at the time when such notice is received by the Secretary unless some later time and date is specified in the notice as the effective time and date.

16.2 Removal

- (a) A Director may be removed from office by ordinary resolution of the Members at a General Meeting of the Company convened for that purpose. At any such General Meeting the Director concerned must be given the opportunity to fully present their case as to why they should not be removed either orally or in writing or pmily by either or both of these means.
- (b) A Director who ceases to be a Director under clause 16.2(a) of this clause retains office until the dissolution or adjournment of the General Meeting at which the Director is removed.

16.3 Disqualification

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act, the office becomes vacant if that member:

- (a) becomes an employee of the Company;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (c) becomes insolvent or under any form of insolvent administration;
- (d) becomes a bankrupt under the Bankruptcy Act;
- (e) dies;or
- (f) fails to attend 3 consecutive meetings of the Board without the prior approval of the Board.

A Director who vacates office pursuant to this clause is not to be taken into account in detennining the number of Directors who are to retire by rotation at any AGM.

17 Exercise of Voting Power

17.1 Exercise of voting power in other corporations

- (a) The Board may exercise the voting power confined by the shares in any corporation held or owned by the Company as the Board thinks fit (including the exercise of the voting power in favour of any resolution appointing the Directors or any of them directors of that corporation).
- (b) A Director may vote in favour of the exercise of voting rights in a company notwithstanding that the Director may be about to be appointed a Board member of that other company and may be interested in the exercise of those voting rights.

18 Board Proceedings

18.1 Procedures relating to Board meetings, including quorum

- (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 determined by the Board, 4 Directors form a quorum. The quorum must be present at all times during the meeting.
- (c) Notice is required to be provided to Directors in accordance with clause 24.

18.2 Meetings by telephone or other means of communication

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. 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, provided that at least one of the members present at the meeting is at that place for the duration of the meeting.

18.3 Votes at meetings

Questions raised at any Board meeting are decided by a majority of votes. The Chairperson of the Board meeting may, in addition to a deliberative vote, have a second or casting vote in the event of an equality of votes.

18.4 Convening of meetings

The Board may at any time, and the Secretary, upon the request of any one Director, must convene a Board meeting upon reasonable notice individually to each other Director.

18.5 Chair

The Chairperson must be willing and able to preside as chair at all meetings of the Board and if:

- (a) there is no Chairperson appointed;
- (b) the Chairperson is not present within 15 minutes after the time appointed for the meeting; or
- (c) the Chairperson is unable or unwilling to preside,

then a Director, appointed by the meeting, must act as Chairperson of the meeting.

18.6 Powers of meetings

A Board meeting 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.

18.7 Delegation of powers to Committees

The Board may, subject to the constraints imposed by law, delegate any of its powers to Committees consisting of one or more Directors or any other person or persons as the Board thinks fit. Any Committee formed or person or persons appointed to the Committee must, in the exercise of the powers delegated, conform to any regulations that may from time to time be imposed by the Board. A delegate of the Board may be authorised by the Board to sub delegate any of the powers it has vested in the delegate.

18.8**Proceedings of Committees**

- (a) The meetings and proceedings of any Committee are to be governed by the provisions of these clauses for regulating the meetings and proceedings of the Board so far as they are applicable and are not superseded by any regulations made by the Board under clause 18.7.
- (b) A Committee in the exercise of the duties delegated or assigned to it must conform to any regulations, directions or instructions that may be imposed or given by the Board.
- (c) A Committee appointed by the Board is under the control and direction of the Board and has no direct power in the management of the Company.

18.9 Validity of acts

- (a) All acts done at any Board meeting or by a Committee or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any of the members or the Committee or the person acting as a Director or that any of them were disqualified, is valid as if every person had been duly appointed and was qualified and continued to be a Director or a Committee member.
- (b) If the number of Directors is reduced below the minimum number fixed pursuant to this Constitution, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of calling a General Meeting of the Company but for no other purpose.

18.10 Written resolutions

- (a) A written resolution of which notice has been given to all Directors and signed by a majority of such members entitled to vote on the resolution, is as valid and effectual as if it was passed at a Board meeting. The written resolution may consist of several documents in the same form each signed by one or more of the Directors.

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- (b) A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the member's authority is deemed to be a document in writing signed by that member. Any resolution made pursuant to this clause is passed when the last Director signs it.

19 Powers of the Board

19.1 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 Constitution) may exercise all powers and do all things as are within the power of the Company.
- (b) The Board may make, amend or rescind such regulations consistent with the Constitution, as considered by the Board to be necessary for:
 - (1) the proper control, administration and management of the Company's finances, affairs and property or
 - (2) 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).
- (c) Regulations 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 a 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.

19.2 Director contracting with the Company

- (a) Irrespective of whether a person holds office as a Director or has a fiduciary relationship as a result of holding office, the Director may:
 - (1) hold any office or place of profit (other than that of Reviewer or Auditor) in the Company;
 - (2) enter into any arrangement, contract or dealing with the Company in any capacity, and any existing arrangement, contract or dealing entered into by or on behalf of the Company in which a Director is in any way interested is not avoided or vitiated; or
- (b) Neither the holding of office nor the fiduciary responsibility which arises from it, renders any Director or any corporation of which a Director is an officer or member or in any way interested or any partnership of which a Director is a member or in any way interested liable to account for any profit arising out of the holding of any such office or place of profit or any such arrangement, contract or dealing.

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- (c) The Director must disclose the nature of any interest, direct or indirect, at the Board meeting at which the arrangement, contract or dealing is determined by the Board, or, in any other case, at the Board meeting next following the acquisition of the relevant interest.
 - (d) Subject to the Act, a Director who has an existing or future interest in any arrangement, contract or dealing referred to in this clause 19.2(a) may vote in respect of the matter at a Board meeting and may be counted in a quorum present at such meeting.
 - (e) A Director may affix or attest the affixing of the Seal to any instrument or sign or execute any document irrespective of any interest that the Director has in the subject matter of that instrument or document, or any other office or place of profit held by such Director.
 - (f) All acts done by members at Board meetings or Committee will be valid as if every such person had been duly appointed and was qualified to be a Director or subcommittee, irrespective of any defect in the appointment of such member or disqualification.

19.3 Appointment of Patron

- (a) Distinguished individuals of the highest personal and professional integrity may be appointed by Board resolution to the position of Patron of the Company.
- (b) In a manner agreed between the Patron and the Company, a Patron must take an interest in the objects and affairs of the Company, be available to represent the Company at events at the invitation of the Board, and promote the objects of the Company and its good standing in the public sphere.
- (c) A Patron shall cease to hold such position upon resignation, by resolution of the Board, or on the expiry of a period of five (5) years from the date of appointment. A Patron may be reappointed by the Board following the expiry of a Patron's five (5) year term.
- (d) There will be no more than two (2) Patrons of the Company at any one time.
- (e) A Patron may be a member of the Company and may serve concurrently as a Director of the Company.
- (f) A Patron shall not be entitled to remuneration for performing such position for the Company, but may seek reasonable costs as specified in clause 21 of this Constitution.
- (g) A Patron may not act in a manner that may adversely impact on the good standing of the Company and/or impede the achievement of its purposes.

20 Other Salaried Officers

- (a) The Board has the power to appoint officers and employees at any time on such terms as it thinks fit and may, subject to conditions of the employment of such officers and employees, dispense with their services and appoint other officers and employees.
- (b) The Board may appoint and/or employ a Chief Executive Officer to implement the decisions of the Board subject to the following:
 - (1) He or she may not be a member of the Company.
 - (2) He or she may be permitted to attend Board meetings by resolution of the Board and at the Board's invitation.
 - (3) Before his or her appointment as chief executive officer, the appointee must agree to be bound by this Constitution even though he or she is not a member and comply with any directions, regulations, rules or codes adopted by the Company.
 - (4) Subject to clause 20(b)(5) of this Constitution, the terms governing the appointment, remuneration, powers and duties of the Chief Executive Officer will be determined from time to time by the Board. They may also impose any limitations on the exercise of those powers, and may withdraw or alter the powers they have conferred.
 - (5) The Board may not give to the Chief Executive Officer the following powers: to borrow, to divest assets of the Company, delegate functions of the Company to another company, or enter into joint ventures or other similar business associations.
 - (6) The Chief Executive Officer should be absent from any meeting of the Board during such time as any vote is taken concerning the remuneration, powers or duties of the Chief Executive Officer, and may be required (at the direction of the Chairperson of the meeting or by resolution of the meeting) to leave any meeting of the Board during such time as the remuneration or duties of the Executive Officer is discussed.
 - (7) No power or authority delegated to the Chief Executive Officer shall relieve the Board or the Company of its obligations under the Act or any other applicable laws or regulations.

21 Payment of costs

The Board may, out of the funds of the Company, pay all reasonable costs and expenses which any Officer or a Patron of the Company incurs or will incur under any contract entered, or as a result of an act or thing done by them within the scope of their role as an Officer or as a Patron, which was reasonably necessary to undertake for the discharge of their duties.

22 The Seal

22.1 Company Seal is optional

The Company may have a Seal.

22.2 Affixing the Seal

- (a) If the Company has a Seal, the Board is to provide for its safe custody and it should only be used with the Board's authority.
- (b) Every instrument to which the Seal is affixed is to be signed by a Director and countersigned by the Secretary, a second Director, or another person appointed by the Board for the purpose.
- (c) The Board may determine either generally or in any particular case that a signature may be affixed by a mechanical means specified in the determination.

22.3 Execution of documents without a Seal

The Company may execute a document, including a deed, by having the document signed by:

- (a) 2 Directors; or
- (b) a Director and the Secretary; and

if the Company executes a deed, the document is to be expressed to be executed as a deed and be executed in accordance with the appropriate procedures set out in this clause or as required by law.

23 Minutes and Access

23.1 Company must maintain minute books

- (a) The Board must cause the Company to keep minute books in which it records within one month:
 - (1) proceedings and resolutions of Members' meetings;
 - (2) proceedings and resolutions of Board and committee meetings (together with the names of the Directors present at each meeting of the Company, the Board and of any Committees);
 - (3) resolutions passed by Members without a meeting; and
 - (4) resolutions passed by Board without a meeting.
- (b) The Company must ensure that the minutes of a meeting are signed by the Chairperson of the meeting or the Chairperson of the next meeting within a reasonable time after the meeting. The minutes of any Board meeting or of any

Committee or of the Company, if proposing to be signed by the Chairperson of the meeting or by the Chairperson of the next succeeding meeting are prima facie evidence of the matters stated in the minutes.

- (c) The Company must ensure that any minutes which record the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

23.2 Access to minutes

Members are entitled to gain access to the minute book of meetings of Members in accordance with the Act.

24 Notices

24.1 Service of notices

A notice may be given by the Company to a Member, or in the case of joint holders to the Member whose name stands first in the Register, in any of the fonnats described in clause 9.7(c).

24.2 Provision of period of notice

The deemed date of service for notice is as set out in clause 9.7(c). Where a given number of days' notice is required to be provided, the day of service is not included in the calculation of the number of days.

24.3 Service on deceased Members

A notice delivered to the Registered address of a Member pursuant to this Constitution is deemed to have been duly 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 (notwithstanding that the Member is then dead and whether or not the Company has notice of the Member's death).

25 Indemnity

25.1 Extent of indemnity

- (a) Subject to Pati 2D.2 of the Act, a person who is or has been an Officer, Reviewer or Auditor of the Company is indemnified by the Company against any liability to another person (other than the Company or a related body corporate of the Company as defined in the Act) incurred in that person's capacity as an Officer unless the liability:
- (l) arises out of conduct involving a lack of good faith; or
 - (2) is for a pecuniary penalty order or composition order under Part 9.4B of the Act.

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- (b) The Company is required to indemnify an Officer, Reviewer or Auditor against a liability for costs and expenses (including, without limitation, legal expenses on a full indemnity basis) incurred by the Officer:
- (I) in defending proceedings, whether civil or criminal, in which:
 - (A) judgment is given in favour of the Officer; or
 - (B) the Officer is acquitted; or
 - (II) in connection with an application, in relation to proceedings under clause 25.1(b)(1), in which a court grants relief to the Officer under the Act,

subject to an obligation that the Officer repays to the Company the expenses advanced by the Company if:

 - (3) judgment is not given in the Officer's favour;
 - (4) the Officer is not acquitted;
 - (5) a court subsequently determines that the indemnification is not permitted; or
 - (6) the indemnification is not permitted by the Act.
- (c) For the purposes of this clause, the Company has the burden of proving that the Officer to be indemnified is not entitled to the requested indemnification.
- (d) The indemnification rights in this clause constitute a contract between the relevant parties seeking indemnification and the Company and continue to have effect following the rescission or restrictive modification of the clause with respect to events occurring prior to the rescission or modification of the clause.

25.2 Limit of indemnity

Subject to the provisions of the Act, an Officer of the Company is not liable for:

- (a) the acts, receipts, neglect or defaults of any other Officer;
- (b) joining in any receipt or other act of conformity or for any loss or expense happening to the Company through:
 - (I) the insufficiency or deficiency of title to any property acquired by order of the Officers for or on behalf of the Company; or
 - (2) the insufficiency or deficiency of any security in or upon which any of the moneys of the Company are invested;
- (c) any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any moneys, Securities or effects are deposited;

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- (d) any loss occasioned by any error of judgment or oversight on the Officer's part; or
 - (e) any other loss, damage or misfortune which occurs in the execution of the Officer's duties unless the loss, damage or misfortune occurred through the Officer's own dishonesty.

25.3 Contract of insurance

- (a) Subject to law, the Company may purchase and maintain a contract of Insurance for any person who is or has been an Officer, Reviewer or Auditor, **against:**
 - (1) any liability incurred by the Officer which does not arise out of conduct involving a willful breach of duty in relation to the Company or a contravention of sections 182 or 183 of the Act; or
 - (2) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal and whatever their outcome.
- (b) The Company may purchase and maintain a contract of Insurance for the benefit an employee of the Company who is not an Officer, Reviewer or Auditor concerned in the management of the Company.

25.4 Personal liability of Officer

If the Board, a Director, or any officer of the Company becomes personally liable for the payment of any sum primarily due from the Company, the Board may execute a charge or security over all or part of the Company assets as an indemnity for any loss incurred by the person as a result of the liability.

26 Gift Fund

26.1 Establishment of a Gift Fund

- (a) The Company may establish a Gift Fund by maintaining a separate bank account for Deductible Contributions made to the Company.
- (b) Upon establishment:
 - (1) Deductible Contributions will be deposited into the Gift Fund and will be kept separate from other funds of the Company and will only be used for the purposes of the Company.
 - (2) Deductible Contributions in the Gift Fund and income earned from those funds will be administered by the Board and utilised exclusively for the furtherance of the Company's purposes.

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- (3) No funds or assets of the Gift Fund will be distributed to Members or Officers of the Company, except as specified in clauses 4.1(e)(3) and 21 of this Constitution.
 - (4) Receipts for gifts to the Company's Gift Fund will state:
 - (A) the name of the Company and that the receipt is for a gift made to the Company;
 - (B) the ABN of the Company;
 - (C) the fact that the receipt is for a gift; and
 - (D) any other matter required to be included in the receipt pursuant to the requirements of the ITAA97.
 - (5) The Gift Fund is subject to clause 4.2 of this Constitution with respect to the winding up of the Company.
 - (6) To avoid any doubt, the Gift Fund is a component of the Company's finances and is not a separate instrument, entity or structure to the Company.

27 Confidentiality

27.1 Maintain confidentiality

All Directors and Members must maintain the confidentiality of Company Information and must not disclose any Company Information to any person except:

- (a) with the prior written consent of the Board or the chief executive officer;
- (b) to the Board, the Company's employees and the professional advisors of the Company; and
- (c) if applicable, as required by law, after first consulting the Board about the form and content of the disclosure.

28 Media Authorisation and Conduct

- (a) No individual Director of the Company or any individual member of the Company may make media comment, issue media releases, participate in media interviews, or correspond with the media on behalf of the Company without the authorisation of the Board. This clause does not apply to the Chairperson of the Board or the chief executive officer.
- (b) Without approval, as specified in clause 28(a) of this Constitution, an individual Director, or individual Member of the Company, may not hold out his or her views to be reflective of the views of the Company.

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- (c) The Board may issue directions, regulations, rules or codes in relation to media authorisation and conduct.

29 Disputes and Mediation

The following grievance procedure applies to disputes under this Constitution between a Member and another Member, or a Member and the Company:

- (a) The parties to a dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within fourteen (14) days after the dispute comes to the attention of all the parties;
- (b) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within ten (10) days, hold a meeting in the presence of a mediator and, in good faith, attempt to settle the dispute;
- (c) The mediator must:
 - (1) Be a person chosen by agreement between the parties; or
 - (2) Be a person appointed by the Company, if the dispute is between a Member and another Member, and the parties cannot agree on the mediator to be appointed; or
 - (3) Be a person who is an accredited mediator, if the dispute is between a Member and the Company, and the parties cannot agree on the mediator to be appointed;
 - (4) Give the parties to the mediation process every opportunity to be heard; and
 - (5) Allow due consideration by all parties of any written statement submitted by any party; and
 - (6) Ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- (d) A mediator can be a Member of the Company, but cannot act in this capacity if they are a party to the dispute;
- (e) The mediator must not determine the dispute;
- (f) If the mediation process does not result in the resolution of the dispute, the parties may seek to resolve the dispute otherwise at law.

Schedule 1 Application for Membership

Awabakal Ltd

[Full name of applicant]

of _____

[Home address of applicant]

hereby apply to become a Member of Awabakal Ltd. In the event of my admission as a Member, I agree to be bound by the Constitution of the Company for the time being in force and in particular I acknowledge my obligations under clause 5 of the Constitution.

Signature of applicant

Date

[Full name of proposer]

a member of Awabakal Ltd, nominate the above applicant for membership of the Company.

Signature of proposer

Date

