

Corporations Act 2001

BINAR FUTURES LTD.

CONSTITUTION

AUGUST 2022

Version 2 – 4th August 2022

TABLE OF CONTENTS

1	INTERPRETATION	2
2	THIS CONSTITUTION	3
3	OBJECTS.....	3
4	INCOME AND PROPERTY	4
5	MEMBERS' GUARANTEE	5
6	ACCOUNTS.....	5
7	MEMBERS.....	5
8	APPLICATION.....	6
9	GENERAL MEETINGS.....	8
10	PROCEEDINGS AT GENERAL MEETINGS.....	9
11	DIRECTORS.....	11
12	DISQUALIFICATION OF DIRECTORS.....	12
13	POWERS AND DUTIES OF THE BOARD.....	12
14	PROCEEDINGS OF THE BOARD	13
15	CONDUCT OF DIRECTORS	15
16	COMPANY SECRETARY	16
17	AUDIT	16
18	NOTICES.....	17
19	COMMON SEAL.....	17
20	INDEMNITY	17
21	WINDING UP.....	18
22	REVOCATION OF DGR STATUS	18
23	REPORTS	19
24	AMENDING THE CONSTITUTION.....	19

CORPORATIONS ACT 2001 (CTH)

A not-for-profit public company limited by guarantee and not having a share capital

CONSTITUTION OF BINAR FUTURES LTD.

1 INTERPRETATION

1.1 The name of the Company is **BINAR FUTURES LTD.**

1.2 In this Constitution:-

"ACNC" means the Australian Charities and Not-for-Profits Commission.

"ACNC Legislation" means the *Australian Charities and Not-for-Profits Commission Act 2012* and the *Australian Charities and Not-for-Profits Commission (Consequential and Transitional) Act 2012* including any amendment or re-enactment thereof for the time being in force.

"Act" means the *Corporations Act 2001* including any amendment or re-enactment thereof for the time being in force.

"Audit" includes a review for the purposes of the ACNC Legislation.

"Auditor" means the auditor of the Company and includes a reviewer for the purposes of the ACNC Legislation.

"Board" means the board of Directors of this Company.

"Business Day" means a day that is not a Saturday, Sunday or public holiday in the State in which the Company is incorporated.

"Chairperson" means the person elected from time to time as chairperson of the Board in accordance with this Constitution.

"Commissioner of Taxation" means a Commissioner of Taxation, Second Commissioner of Taxation and Deputy Commissioner of Taxation as provided for in sections 4 and 7 of the *Taxation Administration Act 1953 (Cth)*.

"Committee" means a committee of Directors formed pursuant to Clause 14.9.

"Company" means the Company above named.

"Constitution" means this Constitution and all supplementary substituted or amending Constitution for the time being in force.

"Director" includes any person occupying the position of a director of the Company by whatever named called (but not an associate director);

"Directors" or **"the Board"** means the Directors from the time being or such number of them as have authority to act for the Company.

"Entity" includes body, trust and fund.

"Members" means the initial members listed in Clause 7.1 and persons admitted as members of the Company pursuant to Clause 7.

"Non-Voting Member" of the Company means a Member who is not a Voting Member.

"Officer" has the same meaning as in the Act.

"Register of Members" means a register of Members of the Company kept in accordance with the Act and this Constitution.

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

"Special Resolution" means a resolution: (i) of which notice has been given under clause 9.3(c), and (ii) that has been passed by at least 75% of the votes cast by Members present and entitled to vote on the resolution.

"Company Secretary" means a person appointed in accordance with the Act.

"State" means the State of Western Australia.

"Voting Member" means a Member who satisfies the eligibility requirements in Clause 7.3.

1.3 Words or expressions contained in this Constitution shall be interpreted in accordance with the Act as in force at the date at which this Constitution becomes binding on the Company.

1.4 In this Constitution unless the context otherwise requires:

- (a) words (including defined expressions) importing the singular include the plural and vice versa;
- (b) words (including defined expressions) importing any gender include the other genders;
- (c) words (including defined expressions) importing persons shall include corporations and bodies politic;
- (d) a reference to a statute ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (e) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes telegram, telex and facsimile transmission;
- (f) reference to a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period shall end on the last day of the next succeeding calendar month;
- (g) subject to the foregoing Divisions 10 of Part 1.2 of the Act applies in relation to this Constitution as if this Constitution were an instrument referred to in section 110B thereof.

1.5 Headings do not affect the interpretation of this Constitution.

1.6 Unless the context requires otherwise, an expression that is used in this Constitution and deals with a matter that is also dealt with by a particular provision of the Act or the ACNC Legislation, has the same meaning as in that provision of the Act or the ACNC Legislation.

2 THIS CONSTITUTION

2.1 The Company's internal management is governed by this Constitution.

2.2 This Constitution is subject to the Act and the ACNC Legislation (if applicable). The Act and the ACNC Legislation prevails over this Constitution to the extent of any inconsistency.

2.3 The Replaceable Rules contained in the Act do not apply to the Company.

3 OBJECTS

3.1 The objects of the Company are to provide relief to children and young people in Perth, Western

Australia and surrounding areas who are Aboriginal and Torres Islander, socio-economically disadvantaged or both, who face barriers to accessing sporting, education, leadership, cultural and employment opportunities, which could help promote social and emotional wellbeing, and to build positive futures for themselves, their families, communities and culture.

- 3.2 The activities of the Company must be conducted in the furtherance of its objects of the Company and may include:
- (a) providing programs and community health services that strengthen connection to community and culture, build positive self-esteem and improve general wellbeing (including social and emotional wellbeing);
 - (b) developing a healthy and safe environment for youth to engage in that encourages mentoring of the next generation of participants;
 - (c) providing homework assistance to facilitate school attendance and improved educational outcomes;
 - (d) operating sporting facilities with engagement in local communities within Western Australia;
 - (e) providing safe transport to and from venues;
 - (f) building awareness within the community of challenges faced by Aboriginal and Torres Strait Islander youth;
 - (g) promoting health and the prevention of illness or injury;
 - (h) providing education and advice on nutrition, exercise and mental health for youth who are at greater risk of suffering from adverse health outcomes;
 - (i) increasing opportunities within the wider community for Aboriginal youth either sport or community focused (as players, coaches, volunteers or employees);
 - (j) promoting reconciliation, mutual respect and tolerance between Aboriginal and Torres Strait Islander people and other Australians; and
 - (k) for any other purpose incidental or ancillary to the objects referred to above.
- 3.2 Subject to the Act the Company has the legal capacity of a natural person including without limitation the capacity to exercise the powers set out in Section 124 of the Act. It is the intention that this Constitution will not restrict or prohibit the exercise by the Company of any of its powers.

3.3 The Company is established for the purposes set out in this Constitution.

4 INCOME AND PROPERTY

- 4.1 The income and property of the Company must be applied solely towards the promotion of the objects of the Company as set out in this Constitution and no portion of it is to be paid, distributed or transferred directly or indirectly by way of profit, dividend, bonus or otherwise to Members, Officers or associated third parties.
- 4.2 Nothing in clause 4.1 shall prevent once approved and minuted by the Board any payment in good faith by the Company of:
- (a) reasonable and proper remuneration to any Member, Officer or employee of the Company (whether or not such a person is a Director) for any services actually rendered to the Company; or
 - (b) reasonable and proper rent for premises let or demised by any Member, Officer or employee of the Company (whether or not such a person is a Director) of the Company to the Company; or
 - (c) monies to any Officer for out-of-pocket expenses; or

- (d) monies to any Member, Officer or employee of the Company (whether or not such a person is a Director), being a solicitor, accountant or other person engaged in any profession, for all usual professional or other charges for work done by that person or that person's firm or employer in connection with the promotion of the above objects; or
- (e) monies to any business, being for the provision of goods and services required for the operation of the Company.

5 MEMBERS' GUARANTEE

- 5.1 The Company is a company limited by guarantee.
- 5.2 The liability of the Members is limited.
- 5.3 Every Member undertakes to contribute an amount not exceeding ten dollars (\$10.00) to the property of the Company in the event of its being wound up while he or she is a Member or within one year afterwards for:
 - (a) payment of the debts and liabilities of the Company contracted before the time when he or she ceased to be a Member;
 - (b) the costs charges and expenses of winding up; and
 - (c) for an adjustment of the rights of contributories among themselves.

6 ACCOUNTS

- 6.1 True accounts shall be kept of the sums of money received and expended by the Company and the matter in respect of which such receipt and expenditure takes place and of the property, credits and liabilities of the Company and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with this Constitution shall be open to the inspection of the Members. Once at least in every year, the accounts of the Company shall be examined by one or more properly qualified Auditor or Auditors who shall report to the Members in accordance with the provisions of the Act.
- 6.2 The Board shall cause proper accounting and records to be kept and shall distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto) accompanied by a copy of the Auditor's report thereon as required by the Act provided, however, that the Board shall cause to be made out and laid before each annual general meeting a balance sheet and profit and loss account made up to date not more than five (5) months before the date of the meeting.
- 6.3 The Board shall from time to time determine in accordance with Clause 6.1 of the Constitution at what times and places and under what conditions or regulations the accounting and other records of the Company shall be open to the inspection of Members not being Directors, and no Member (not being a Director) shall have any right of inspecting any account or book or paper of the Company except as conferred by statute or by Clause 6.1 of the Constitution or authorised by the Board or by the Company in general meeting.

7 MEMBERS

- 7.1 A Member may be a natural person or body corporate who:
 - (a) is taken to be a Member of the Company on registration of the Company; or
 - (b) applies, and is approved in accordance with Clause 8, to become a Member of the Company and whose name is entered into the Register of Members; or
 - (c) is otherwise a Member of the Company in accordance with the Act.
- 7.2 A majority of the Members of the Company must be individuals who are Aboriginal and Torres Strait Islander persons.

- 7.3 Membership of the Company is personal to the Member and is not transferable.
- 7.4 A Member is eligible to be a Voting Member of the Company if the Member:
- (a) is a natural person, is 16 years of age or more and satisfies such other criteria as the Board shall determine for the admission of members of the Company from time to time; or
 - (b) is a body corporate or an incorporated association and satisfies such other criteria as the Board shall determine for the admission of Members of the Company from time to time.
- 7.5 At any one time a Member may only hold a single class of membership, either Voting Member or Non-Voting Member.
- 7.6 Voting Members may:
- (a) vote at all general meetings and elections;
 - (b) be elected as a Director; and
 - (c) exercise any other rights of membership which apply in accordance with the Act.
- 7.7 Any person or entity who is entitled to become a Member of the Company, but who is ineligible to become a Voting Member of the Company in accordance with Clause 7.3 is eligible to be a Non-Voting Member. The Board may prescribe from time to time criteria for admission of members as Non-Voting Members.
- 7.8 A Non-Voting Member:
- (a) has the right to attend, but not vote, at general meetings of the Company;
 - (b) may not attend or vote at Board meetings; and
 - (c) may not be elected as a Director.

8 APPLICATION

- 8.1 Application for Membership (whether Voting Member or Non-Voting Member) must:
- (a) be in writing in the form prescribed by the Board;
 - (b) state that the applicant:
 - (i) applies to become a Member of the Company;
 - (ii) supports the objects of the Company;
 - (iii) agrees to comply with the Constitution and by-laws (if any) of the Company; and
 - (iv) undertakes to contribute the subscriptions (if any) determined by the Board from time to time;
 - (c) be signed by the applicant;
 - (d) be accompanied by any subscriptions prescribed by the Board;
 - (e) be sent or given to the Company Secretary or appointed person.
- 8.2 The Board must approve or reject the application for membership at its next meeting after the Company Secretary has received it.
- 8.3 The Board may determine at its absolute discretion the admission or rejection of the applicant and in no case shall the Board be required to give any reason for the rejection of the applicant.
- 8.4 The Board must not accept an application if it results in the majority of Members not being

Aboriginal or Torres Strait Islander persons.

- 8.5 The Board must without delay notify the applicant whether the application has been approved or rejected.
- 8.6 If the Board rejects the application, it must return any subscription to the applicant.
- 8.7 If the Board approves the application:
- (a) the applicant becomes a Member from the date of the Board meeting; and
 - (b) relevant details are entered on the Register of Members pursuant to Clause 8.7.
- 8.8 The Company must maintain a Register of Members. The Register of Members must contain the following information:
- (a) the name and address and contact details of each Member;
 - (b) the date on which the name of each Member is entered in the Register;
 - (c) other information required by the Act;
 - (d) the Member's membership type (Voting or Non-Voting).
- 8.9 The Board may suspend or expel a Member from the Company if, in their absolute discretion, they decide it is not in the interests of the Company for the person to remain a Member.
- 8.10 If the Board intends to consider a resolution under Clause 8.9, at least one week before the meeting at which the resolution is to be considered, they must give the Member written notice:
- (a) stating the date, place and time of the meeting;
 - (b) setting out the intended resolution and the grounds on which it is based; and
 - (c) informing the Member that he or she may attend the meeting and may give an oral or written explanation of submission before the resolution is put to the vote.
- 8.11 Any Member suspended or expelled from the Company may at any time apply to the Board to be readmitted as a Member.
- 8.12 No person may be a Director following expulsion or during suspension as a Member unless such a person is subsequently readmitted as a Member.
- 8.13 A person ceases to be a Member on:
- (a) resignation; or
 - (b) suspension or expulsion; or
 - (c) in the case of a natural person:
 - (i) death;
 - (ii) becoming bankrupt or insolvent or making an arrangement or composition with creditors or the person's joint or separate estate generally;
 - (iii) at the completion of a 3-year period and a new application has not been submitted and approved;
 - (iv) the Directors deeming, in their sole discretion, the Member to be an untraceable Member because the person has not responded to correspondence sent to the contact details entered in the Register of Members for that Member; or
 - (d) in the case of a body corporate:

- (i) being dissolved or otherwise ceasing to exist;
 - (ii) having a administrator, liquidator or provisional liquidator appointed to it;
 - (iii) being insolvent; or
 - (iv) the Directors deeming, in their sole discretion, the Member to be an untraceable Member because the Member has not responded to correspondence sent to the contact details entered in the Register of Members for that Member.
- (e) a Member whose membership ceases will be liable for all monies due by that Member to the Company in addition to any sum not exceeding the guaranteed amount for which the Member is liable under Clause 5 of this Constitution.
 - (f) a Member whose membership ceases will not make any claim, monetary or otherwise, on the Company, its funds or property except as a creditor thereof.
 - (g) any person or corporation who for any reason ceases to be a Member shall no longer represent themselves in any manner as being a Member.

8.14 Where a dispute arises between:

- (a) a Member and another Member; or
- (b) a Member and the Company,

the matter will be referred to the Chairperson of the Board.

8.15 The Chairperson will attempt to resolve the matter by mediation. If mediation is determined by the Chairperson to have failed or to be inappropriate, then the Chairperson will determine a process to deal with the dispute.

8.16 If the Chairperson is one of the parties to the dispute, the matter must be referred to mediation by an external authority.

9 GENERAL MEETINGS

9.1 An annual general meeting of the Company shall be held in accordance with the provisions of the Act. All Meetings, other than the annual general meetings, shall be called general meetings.

9.2 A general meeting may only be called:

- (a) by a Directors' resolution; or
- (b) in accordance with a Members' requisition under the Act; or
- (c) as otherwise provided in the Act; or
- (d) as otherwise provided in the ACNC Legislation.

9.3 At least twenty one (21) days' notice (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying:

- (a) the place, the day and the time of the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- (b) the general nature of the business to be transacted at the meeting;
- (c) if applicable, that a special resolution is to be proposed and the words of the proposed resolution; and
- (d) such other information as is required by section 249L of the Act.

- 9.4 All business will be special that is transacted at:
- (a) a general meeting not being an annual general meeting; or
 - (b) an annual general meeting with the exception of:
 - (i) the confirmation of the minutes of the preceding meeting;
 - (ii) the consideration of the annual financial statements, Directors' declaration and Directors' report and Auditor's report;
 - (iii) the election of Directors;
 - (iv) the appointment of the Auditor;
 - (v) the fixing of the Auditor's remuneration; and
 - (vi) the transaction of any business which under the Act or this Constitution is required to be transacted.
- 9.5 Any written resolution of the Company determined without a general meeting (whether in one document or in several copies) and signed by all the Voting Members is as valid and effectual as a resolution duly passed at a general meeting of the Company unless the Act requires a resolution to be passed at a general meeting of the Company.
- 9.6 Postponement of meetings and use of technology:
- (a) the Board may change the venue for, postpone or cancel a general meeting, provided that if the general meeting was not called by a Directors' resolution or was called in accordance with a Members' requisition under the Act, then it may not be postponed or cancelled without the prior written consent of the persons who called or requisitioned the meeting;
 - (b) the Company may hold a meeting of its Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

10 PROCEEDINGS AT GENERAL MEETINGS

- 10.1 No business shall be transacted at any general meeting unless a quorum of Voting Members is present at the time when the meeting proceeds to business. Until otherwise provided by the Board, a quorum for a general meeting is (50%) of existing Voting Members on the Register of Members present (or only one member if the Company has one member). For the purpose of this Clause "Member" includes a person attending as a proxy for a Voting Member.
- 10.2 If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved, in any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Board may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the meeting shall be dissolved.
- 10.3 The Chairperson shall preside at every general meeting of the Company, or if there is no Chairperson, or the Chairperson is present but says they do not wish to act as Chairperson for the general meeting or if they are not present within thirty (30) minutes after the time appointed for the holding of the meeting or are unwilling to act, then the Members present shall elect one of their number to be chairperson of the meeting.
- 10.4 The Chairperson may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment for the business to be transacted at an adjourned meeting.

10.5 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands of Voting Members unless a poll is demanded:

- (a) by the Chairperson;
- (b) by at least three (3) Voting Members present in person or by proxy; or
- (c) Voting Members with at least 5% of the votes that may be cast on the resolution on a poll.

A poll may be demanded:

- (a) before a vote is taken;
- (b) before the voting results on a show of hands is declared; or
- (c) immediately after the voting results on a show of hands are declared.

Unless a poll is so demanded a declaration by a Chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

Before a vote is taken the Chairperson must inform the meeting whether any proxy votes have been received and how the proxy votes are cast.

10.6 If a poll is duly demanded it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairperson directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a Chairperson or on a question of adjournment shall be taken forthwith.

10.7 In the case of an equality of votes, whether on a show of hands or on a poll, the Chairperson of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

10.8 A Voting Member may vote in person, by proxy, by attorney or by representative and on a show of hands every person present who is a Voting Member or a representative of a Voting Member shall have one vote and on a poll every Voting Member present in person or by proxy or by attorney or other duly authorised representative shall have one vote.

10.9 A Voting Member is not entitled to vote at a general meeting unless all sums presently payable by him or her in respect of his or her membership in the Company have been paid.

- 10.10 (a) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered;
- (b) Any such objection shall be referred to the Chairperson of the meeting, whose decision is final;
- (c) A vote not disallowed pursuant to such an objection is valid for all purposes.

10.11 An instrument appointing a proxy is valid if it is in accordance with the Act or in any other form (including electronic) which the Board may determine or accept

10.12 An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument but may vote as he or she thinks fit on any motion or resolution in respect of which no manner of voting is indicated.

10.13 An instrument appointing a proxy shall be taken to confer authority to demand or join in demanding a poll.

10.14 An appointment of proxy or attorney for a meeting of Members is effective only if the Company receives the instrument appointing the proxy (and any authority pursuant to which the appointment

was signed or a certified copy of the authority) not less than 24 hours before the time appointed for the commencement of the meeting or, in the case of an adjourned meeting, resumption of the meeting.

- 10.15 Where a notice of meeting specifies an electronic address or other electronic means by which a Member may give the Company a proxy appointing instrument, a proxy given at that electronic address or by that other electronic means is taken to have been given by the Member and received by the Company if the requirements set out in the notice of meeting are complied with.
- 10.16 A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or unsoundness of mind of the appointer or the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, if no intimation in writing of the death, unsoundness of mind or revocation has been received by the Company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.
- 10.17 All the provisions of this Constitution as to general meetings apply to any annual general meeting or special meeting which may be held by the Company.
- 10.18 A resolution in writing signed by all the Voting Members shall be as valid and effectual as if it had been passed at a meeting of the Members of the Company duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more Voting Members.

11 DIRECTORS

- 11.1 (a) The number of Directors shall not be less than three (3) nor more than nine (9). If the number of Directors at any time falls below three (3), the Directors shall not act in the affairs of the Company (other than to appoint additional Directors) until the number of Directors is made up to at least three (3);
- (b) At all times, six (6) Director positions (in aggregate) are reserved for current Directors of Binar Basketball Association Inc.
- (c) A person specified in the application for registration of the Company as a person who consents to being a director of the Company becomes on registration a Director of the Company.
- (d) At all times, a majority of the Directors must be individuals who are Aboriginal and Torres Strait Islander persons.
- 11.2 Subject to this Constitution, a Director must retire from office no later than on the commencement of the third successive annual general meeting after their appointment.
- 11.3 A Director who retires pursuant to clause 11.2 holds office as a Director until the end of the meeting at which the Director retires and is eligible for re-election.
- 11.4 (a) A Director must have the suitable qualifications, skills and experience to discharge the functions of a Director as determined by the Board from time to time.
- (b) It shall not be necessary for a Director to be a Member by way of qualification but a person who is appointed Director shall become a Member (and shall be deemed to have applied for, and been approved as a Member, and shall have their name entered into the Register of Members) by virtue of their appointment.
- (c) A Director must be committed to the objects of the Company.
- (d) A person is ineligible to be a Director of the Company if they are disqualified:
- (i) from managing a corporation by the Act; or
- (ii) from being a Director of the Company by the ACNC Commissioner under the provisions of the ACNC Legislation – unless an exemption is obtained from the ACNC

Commissioner; but

- (iii) to avoid any doubt, subclause 11.4(d)(ii) shall only apply if the Company is registered with the ACNC.

(e) A person is ineligible to be a Director of the Company if they are not eligible to hold a Working With Children's Check.

- 11.5 Subject to 11.1, the Company may by ordinary resolution appoint any Voting Member of the Company as a Director.
- 11.6 The Company may from time to time by ordinary resolution passed at a general meeting increase or reduce the number of Directors.
- 11.7 The Board shall have power at any time, and from time to time, to appoint any person to the Board, either to fill a casual vacancy or as an addition to the existing Directors but so that the total number of Directors shall not at any time exceed the number fixed in accordance with this Constitution. Any Director so appointed shall hold office only until the next following annual general meeting, but is eligible for re-election.
- 11.8 The Company may by ordinary resolution remove any Directors before the expiration of his or her period of office, and may by an ordinary resolution appoint another person in his or her stead; the person so appointed shall hold office only until the next following annual general meeting.

12 DISQUALIFICATION OF DIRECTORS

A Director vacates the office of a Director prior to the expiration of his or her term of office if:

- (a) the Director ceases to be or is removed as a Director pursuant to the Act;
- (b) the Director becomes bankrupt or makes any composition or arrangement with his or her creditors or any class of them;
- (c) the Director becomes mentally unfit to hold office;
- (d) the Director resigns from office by notice in writing to the Company;
- (e) the period for which the Director is appointed expires;
- (f) the Director, without the permission of the other Directors, is absent from the meetings of the Directors for six (6) months continuously or fails to attend 50% of meetings within a calendar year;
- (g) the Director is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of that interest as required by the Act; or
- (h) the Director is removed as a Director pursuant to Clause 11.8.

13 POWERS AND DUTIES OF THE BOARD

- 13.1 The management of the business and affairs of the Company is vested in the Board who in addition to the powers and authorities conferred by this Constitution or otherwise may exercise all powers and do all acts and things as can be exercised or done by the Company and are not required to be exercised or done by the Company in general meeting. The powers of the Board are subject to the Act, this Constitution and to any regulations (not being inconsistent with this Constitution) from time to time made by the Company in general meeting. No regulation made by the Company in general meeting will invalidate any prior act of the Board which would have been valid if that regulation had not been made.
- 13.2 The Board may exercise all the powers of the Company to borrow money and to mortgage or charge its property, or any part thereof, and to issue debentures and other securities whether outright or as security for any debt liability, or obligation of the Company.
- 13.3 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all

receipts for money paid to the Company, shall be signed drawn accepted endorsed or otherwise executed, as the case may be, by the persons and in such other manner as the Board from time to time determines.

13.4 The Board shall cause minutes to be made of:

- (a) all appointments of Officers and Directors;
- (b) the names of Directors present at all meetings of the Company and of the Board; and
- (c) all proceedings at all meetings of the Company and of the Board.

Such minutes shall be signed by the Chairperson of the meeting at which the proceedings were held or by the Chairperson of the next succeeding meeting, or if the minutes are unavailable at the next meeting then at the earliest opportunity afforded by a subsequent meeting.

13.5 The Board will ensure all revenue from State and Commonwealth Governments will be used solely for the purposes intended, contractually required and will not be used for any other purpose.

13.6 The Board is responsible for the governance and strategic planning of the Company and will oversee the following functions, where appropriate;

- (a) provide support for youths who are referred for enrolment for social, emotional or behavioural reasons by competent authorities or agencies;
- (b) involve the community in the governance of the Company;
- (c) seek regular consultation with a cultural advisory committee;
- (d) set the broad direction, vision and strategic plan;
- (e) determine, monitor and review the objectives and targets of the strategic plan;
- (f) consider, approve and monitor asset management plans;
- (g) determine the application of the total financial resources available to the Company including the regular review of the budget;
- (h) determine policies including safety, welfare and development of youths;
- (i) report to the community on the strategic plan; finances; operations and board operations;
- (j) the employment, management, discipline and dismissal of executives; and
- (k) any other functions relevant to Clauses 13.6(a) - (j).

13.7 The Board is responsible for overseeing the proper care and maintenance of any property owned by the Company.

13.8 The Board may perform such functions as necessary to establish and conduct, or arrange for the conduct of facilities and services to enhance the education, development, care, safety, health or welfare of young people.

13.9 The Board may only raise money, income for purposes consistent with its objectives.

13.10 The Board may do all things incidental to the exercise of these functions.

14 PROCEEDINGS OF THE BOARD

14.1 The Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A Director may at any time and the Company Secretary or appointed person shall on the requisition of a Director summon a meeting of the Board.

- 14.2 (a) The Board must elect a Director as Chairperson of the Board, for any period resolved by the Board, or if no period is specified, until that person ceases to be a Director.
- (b) The Board may remove the Chairperson of the Board at any time.
- (c) Election of the Chairperson must be conducted by a vote and approved by majority of the Directors present.
- 14.3 All Directors are entitled to receive reasonable notice of a meeting of the Board.
- 14.4 (a) The Directors may hold a Board meeting in person or by use of any technology consented to by the Board in accordance with paragraph (b) of this Clause.
- (b) If a Board meeting is not held in person, each of the following conditions must be met in order for the Board meeting to be valid:
- (i) each Director must have received reasonable notice that the Board meeting is to be held;
 - (ii) each participating Director must announce at the beginning of the Board meeting that he or she is present;
 - (iii) a Director who ceases to participate in the Board meeting without first obtaining the permission of the Chairperson will not be regarded as being present for the whole Board meeting;
 - (iv) the Board must agree on a place where the Board meeting will be said to have been held;
 - (v) at least one (1) of the Directors must be at that place throughout the Board meeting; and
 - (vi) all Directors must be able to hear and be heard.
- 14.5 (a) The quorum for a Board meeting is fifty percent (50%) of the existing number of Directors plus one (1) Director.
- (b) For the purpose of determining whether a quorum is present, a person attending as a proxy for a Director, shall be taken to be a Director present in person.
- (c) A quorum must be present for the duration of the Board meeting.
- (e) If a quorum is not present within half an hour from the time appointed for the meeting:
- (i) where the meeting was convened upon the requisition of Directors – the meeting shall be dissolved; or
 - (ii) in any other case:
 - (1) the meeting stands adjourned to such day, and at such time and place, as the Directors determine or, if no determination is made by the Directors, to the same day in the next week at the same time and place; and
 - (2) if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting – the meeting shall be dissolved.
- 14.6 Subject to this Constitution questions arising at any meeting of the Board shall be decided by a majority of votes and a determination by a majority of the Director shall for all purposes be deemed a determination of the Board. In case of an equality of votes the Chairperson of the meeting shall have a second or casting vote.
- 14.7 The continuing Directors may act notwithstanding any vacancy in the Board, but if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as the necessary

quorum of the Board, the continuing Director or Directors may act for the purpose of increasing the number of members of the Board to that number or summoning a General Meeting of the Company but for no other purpose.

- 14.8 The Chairperson shall preside at every meeting of the Board, or if there is no Chairperson, or the Chairperson is present but says they do not wish to act as Chairperson for the meeting of the Board or if at any meeting he or she is not present within thirty (30) minutes after the time appointed for holding the meeting, the Members present and entitled to vote at a meeting of the Board may choose a Director or Member (who is not the Chairperson) to be the chairperson for that meeting.
- 14.9 The Board may delegate any of its powers to Committees consisting of such Director or Directors together with or without other person or persons approved by the Board as they think fit; any Committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the Board.
- 14.10 A Committee may elect a chairperson of its meetings; if no such chairperson is elected, or if at any meeting the chairperson is not present within ten (10) minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairperson of the meeting.
- 14.11 A Committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairperson shall have a second or casting vote.
- 14.12 All acts done by any meeting of the Board or of a Committee or by any person acting as a Director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid or that the Director or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.
- 14.13 A resolution in writing signed by all the Directors for the time being entitled to receive notice of a meeting of the Board, shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more members of the Board.

15 CONDUCT OF DIRECTORS

- 15.1 Without limit to Clause 15.5, Directors will fully disclose any business interest public or private and any other matters which may lead or be seen to lead to a potential or actual conflict of interest.
- 15.2 Directors will annually disclose their involvements with other organisations, with vendors, or any other associations that might produce a conflict through completion of statement of Director's interests and will update this statement as and when such interests change.
- 15.3 Directors must represent unconflicted loyalty to the interests of the Company. This accountability supersedes any conflicting loyalty such as that to advocacy or interest groups and membership on other boards or staffs. It also supersedes the personal interest of any Director acting as a consumer of the Company's services.
- 15.4 There must be no self-dealing or any conduct of private business or personal services between any Director and the Company except as procedurally controlled to assure openness, competitive opportunity, and equal access to inside information.
- 15.5 If a Director has a material personal interest in a proposed contract or arrangement which the Company may enter into, the Director must declare that interest:
- (a) at the Board meeting at which the proposed contract or arrangement is first discussed; or
 - (b) if the interest arises later, at the first Board meeting after the Director becomes aware of the interest.
- 15.6 If a Director gains a material personal interest in a contract or arrangement which the Company has already entered into, the Director must declare that interest at the first Board meeting after the Director becomes aware of that interest. If the disclosure is made before the contract is entered

into:

- (a) the Director may retain the benefits under the contract to the extent of his or her interest; and
- (b) the Company may not avoid the contract because of the existence of the interest.

15.7 If a Director has a conflict of interest:

- (a) the Director may not vote and may not be counted in the quorum present at any meeting on a matter relating to the interest; and
- (b) the Director must vacate the Board meeting for the period during which the Directors discuss, deliberate or vote on the matter relating to the interest.

15.8 Directors:

- (a) will act honestly, exercise reasonable care, diligence and skill, and be aware of and understand the fiduciary duties of a Director.
- (b) will maintain the highest levels of professional conduct in all their interactions, dealings and in their representation of the Company to the community.
- (c) will not discriminate on the grounds of race, religion, sexuality, gender or disability.
- (d) will be truthful ensuring that they do not mislead either by statement or omission or make false statements.
- (f) will not use their role within the Company for political interests at any time.
- (g) will abide by the law within Australia at all times.
- (h) must ensure that confidential information relating to the Company, its clients or its operations are not given either inadvertently or deliberately to third parties without the consent of the Company.
- (i) will maintain and observe their obligations of confidentiality even after they have ceased to be Directors of the Company.
- (j) will ensure that the good name and reputation of the Company is protected and not impugned by any action they undertake.
- (k) will not cause the reputation of the Company to be damaged through their actions, opinions or any comments made, either written or verbal.
- (l) must not use their access to information about the Company to seek personal gain from those doing business or seeking to do business with the Company.

15.9 Directors must not accept payments, gifts or entertainment beyond that which would be considered normal business practice.

15.10 Directors will report and record any behaviour that involves non-compliance with this Clause 15. The Chairperson must be made aware of any such acts and will take any action considered appropriate in the circumstances.

16 COMPANY SECRETARY

A Company Secretary shall in accordance with the Act be appointed by the Board for such term, at such remuneration and upon such conditions as it thinks fit. Subject to any agreement between the Company and the Company Secretary, the Board may vary or terminate the appointment of a Company Secretary at any time, with or without cause.

17 AUDIT

- 17.1 The Board may appoint an Auditor to the Company by resolution in general meeting.
- 17.2 The Auditor may be removed or replaced in accordance with the Act and the ACNC Legislation.

18 NOTICES

- 18.1 A notice may be given by the Company to any Member either:
- (a) personally; or
 - (b) by sending it by post to him or her at his or her registered address, or (if he or she has no registered address within the State) to the address, if any, within the State supplied by him or her to the Company for the giving of notices to him or her: where a notice is sent by post, service of the notice shall be deemed to be effected in the case of a notice of a meeting three (3) days after it is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of post; or
 - (c) by sending it to the fax number or electronic address (if any) nominated by the Member: A notice sent by fax or other electronic means is to be given on the business day after it is sent.
- 18.3 Notice of every general meeting shall be given in any manner hereinbefore authorised to:
- (a) every Member except those Members who (having no registered address within the State) have not supplied to the Company an address within the State for the giving of notices to them; and
 - (b) the Auditor or Auditors for the time being of the Company; and
 - (c) each Director.

19 COMMON SEAL

- 19.1 The Board may provide for the safe custody of the Seal. The Seal shall only be used by the authority of the Board, or of a committee of the Board authorised by the Directors to authorise the use of the Seal. Every document to which the Seal is affixed shall be signed by a Director and countersigned by another Director, a Company Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included.
- 19.2 The Company may execute a document without using the Seal if the document is signed by:
- (a) two Directors; or
 - (b) Director and the Company Secretary if appointed

20 INDEMNITY

- 20.1 To the extent permitted by law and without limiting the powers of the Company, the Company must indemnify each person who is, or has been, a Director or Company Secretary of the Company against any liability which results directly or indirectly from facts or circumstances relating to the person serving or having served in that capacity:
- (a) to any person (other than the Company or a related body corporate), which does not arise out of conduct involving a lack of good faith or conduct known to the person to be wrongful; and
 - (b) for costs and expenses incurred by the person in defending proceedings, whether civil or criminal, in which judgement is given in favour of the person or in which the person is acquitted, or in connection with any application in relation to such proceedings in which the court grants relief to the person under the law.
- 20.2 The Company need not indemnify a person as provided for in Clause 20.1 in respect of a liability to the extent that the person is entitled to an indemnity in respect of that liability under a contract of insurance.

20.3 To the extent permitted by law and without limiting the powers of the Company, the Board of Directors may authorise the Company to, and the Company may enter into any:

- (a) documentary indemnity in favour of; or
- (b) insurance policy for the benefit of:

a person who is, or has been, a Director, Company Secretary, Auditor, employee or other Officer of the Company.

20.4 The benefit of each indemnity given in Clause 20.1 continues, even after its terms or the terms of this Clause 20.4 are modified or deleted, in respect of a liability arising out of act or omissions occurring prior to the modification or deletion.

21 WINDING UP

21.1 On a winding up of the Company, any surplus assets (including funds mentioned in Clause 22.2) of the Company remaining after the payment of its debts must not be paid to or distributed among the Members, but must be given or transferred to:

- (a) one or more of the bodies corporate, associations or institutions (whether or not a Member or Members) selected by the Members by resolution at or before the dissolution of the Company:
 - (i) having objects similar to the objects of the Company;
 - (ii) whose constitution prohibits the distribution of its or their income or property to no lesser extent than that imposed on the Company pursuant to Clause 4; and
 - (iii) if the Company has obtained deductible gift recipient endorsement, then the recipient or transferee must be an entity of which gifts to whom are allowable deductions under Division 30 of the *Income Tax Assessment Act 1997* (Cth); or
- (b) if there are no bodies corporate, associations or institutions which meet the requirements of Clause 21.1(a), to one or more bodies corporate, associations or institutions (whether or not a Member or Members) selected by the Members by resolution at or before the dissolution of the Company, the objects of which are the promotion of charity and gifts which are allowable deductions pursuant to the *Income Tax Assessment Act 1997* (Cth); or
- (c) if the Members do not make a selection pursuant to Clause 21.1(a) or 21.1(b) for any reason, to one or more bodies corporate, associations or institutions meeting the requirements of either Clause 21.1(a) or 21.1(b) selected by the Board, subject to Board obtaining court approval pursuant to the Corporations Act (if applicable) to exercise this power.

22 REVOCATION OF DGR STATUS

22.1 If the Company has obtained deductible gift recipient endorsement but such endorsement is subsequently revoked (whether or not the Company is to be wound up), any surplus funds must be transferred to one or more organisations that meet the requirements of Clauses 21.1(a)(i), 21.1(a)(ii) and 21.1(a)(iii), as decided by the Board.

22.2 For the purpose of this Clause 22:

- (a) the relevant funds are:
 - (i) gifts of money or property for the principal purpose of the Company;
 - (ii) contributions made in relation to a fund-raising event held for the principal purpose of the Company; and
 - (iii) money received because of such gifts and contributions; and

- (b) 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the *Income Tax Assessment Act 1997* (Cth).

23 REPORTS

- 23.1 While the Company is a company limited by guarantee the Company is required to:
- (a) prepare:
 - (i) a financial report and Directors' report for that financial year in accordance with the Act; and
 - (ii) other reports that may be required from time to time by any State or Commonwealth Government Department.
 - (b) send those reports to the Directors prior to the annual general meeting or within the time prescribed by the Board.
- 23.2 Subject to the Act and the ACNC Legislation (if applicable), the Directors may specify all or any of the following:
- (a) that the financial report does not have to comply with some or all of the accounting standards;
 - (b) that a Directors' report or a part of that report need not be prepared;
 - (c) that the financial report is to be audited; or
 - (d) that the Company is to adhere to Australian Financial Reporting Standards as directed by the Board.

24 AMENDING THE CONSTITUTION

- (a) Subject to Clause 24(b), the Members may amend this Constitution by passing a special resolution.
 - (b) The Members must not pass a special resolution that amends this Constitution if passing it causes the Company to no longer be a charity.
-