

# CONSTITUTION

of

# buildingSMART Australasia Limited(bSA)

A Not-for-Profit Public Company Limited by Guarantee

Adopted by members on December 13, 2016 with the company registered under the Corporations Act 2001 on January 24, 2017

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Corporations Act, 2001  
Public company limited by guarantee  
**CONSTITUTION**  
of  
buildingSMART Australasia Limited (bSA)  
ACN 616 714 982

## 1. Definitions and Interpretation

### 1.1 Definitions

1.1.1 The following definitions apply in this Constitution unless the context requires otherwise:

**Act** means the Australian Corporations Act 2001 (Cth).

**Arm's Length** means a relationship between parties where neither bears the other any special duty or obligation, they are unrelated, uninfluenced and each acts in its own interests.

**ATO** means the Australian Taxation Office.

**Board** means the Directors acting collectively under this Constitution.

**bSA** means buildingSMART Australasia.

**Certification** means a process whereby the Company publicly attests that a specified quality or standard of a product or thing has been achieved or exceeded.

**Chair** means the person occupying the position of chair of the Directors under clause 5.8.

**Company** means the company named in clause 2.1.2.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Deputy Chair** means the Director elected in accordance with clause 5.8.

**Director** means a person appointed or elected to the office of director of the company in accordance with this Constitution and, where appropriate, includes an Independent Director.

**Employee** means a person who performs work for the Company and receives remuneration and entitlements under a verbal or written understanding with the Company.

**Financial Year** means the period of twelve months commencing from 1 July and ending on 30 June of the following year.

**Independent Director** means a person who:

- (a) is not and has not within the last three years been an employee of the Company; and
- (b) has no material contractual relationship with the Company other than as a Director; and

- (c) has no other interest or relationship that could interfere with the Independent Director's ability to act in the best interests of the Company.

**Insolvency Event** means:

- (a) Member is or becomes:
  - (i) an externally administered body corporate;
  - (ii) subject to control by a Controller; or
  - (iii) an insolvent company under administration, as those terms are defined in the Act;
- (b) a resolution is passed or a court order made or analogous proceedings are taken for the winding up of the Member other than for the purposes of solvent amalgamation or reconstruction;
- (c) the Member ceases conducting business in the normal manner;
- (d) the Member has received a deregistration notice or applied for deregistration;
- (e) the Member has been issued with a writ of execution; or
- (f) the Member files a voluntary petition in bankruptcy, a petition seeking any reorganisation, arrangement, composition or similar relief under any law regarding insolvency or relief for debtors or makes an assignment for the benefit of the Member's creditors.

**Material Personal Interest** means an interest that has the capacity to influence the vote of a Director, or benefit a Director, or a real and substantial conflict between a Director's personal interest and the interests of the Company, whether it is direct, indirect, contingent or contractual. It includes but is not limited to any conflict of interest or any affiliation a person may have with an actual or potential supplier of goods or services, recipient of grant funds or organisation with competing or conflicting objectives. Such a Director is considered to be a related party within the meaning of the Act and in extreme cases of conflict of interest, a Director's resignation or removal from office by a vote at a general meeting is the only effective means of avoiding a serious material personal interest issue.

**Member** means a person admitted to the membership of the company in accordance with the provisions of this Constitution.

**Member Present** means, in connection with a meeting, the Member present at the venue or venues for the meeting, in person or by proxy, by attorney or, where the Member is a body corporate, by representative.

**Officer** means a person who is:

- (a) a director, secretary or executive of the Company; or
- (b) a person:
  - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company; or
  - (ii) who has the capacity to affect significantly the Company's financial, legal, or operational standing; or
  - (iii) in accordance with whose instructions or wishes the directors of the Company are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the Company).

**Ordinary resolution** means a resolution passed by a simple majority of persons entitled to vote, other than a special resolution.

**Person** and words importing persons means any person including partnerships, associations and bodies corporate, unincorporated bodies and all other entities or associations recognised by law as well as individuals.

**Political Office** means a person holding or seeking political office whether elected or appointed, whether professionally or otherwise as a:

- (a) Minister, Senator or local government Councillor or Mayor; or
- (b) holder of an elected Parliamentary or local government office.

**Proxy** means written authorisation given by one person to another so that the second person can act for the first, such as that given by a member to someone else to represent him/her and vote at a members' general meeting.

**Register** means the register of Members kept as required by the Act.

**Registration** means an official record or register maintained by the Company that a person whose name is listed the record has met all the requirements to be a Certified Professional. The registry list of names can be accessed by the public to determine if an individual has met the requirements to be a certified professional.

**Secretary** means a person appointed as secretary of the company in accordance with this Constitution.

**Special resolution** has the meaning given by the Act.

**Tax Act** means the Income Tax Assessment Act 1997 (Cth).

## 1.2 Interpretation

1.2.1 Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless any contrary intention appears in this Constitution or the context requires otherwise:

- (a) the singular includes the plural and conversely;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) a reference to any legislation or to any provision of any legislation includes any modification or re enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it;
- (d) a word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution;
- (e) "including" and other similar words are not words of limitation;.
  - (f) a duty, obligation, covenant or agreement on the part of two or more persons benefits and binds them jointly and severally;
- (g) if there is any inconsistency between a clause of this Constitution and the Act, the Act prevails to the extent of such inconsistency.

1.2.2 Where any calculation to be made pursuant to this Constitution produces a fraction including with respect to quorums, voting and resolutions, the fraction will be eliminated by rounding to the nearest whole number.

## 2. Nature of the Company

### 2.1 Limited Liability and Guarantee

2.1.1 The Company is a public company limited by guarantee.

- 2.1.2 The name of the Company is buildingSMART Australasia (bSA).
- 2.1.3 Every Member undertakes to contribute a maximum of ten dollars (\$10) to the Company for payment of the debts and liabilities of the Company, the costs, charges and expenses of any winding up and the adjustment of the rights of Members amongst themselves payable at the time the Company is wound up, in the event the Company is wound up while the Member is a Member or within one year after the Member ceases to be a Member.

## **2.2 Powers**

- 2.2.1 The Company has all the powers of an individual and a body corporate but does not have the power to issue shares.
- 2.2.2 The Company may in any manner permitted by the Corporations Act exercise any power, take any action, or engage in any conduct or procedure, which under the Corporations Act a company limited by guarantee may exercise or undertake.
- 2.2.3 Notwithstanding clause 2.2.2, the Company may only exercise its powers and use its income, assets and profits for the purpose and objectives set out in clause 3.

## **2.3 Not for Profit**

- 2.3.1 The income and property of the Company, from wherever it is derived, must be applied solely towards the promotion of the purpose and objectives of the Company set out in clause 3.
- 2.3.2 No portion of the income or property of the Company may be paid directly or indirectly, by way of dividend, bonus or otherwise to the members of the Company in their capacity as members of the Company or to Directors.
- 2.3.3 No Director except an executive Director, Principal Executive Officer or Secretary may be appointed to:
  - (a) Any salaried office of the Company; or
  - (b) Any other office of the Company paid by fees.
- 2.3.4 Nothing in clause 2.3 or this Constitution prevents the Company from paying for:
  - (a) professional or technical services actually rendered by a Member to the Company;
  - (b) goods supplied to the Company by a Member in the ordinary and usual course of business;
  - (c) interest (at a rate not exceeding the lowest rate paid for the time being by the Company's bankers) on term deposits on money borrowed from any Member; or
  - (d) reasonable and proper rent for premises demised or let by any Member.
- 2.3.5 The Company may pay in good faith:
  - (a) out of pocket expenses reasonably incurred by a Director or Member in the performance of any duty as Director or Member where the amount payable does not exceed an amount approved by the Board; and
  - (b) any service rendered by him or her to the Company in a professional or technical capacity where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service.
- 2.3.6 If upon the winding-up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatsoever, that property will not be paid to or distributed among the Members but shall be given or transferred to some other institution:

- (a) having objects similar to the objects of the Company; and
  - (b) whose memorandum of association or constitution prohibits the distribution of its income and property among its members or Directors to an extent at least as great as imposed on the Company under this Constitution.
- 2.3.7 The Members have no right to participate in any distribution or payment of the assets or property of the Company in the event of the winding up or dissolution of the Company.

## **2.4 Constitution Displaces Replaceable Rules**

- 2.4.1 Except for the non-replaceable rules which mandatorily apply to a public company, the provisions of this Constitution displace the Replaceable Rules of the Act.

# **3. Purpose and Objectives of the Company**

## **3.1 Purpose and Objects**

- 3.1.1 Advancing building, construction and infrastructure technology through the definition, promotion and publishing of common specifications for sharing data, including Industry Foundation Classes (IFCs) as a universal language for electronic data exchange, and without limiting the generality of the foregoing to:
- (a) position bSA to be recognised by the public, industry, governments and their regulatory agencies as an authoritative group on all matters related to common specifications for sharing data;
  - (b) improve the regulatory environment for the adoption of common specifications for sharing data;
  - (c) facilitate the sourcing of practical information to the industry about common specifications for sharing data, from bSA members and related organisations;
  - (d) publish common specifications for sharing data to create synergy among the languages of the building and construction industries leading to interoperability of the industry's information systems;
  - (e) help integrate the industry into the global electronic market and improve productivity of the design, construction and operation process in Australasia;
  - (f) develop and administer a certification process to give effect to the goals above; develop and administer a certification process to certify that software applications and practitioners fully comply with standards as defined by the bSA;
  - (g) develop, in cooperation with the international branch and other national branches of buildingSMART, an industry-wide framework through the use of guidelines to enable and encourage information sharing and interoperability;
  - (h) provide a forum for members to work together on technical and marketing programs to advance the standards for information sharing;
  - (i) perform the role of a national chapter of buildingSMART International in the Australasian region (Australia and New Zealand), in accordance with the Charter of the buildingSMART International and decisions of the buildingSMART International Council;
  - (k) encourage investment in skills formation and industry research by removing regulatory and industry impediments to innovation;



- (l) develop policy and make submissions or representations to governments, industry and the community on standards, codes and regulatory issues of concern to the bSA;
- (m) improve communications and foster good relations between bSA and other stakeholders in the Australian construction industry;
- (n) conduct research into any matters of interest to bSA;
- (o) establish, subscribe or make advances or donations to, promote, become a member of, support or cooperate or amalgamate with any association or person, whether incorporated or not, whose objects are altogether or in part similar to those of the bSA;
- (p) register in the name of bSA a mark or marks and to use or license the use of such mark or marks in relation to certain materials, goods, processes and personnel and to enforce and protect the use of such mark and marks and to oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the objects or interests of bSA;
- (q) carry out, encourage and support any act, matter or thing which is or may be incidental or conducive to any of the above objects or which may be conveniently done in connection therewith.

### **3.2 Mandatory Restrictions**

- 3.2.1 The Company's officers including Directors shall act in accord with internationally acceptable ethical and cultural standards and shall not:
- (a) take part directly or indirectly in the election of political candidates or political parties nor accept donations from political parties or political candidates;
  - (b) cause harm to the built or natural environment;
  - (c) endanger public health or compromise public health standards;
  - (d) create, sell or promote any unsafe products or services;
  - (e) do anything to restrict competition or engage in unfair or deceptive trade practices;
  - (f) endanger the health, safety and livelihood of employees and contractors;
  - (g) reduce the rightful compensation (as determined by a court or arbitration) due to a claimant, nor shall the Company fail to act speedily to provide such compensation.

### **3.3 Operational Principles**

- 3.3.1 The Company is a learning enterprise that:
- (a) benchmarks its operations against international best practices;
  - (b) engages the best people for the job;
  - (c) uses the most appropriate, proven technologies to reduce administrative and operational effort;
  - (d) uses anticipatory and preventative strategies to reduce risk and avoid crisis management;
  - (e) demonstrates an active concern for the future.

## 4. Membership

### 4.1 New Members

- 4.1.1 A person is eligible to be a member of the Company if:
- (a) the person is a natural person, and
  - (b) that person agrees in writing to be bound by this Constitution and company rules and policies pursuant to this Constitution; and
  - (c) fulfills all relevant eligibility criteria; and
  - (d) that person was a member of bSA at the time of incorporation and has not since ceased to be a member; and
  - (e) the person has been nominated and approved for membership of the Company in accordance with clause 4.2.
- 4.1.2 An organisation, such as a corporation, department, division, branch or association is eligible to be a member of the association if:
- (a) that organisation agrees in writing to be bound by this Constitution and company rules and policies pursuant to this Constitution; and
  - (b) fulfills all relevant eligibility criteria; and
  - (c) that organisation was a member of bSA at the time of incorporation and has not since ceased to be a member; and
  - (d) the organisation nominates one natural person to exercise its membership rights and responsibilities (nominated members), and
  - (e) the organisation has been nominated and approved for membership of the Company in accordance with clause 4.2.
- 4.1.3 Membership classes including entitlements and responsibilities for Members will be developed from time to time by the Board.
- 4.1.4 Each Member must agree to embrace the Company's objectives, be bound by this Constitution and comply with any code or rules of conduct or any other standard prescribed from time to time by the Board or the Act.

### 4.2 Nomination for Membership

- 4.2.1 A nomination for membership of the Company:
- (a) shall be made in writing in the form set out in Appendix 1 to this Constitution; and
  - (b) shall be lodged with the Company Secretary.
- 4.2.2 As soon as is practicable after receiving a nomination, the Company Secretary shall refer the nomination to the Board which shall determine whether to approve or reject the nomination.
- 4.2.3 The Board:
- (a) shall advise approval or rejection of the nomination, in accordance with this Constitution at the next scheduled meeting of the Board; or
  - (b) may authorise a circular resolution, where a decision is required before the next scheduled Board meeting.
- 4.2.4 Approval of the nomination shall require a two thirds majority approval of all Board members.

- 4.2.5 Where the Board approves a nomination for membership, the Company Secretary shall, as soon as practicable after that determination, notify the nominee of that approval and request the nominee to pay within 28 days after receipt of the notification all fees and subscriptions payable as decided from time to time by the Board.
- 4.2.6 The Company Secretary shall, on receipt of fee and subscription payment by a nominee, enter the nominee's name in the register of members and, on the name being so entered, the nominee shall become a Member of the Company.

### **4.3 Membership Entitlements Not Transferable**

- 4.3.1 A right, privilege or obligation which a person has by reason of being an individual member:
- (a) is not capable of being transferred or transmitted to another individual or organisation; and
  - (b) otherwise terminates on cessation of the person's membership.
- 4.3.2 A right, privilege or obligation which an organisation has by reason of being an organisational member:
- (a) is not capable of being transferred or transmitted to another organization or individual; and
  - (b) otherwise terminates on cessation of the organisation's membership.

### **4.4 Cessation of Membership**

- 4.4.1 A member ceases to be a member if they:
- (a) no longer meet the criteria for membership of the Company; or
  - (b) die or become of unsound mind; or
  - (b) resign from membership; or
  - (c) are in arrears by thirty (90) days of the due date for payment of a Subscription or other monies due to the Company and fail to pay such arrears within seven (14) days of the date of a notice from the Company Secretary to pay the Subscription or other monies as required; or
  - (d) have failed to comply with a written direction issued by the Board regarding good conduct or a proper standard of professionalism or representation; or
  - (e) otherwise fail in the opinion of the Board (for any reason) to comply with the Act, this Constitution, or any rules or regulations of the Company.
  - (f) engage in derogatory, discriminator conduct or bring the Company or industry into disrepute; or
  - (g) are expelled from by the Company; or
  - (h) are subject to an Insolvency Event.

### **4.5 Resignation of Membership**

- 4.5.1 A member is not entitled to resign from membership except in accordance with this clause.
- 4.5.2 A member who has paid all amounts payable by the member may resign from membership by first giving notice (being not less than 1 month or, if the Board has determined a shorter period, that shorter period) in writing to the Company Secretary of the member's intention to resign and, on the expiration of the period of notice, the member ceases to be a member.
- 4.5.3 Where a person ceases to be a member, the Company Secretary shall make an appropriate entry in the register of members recording the date on which the member ceased to be a member.

## **4.6 Fees and Subscriptions**

- 4.6.1 The annual membership fee of the Company is any amount payable in advance determined from time to time by resolution of the Board, and provided that members are given at least two months' prior notice of any changes to the fees.
- 4.6.2 The Directors may grant any concession in regard to entrance, membership and all other fees that they see fit, including the full or partial waiver of all or any such fees.
- 4.6.3 The annual membership fee is payable, except as provided by clause 4.6.4, before 1 July in each year.
- 4.6.4 Where a member is admitted to membership on or after 1 July in any year the membership fee payable in advance for that year shall be a pro rata amount determined by the ratio of the number of whole months remaining after the Board approval of membership divided by twelve.

## **4.7 Disciplining of Members and Affiliated Individual**

- 4.7.1 A complaint may be made to the Board by any person that a member of bSA:
  - (a) has refused or neglected to comply with a provision or provisions of this Constitution, policy or rule of the Company; or
  - (b) has willfully acted in a manner prejudicial to the interests of bSA and the industry generally including but not limited to, breaching trust, using position for gain, bribery, extortion, misappropriation, self-dealing, patronage, nepotism, cronyism and trading of entrusted authority.
- 4.7.2 The Board may refuse to deal with a complaint if it considers the complaint to be trivial, vexatious or spurious in nature.
- 4.7.3 If the Board decides to deal with the complaint, the Board may recommend that Members in general meeting resolve to:
  - (a) expel the Member from the Company; or
  - (b) suspend the Member from such rights and privileges of membership of the Company as the Board may determine for a specified period.
- 4.7.4 Where the Board intends to move a resolution under clause 4.7.3, the Company Secretary shall, as soon as practicable, cause a notice in writing to be served on the member:
  - (a) setting out the resolution of the Board and the grounds on which it is based; and
  - (b) stating that the member as an individual or by its member representative, may address the Board at a meeting to be held not earlier than 14 days and not later than 28 days after service of the notice; and
  - (c) stating that legal advisors, proxies or other representatives of a Member are not permitted to attend the meeting referred to in clause 4.7.5 nor are witnesses, experts or personal referees; and
  - (d) stating the date, place and time of that meeting; and
  - (e) informing the member that the member may do either or both of the following:
    - (i) be present at that meeting;
    - (ii) submit to the Board at or prior to the date of that meeting written representations relating to the resolution.
- 4.7.5 At a meeting of the Members to determine matters relating to clause 4.7.3 and 4.7.4, the Members shall:

- (a) ensure that legal advisors, proxies or other representatives of a Member are not permitted to attend the meeting nor are witnesses, experts or personal referees; and
  - (b) give to the member mentioned in clause 4.7.3 an opportunity to make oral representations; and
  - (c) give due consideration to any written representations submitted to the Company by that member at or prior to the meeting; and
  - (d) decide whether to terminate membership, suspend membership for a time determined by the members, or dismiss the recommendation of the Board.
- 4.7.6 Where the Members decide to terminate or suspend membership by resolution under clause 4.7, the Company Secretary shall, within 7 days after that determination, by notice in writing inform the member of that decision and of the member's right of appeal under clause 4.8.
- 4.7.7 A resolution by the Members under clause 4.7.5 does not take effect:
- (a) until the expiration of the period within which the member is entitled to appeal against the resolution where the member does not exercise the right of appeal within that period; or
  - (b) where within that period the member exercises the right of appeal, unless and until the Company confirms the resolution in accordance with under clause 4.8.
- 4.7.8 The Company may reinstate a Member whose membership has ceased, been suspended or cancelled on the satisfaction of such terms and conditions as the Company thinks fit to apply from time to time, and only after the Member has paid all money owed by the Member to the Company as at the date their membership ceased, was suspended or cancelled.

#### **4.8 Right of Appeal of Disciplined Member**

- 4.8.1 A member may appeal to the Company in general meeting against a resolution of the Members which is confirmed under clause 4.7.5, within 7 days after notice of the resolution is served on the member, by lodging with the Company Secretary a notice to that effect.
- 4.8.2 On receipt of a notice under clause 4.8.1, the Company Secretary shall notify the Board which shall convene a general meeting of the Members to be held within 21 days after the date on which the Company Secretary received the notice or as soon as possible after that date.
- 4.8.3 At a general meeting of the Members convened under clause 4.8.1:
- (a) no business other than the question of the appeal shall be transacted; and
  - (b) the Members and the member shall be given the opportunity to make representations in relation to the appeal orally or in writing, or both; and
  - (c) legal advisors, proxies or other representatives of a member are not permitted to attend the general meeting nor are witnesses, experts or personal referees; and
  - (d) the Members present shall vote by secret ballot on the question of whether the resolution made under clause 4.7.5 should be confirmed or revoked.
- 4.8.4 If the meeting passes a resolution in favour of the confirmation of the resolution made under clause 4.7.5, that resolution is confirmed. Where membership has been terminated the Member does not have any claim on the Company, its funds or property.

#### **4.9 Conduct of Members**

- 4.9.1 Members shall maintain an 'arm's length' relationship with the Company at all times and conduct themselves in accordance with:
- (a) the Act; and

- (b) this Constitution; and
  - (c) any rules and regulations prescribed by the Board, as amended from time to time.
- 4.9.2 Members shall indicate their membership of the Company only in such form and manner and subject to any conditions in any rules and regulations prescribed by the Board from time to time.
- 4.9.3 Each Member shall notify the Company Secretary of any change in the circumstances of the Member which may affect the Member's continued entitlement to membership or class of membership.
- 4.9.4 Each member is responsible their conduct when acting as a Director of the Board. The Members in general meeting shall by ordinary resolution require the removal of any Director who in the opinion of the other Directors or members acts inappropriately, has failed to comply with a written direction issued by the Board regarding good conduct or a proper standard of professionalism or representation, who fails to comply with this Constitution, or any rules or regulations of the Company, or who engages in derogatory, discriminatory conduct or harassment or brings the Company or industry into disrepute. The Members' decision on this matter shall be final and binding with no appeal against such a resolution and a Member issued with such a resolution or notice must step down from the Board immediately after the resolution is passed.

#### **4.10 Resolution of Disputes**

- 4.10.1 A dispute between a member and another member (in their capacity as members) of the Company, or a dispute between a member or members and the Company, are to be referred to a community justice centre for mediation.
- 4.10.2 If a dispute is not resolved by mediation within 3 months of the referral to a community justice centre, the dispute is to be referred to arbitration.
- 4.10.3 The New South Wales Commercial Arbitration Act 1984 applies to any such dispute referred to arbitration.

## **5. Board**

### **5.1 Powers of the Board**

- 5.1.1 Subject to the Act and this Constitution, the Board shall control and supervise the business and affairs and have custody and control of the funds and property of the Company.
- 5.1.2 Without limiting clause 5.1.1, the role of the Board is to:
- (a) act in good faith in the interests of the Company as a whole; and
  - (b) declare any direct conflict of interest reasonably known to them; and
  - (c) direct and guide the Company's strategic direction; and
  - (d) ensure that the Company's activities remain consistent with its objectives; and
  - (e) monitor and maintain the financial integrity and viability of the Company; and
  - (f) approve membership; and
  - (g) determine policy of the Company such that the Company's objectives are achieved and impartiality of the Company's activities is maintained; and
  - (h) counteract any tendency on the part of the Company to allow commercial or other considerations to prevent the consistent objective provision of its activities; and

- (i) determine on matters affecting confidence in assurance, including openness and public perception.
- 5.1.3 The Board represents stakeholder interests to ensure, amongst other things that the Company is acting independently and impartially, that it is operating its processes correctly, and that it is acting in a fair and reasonable manner.
- 5.1.4 The activities of the Board are subject to any regulation from time to time made, amended and removed by the Company in general meeting provided that no regulations so made shall invalidate any prior act of the Board which would have been valid if such regulation had not been made.

## 5.2 Directors

- 5.2.1 Subject to clause 5.2.2, the Board shall consist of not less than three (3) and not more than eight (8) non-executive Directors and additionally a Principal Executive Officer, noting that where possible, both Australia and New Zealand should be represented on the Board in proportion to that represented by the membership of the Company.
- 5.2.2 Subject to the minimum number of Directors not being less than three (3), the Board may determine the number of vacancies applicable at any one time and resolve not to replace retiring Directors or Directors who have vacated office.
- 5.2.3 With the exception of the Principal Executive Officer and subject to clause 5.2.2 a Director is elected for a term of one (1) year or at the next annual general meeting, at the end of which he or she shall retire and unless otherwise resolved by the Company in general meeting, may seek to be re-elected.
- 5.2.4 The Principal Executive Officer is an ex-officio Director and is not subject to clauses 5.2.3, 5.2.5 and 5.2.6.
- 5.2.5 A Director removed from office under clause 5.3 is permanently barred from appointment and re-election to the Board.
- 5.2.6 Excluding persons appointed to the Board as non-member Independent Directors or to fill Casual Vacancies on the Board, the Company shall call for nominations as Director from the members at least 21 days prior to an annual general meeting, in such manner as the Board determines from time to time. Each nominee must be a member of the Company, must be nominated by a current member of the Company, and must express their nomination in writing in the form set out in Appendix 3 to this Constitution. All nominees for the position of Director including Independent Directors must demonstrate:
  - (a) commitment to the Objects of the Company;
  - (b) ability to apply a broad perspective on issues;
  - (c) teamwork and the ability to listen to others, constructively solve problems, make objective and fair decisions, and reach consensus in a timely manner;
  - (d) ability to deal professionally with confidential and sensitive information;
  - (e) ability to communicate effectively and write clear and concise reports; and
  - (f) high ethical standards and integrity in professional and personal interactions.
- 5.2.7 If insufficient nominations are received to fill all Board vacancies, the candidates nominated shall be deemed to be elected and any vacant positions shall be deemed to be vacancies. In the event that more candidates have nominated than vacancies exist on the Board, the election of Directors shall take place by way of a resolution of members or by ballot, as determined by the Board. If the number of nominations received is equal to the number of vacancies to be filled, the individuals nominated shall be taken to be elected. This requirement excludes persons appointed to the Board as non-member Independent Directors.

- 5.2.8 On election, Directors are bound to:
- (a) vote in the best interests of the Company as a whole at any meeting of the Board or sub-committee; and
  - (b) declare any direct or indirect conflict of interest reasonably known to them and decline to vote unless with the approval of the remaining members of the Board or sub-committee; and
- 5.2.9 Newly elected Directors shall take office at the conclusion of the annual general meeting at which the results of the election are declared.
- 5.2.10 Prior to taking office, Directors are to sign a Confidentiality Deed and the Board Code of Conduct and undergo governance training as determined by the Board within 3 months of taking office.
- 5.2.11 Directors shall be reimbursed any reasonable costs incurred by them in exercising the duties of their office, including their attendance at all Board meetings, and as determined by the Board from time to time.

### **5.3 Removal and Vacation of Office**

- 5.3.1 A Director may at any time resign from the Board by giving written notice of resignation to the Company Secretary.
- 5.3.2 Subject to the Act and this Constitution, the Members in general meeting may resolve to remove any Director, including an Independent Director, before the expiration of his or her period of office and may by an ordinary resolution appoint another member in his or her stead. A general meeting held for this purpose must be attended by all Board members. A resolution to remove a Director must include all relevant details including the grounds for removal and a performance assessment of the Director in question so that Members can make an informed decision. A person removed under this clause 5.3.2 is henceforth permanently barred from being a Director of the Company. A person appointed to replace a Director removed under this clause 5.3.2 shall hold office for the same period as the person he or she has replaced.
- 5.3.3 If the conduct or attitude of any Director is such that continuance in office appears to a majority of the Directors to be prejudicial to the interests of the Company, a simple majority of the Directors at a meeting of the Board specially convened for that purpose may suspend that Director. Within 14 days of the suspension, the Directors will call a general meeting, at which the Members may either confirm the suspension and remove that Director from office in accordance with Clause 5.3.2, or annul the suspension and reinstate that Director.
- 5.3.4 The office of Director shall be vacated immediately if he or she:
- (a) resigns or is removed from office pursuant to clause 5.3.2;
  - (b) ceases to be a director by virtue of the Act or becomes prohibited from being a director by reason of any order made under the Act;
  - (c) dies or becomes of unsound mind;
  - (d) ceases to be an employee or representative of the organisational Member he or she originally represented;
  - (e) is employed by or represents an organisational Member that ceases to be an organisational Member;
  - (f) has a serious material personal interest or conflict that puts the Company at risk, or undermines the public's trust and respect for the Company and includes but is not limited to, breaching trust, using position for personal gain, bribery, extortion, misappropriation, self-dealing, patronage, nepotism, cronyism and trading of entrusted authority;



- (g) runs for political office or is elected to a political office, with cessation of the office of Director commencing on the date that political office candidacy is publicly announced;
- (h) has a relationship, personal, business or otherwise, with one or more other Directors such that it impairs his or her objectivity and independence with respect to matters that affect the personal, pecuniary interests of the other Board members;
- (i) fails to meet the requirements of the definition of Independent Director if the Director was appointed as an Independent Director.
- (k) fails to sign the Confidentiality Deed and the Board Code of Conduct; or
- (l) fails to successfully complete Board governance training as determined by the Board from time to time, within 3 months of appointment as a Director.

#### **5.4 Casual Vacancies and Independent Directors**

- 5.4.1 If the number of Directors excluding the Principal Executive Officer becomes less than three (3) as a result of vacancies on the Board, the Board must not act, except for the purposes of convening an urgent general meeting to elect new Directors.
- 5.4.2 Subject to the Act and this Constitution, the Members in general meeting may resolve to appoint a member to the Board to fill a casual vacancy. A person appointed to fill a casual vacancy on the Board shall hold office for the same period as the person he or she has replaced.
- 5.4.3 The Board may from time to time resolve to appoint an independent non-member as an additional Director, subject to clause 5.2.1. An Independent Director shall hold office for at least one (1) year and his or her continuation on the Board following the initial period shall be at the discretion of the Board with the maximum period of appointment being ten (10) years in total.

#### **5.5 Material Personal Interest**

- 5.5.1 Subject to clause 5.5.2, Directors must maintain an 'arm's length' relationship with the Company and a Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of his or her interest in accordance with the Corporations Act.
- 5.5.2 A Director with a material personal interest in a matter that relates to the affairs of the Company is not required to give notice in the following circumstances:
  - (a) if all of the following conditions are met:
    - (i) the Director has already given notice of the nature and extent of the interest and its relation to the affairs of the company;
    - (ii) if a person who was not a Director at the time the notice was given is appointed as a Director, the notice is given to that person; and
    - (iii) the nature or extent of the interest has not materially increased above that disclosed in the notice;
  - (b) if the Director member has given a standing notice of the nature and extent of the interest in accordance with the Corporations Act and that standing notice is still effective in relation to the interest; or
  - (c) as otherwise permitted under the Corporations Act.
- 5.5.3 A Director who has a material personal interest in a matter that is being considered at a meeting of the Directors or by circular resolution, must not be present while the matter is being considered at the meeting or vote on the matter at the meeting or by circular resolution.

- 5.5.4 Where the Board decides that a Director has a material personal interest in a matter, that Director may have briefing material, other documentation and communications including certain sections of Board papers and minutes that relate to that matter, withheld from them prior to the matter being considered at a Board meeting or until a final Board decision has been made on the matter.
- 5.5.5 A person who obtains information because they are, or have been, a Director, Officer, or employee of the Company must not improperly use the information or improperly use their position to:
- (a) gain an advantage for themselves or someone else;
  - (b) cause detriment to the Company.

This duty continues after the person stops being a Director, Officer, or employee of the Company and failure in this duty is a civil penalty provision under the Act.

## **5.6 Negotiable Instruments**

- 5.6.1 The Board shall determine the mechanism for signing, drawing, accepting, endorsing or otherwise executing a negotiable instrument.
- 5.6.2 Receipts for money payable to or receivable by the Company may be signed by a Director or the Secretary or by any other person authorised by the Board to receive money either generally or any particular sum of money on behalf of the Company and such receipt shall be deemed to be valid.

## **5.7 Board Meetings and Quorum**

- 5.7.1 The Board shall meet at least three (3) times in each calendar year at such place and time as the Board may determine with preference given to teleconference, online or other electronic meetings rather than face-to-face meetings.
- 5.7.2 Additional meetings of the Board may be called by the Chair or any two members of the Board.
- 5.7.3 Oral or written notice of a meeting of the Board shall be given by the Company Secretary to each member of the Board at least 48 hours (or such other period as may be unanimously agreed on by the Directors) before the time appointed for the holding of the meeting.
- 5.7.4 Notice of a meeting given under clause 5.7.3 shall specify the general nature of the business to be transacted at the meeting and no business other than that business shall be transacted at the meeting, except business which the Board members present at the meeting unanimously agree to treat as urgent business.
- 5.7.5 Any three (3) members of the Board constitute a quorum for the transaction of the business of a meeting of the Board.
- 5.7.6 No business shall be transacted by the Board unless a quorum is present and, if within half an hour after the time appointed for the meeting a quorum is not present, the meeting stands adjourned to the same place and at the same hour of the same day in the following week.
- 5.7.7 If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the meeting shall be dissolved.
- 5.7.8 At meetings of the Board:
- (a) the Chair or, in the absence of the Chair, the Deputy Chair shall preside; or
  - (b) if the Chair or Deputy Chair are absent—one of the remaining Board members may be chosen by the Directors present to preside.

## **5.8 Board Chair, Deputy Chair and Secretary**

- 5.8.1 The Board must meet immediately after each AGM and elect:

- (a) A Director to be the Chair; and
- (b) A Director to be the Deputy Chair; and
- (c) A Company Secretary who may be a Director or an appointed individual.

The Principal Executive Officer is not eligible to be the Chair, Deputy Chair or Secretary.

- 5.8.2 The Chair, Deputy Chair and Company Secretary serve for a term of one year which must expire at the conclusion of the next annual general meeting, whether more or less than one calendar year has expired before that time.
- 5.8.3 Neither the Chair, Deputy Chair or Company Secretary have any powers additional to other Directors, and their role is to ensure the Board functions properly, to act as a figurehead or spokesperson for the Company and provide support to the Principal Executive Officer.
- 5.8.4 The Chair, Deputy Chair or Company Secretary may be removed at any time by a simple majority vote of all Directors and a new Chair, Deputy Chair or Secretary elected.
- 5.8.5 The Chair, or in his or her absence, the Deputy Chair shall be entitled to preside as chair at every meeting. If there is no Chair or Deputy Chair present at the time appointed for holding the meeting or if both decline to chair the meeting, the Directors present shall elect one of their number to be chair of that meeting. If the Chair and Deputy Chair have stepped down, the Director elected to chair a meeting shall manage the Chair's responsibilities until the next meeting.

## **5.9 Use of Technology**

- 5.9.1 For the purposes of the Act, a Directors' meeting may be called or held using any technology consented to by all the Directors with preference given to teleconference, online or other electronic meetings rather than face-to-face meetings. The consent may be a standing one and a director may not withdraw their consent within fourteen (14) calendar days before the meeting.
- 5.9.2 Where the Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors:
  - (a) the participating Directors are, for the purpose of every provision of this Constitution concerning meetings of the Directors, taken to be assembled together at a meeting and to be present at that meeting; and
  - (b) all proceedings of those Directors conducted in that manner are as valid and effective as if conducted at a meeting at which all of them were physically present in one location.

## **5.10 Circular Resolutions**

- 5.10.1 The Directors may pass a 'circular resolution' without a face-to-face Directors' meeting being held if the Directors 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.
- 5.10.2 Circulating resolutions must be received from no less than 70% of the number of Directors on the Board and the resolution is passed when a simple majority (greater than 50%) of Directors who return the signed document are in favour of it.

## **5.11 Delegation by the Board**

- 5.11.1 Pursuant to the Act, the Board may delegate any of its powers to any Committee, other Director(s), employee of the Company or any other person.
- 5.11.2 The delegate must exercise the delegated powers in accordance with the Act and any directions of the Board.
- 5.11.3 The effect of the delegate exercising a delegated power is the same as if the Board exercised it.

- 5.11.4 The Board may withdraw any delegated power at any time.
- 5.11.5 A Director must not delegate their responsibilities or appoint a person to act as an alternate Director in the Director's place.
- 5.11.6 The Board may from time to time establish Committees to advise it on matters affecting the operations of the Company. Terms of reference and duration of all Committees shall be determined by the Board and the Committees shall have no decision-making power. The Chair shall not sit on any finance or audit committees and no Directors of an audit or finance committee shall have any executive powers, management functions or delegated financial responsibility.

## **5.12 Board Voting and Decisions**

- 5.12.1 Questions arising at a meeting of the Directors or of any subcommittee appointed by the Directors shall be determined by a simple majority of the votes of members of the Board or subcommittee present at the meeting providing there is a quorum.
- 5.12.2 Each Director present at a meeting of the Board or of any subcommittee appointed by the Board (including the person presiding at the meeting) is entitled to one (1) vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote. Pursuant to all the relevant information, facts and details relating to a matter subject to a vote having been provided to Directors, each Director must vote either for or against the matter and there shall be no abstaining from voting.
- 5.12.3 Any act or thing done or suffered, or purporting to have been done or suffered, by the Board or by a subcommittee appointed by the Board, is valid and effectual notwithstanding any defect that may afterwards be discovered in the appointment or qualification of any member of the Board or subcommittee.

## **6. General Meetings**

### **6.1 Annual General Meetings**

- 6.1.1 Annual General Meetings (AGM) of the members shall be convened in accordance with the Act and must be held at least once in each calendar year and within a period of 6 months after the expiration of each financial year, convened on such date and at such place and time as the Board thinks fit. The Company may hold the meeting at two (2) or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- 6.1.2 In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting shall be:
  - (a) to confirm the minutes of the last preceding annual general meeting and of any general meeting held since that meeting; and
  - (b) to receive from the Board reports on the activities of the Company during the last preceding financial year; and
  - (c) to elect members of the Board; if and as required by clause 5.2; and
  - (d) to receive and consider the Annual Report and other reports that are required to be submitted to members under the Act; and
  - (e) to consider any matter relating exclusively to the Company or this Constitution which may be submitted by a Member. Such matters must be in writing and submitted to the Board no less than 28 days prior to the AGM. Matters raised by members at the AGM may be considered by the Board at the Board's discretion.

## **6.2 General Meetings of Members**

- 6.2.1 The Company may hold a general meeting at two (2) or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- 6.2.2 The Chair of the Board may, whenever they think fit, convene a general meeting of the Company.
- 6.2.3 The Board shall, on the request in writing of not less than 25% of the total number of members, convene a general meeting of the Company.
- 6.2.4 A requisition of members for a general meeting:
  - (a) shall state the purpose or purposes of the meeting and any resolution proposed; and
  - (b) shall be signed by the members making the requisition; and
  - (c) shall be lodged with the Company Secretary; and
  - (d) may consist of several documents in a similar form, each signed by 1 or more of the members making the requisition.
- 6.2.5 If the Board fails to convene a general meeting within 1 month after the date on which a requisition of members for the meeting is lodged with the Company Secretary, any one or more of the members who made the requisition may convene a general meeting to be held not later than 3 months after that date.
- 6.2.6 A general meeting requested by members referred to in clause 6.2.3 shall be convened as nearly as is practicable in the same manner as general meetings are convened by the Board and any member who incurs expenses in convening a general meeting is entitled to be reimbursed by the Company for any reasonable expense so incurred.

## **6.3 General Meeting Notice**

- 6.3.1 Except where the nature of the business proposed to be dealt with at a general meeting requires a special resolution by the Company, the Company Secretary shall, at least 21 days before the date fixed for the holding of the general meeting, cause to be sent by prepaid post or by electronic means or by whatever means is deemed suitable by the Board to each member at the member's address appearing in the register of members:
  - (a) a notice specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting; and
  - (b) the intention to propose a resolution as a special resolution, if applicable.
- 6.3.2 Notice of meeting given under clause 6.3.1 may be given either personally, by post, by courier, facsimile, email or any other form of wire or wireless communication. A notice of meeting sent by post is taken to be delivered on the business day after it is posted. A notice of meeting sent by facsimile or other electronic or online means is taken to be received on the business day that it was sent. No other person or organisation shall be entitled to receive notices of meetings other than Members, each Director and the Auditor.
- 6.3.3 No business other than that specified in the notice convening a general meeting shall be transacted at the meeting except, in the case of an annual general meeting, business which may be transacted under clause 6.1.
- 6.3.4 A member desiring to bring any business before a general meeting may give notice in writing of that business to the Company Secretary who shall include that business in the next notice calling a general meeting given after receipt of the notice from the member.
- 6.3.5 The Company need not comply with clause 6.3.1:

- (a) if the notice or statement is more than 1,000 words long, or is defamatory, trivial, vexatious or spurious; or
  - (b) if the members giving notice or making the request are to bear the expenses of sending the notice out – unless the members give the Company an amount reasonably sufficient to meet the expenses of distribution of the notice or statement.
- 6.3.6 The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of Members.

#### **6.4 General Meetings Procedure and Quorum**

- 6.4.1 No item of business shall be transacted at a general meeting unless a quorum of members entitled under these rules to vote is present during the time the meeting is considering that item.
- 6.4.2 Greater than 25% of Members whose representatives are present in person (being Members entitled under this Constitution to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting.
- 6.4.3 If within 30 minutes after the appointed time for the commencement of a general meeting a quorum is not present, the meeting if convened on the requisition of members shall be dissolved and in any other case shall stand adjourned to the same day in the following week at the same time and (unless another place is specified at the time of adjournment by the person presiding at the meeting or communicated by written notice to members given before the day to which the meeting is adjourned) at the same place.
- 6.4.4 If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the commencement of the meeting, the members present (being not less than 5) shall constitute a quorum.

#### **6.5 Presiding Member**

- 6.5.1 The Chair, or in the absence of the Chair, the Deputy Chair, shall preside at each general or ordinary meeting of the Company.
- 6.5.2 If the Chair and Deputy Chair are absent from a general or ordinary meeting, the members present shall elect one (1) of their number to preside at the meeting.

#### **6.6 Adjournment of General Meetings**

- 6.6.1 The person presiding at a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- 6.6.2 Where a general meeting is adjourned for 14 days or more, the Company Secretary shall give written or oral notice of the adjourned meeting to each member of the Company stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- 6.6.3 Except as provided in clauses 6.6.1 and 6.6.2, notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

#### **6.7 Making of Decisions**

- 6.7.1 A question arising at general or ordinary meetings of the Company shall be determined on a show of hands and, unless before or on the declaration of the show of hands a poll is demanded, a declaration by the person presiding that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book

of the association, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.

- 6.7.2 A poll may be demanded by the person presiding or by not less than three (3) members present in person or by proxy at the meeting, on any resolution other than the election of the chair of a meeting, or the adjournment of a meeting and conducted in accordance with the Act.
- 6.7.3 The result of a poll shall be a resolution of the meeting at which the poll was demanded and the demand for a poll shall not prevent a meeting from continuing with the transaction of any business other than that on which a poll has been demanded.

## **6.8 Voting**

- 6.8.1 Subject to clause 6.8.3, on any question arising at a general meeting a member has one (1) vote only.
- 6.8.2 All votes shall be given personally by the member representative or by proxy but no member representative or Director may hold more than five (5) proxies.
- 6.8.3 In the case of an equality of votes on a question at a general or ordinary meeting, the person presiding is entitled to exercise a second or casting vote.
- 6.8.4 A member or proxy is not entitled to vote at any general or ordinary meeting of the Company unless all money due and payable by the member or proxy to the Company has been paid, other than the amount of the annual subscription payable in respect of the then current year.

## **6.9 Appointment of Proxies**

- 6.9.1 Each member shall be entitled to appoint only one (1) other individual member or representative of another organisational member, or a Director as proxy by notice given to the Company Secretary.
- 6.9.2 The instrument appointing a proxy and the Power of Attorney or other authority, if any, under which it is signed or a copy certified as a true copy by a person qualified to witness statutory declarations of that power or authority must be deposited not less than forty eight (48) hours before the time for holding the meeting or adjourned meeting otherwise the proxy is invalid, and must be:
  - (a) delivered by hand, by mail or by fax, at the Registered Office of the Company; or
  - (b) to a place, fax number or electronic address specified for the purpose in the Notice of Meeting;
- 6.9.3 Proxies do not count towards the number of people required for a quorum at a general meeting.
- 6.9.4 The notice appointing the proxy shall be in the form set out by the Board from time to time.
- 6.9.5 If more than one attorney, representative or proxy appointed by a Member is present at a meeting of Members and the Company Secretary has not received notice of revocation of any of the appointments, an attorney, representative or proxy appointed under a more recent appointment may act to the exclusion of an attorney, representative or proxy appointed earlier in time.

## **7. Principal Executive Officer**

- 7.1.1 The Board may appoint a principal executive officer to manage the business of the Company with such powers and responsibilities and to perform such functions and duties as the Board determines from time to time for such periods and on such terms as they think fit and subject to the terms of any agreement entered into in any particular case and may revoke any such appointment subject to the provisions of the law and the terms of the agreement entered into. The Principal Executive Officer may also be known as the Chief Executive Officer, Executive Director or any other title determined by the Board from time to time. The principal executive officer is an ex officio Board Director and may vote on all matters other than the election of Board Directors, Chairman, Deputy

Chairman and Secretary. The principal executive officer's status as an ex officio Board Director commences on the date of appointment as principal executive officer and ceases on the date of termination as principal executive officer to the Company. The principal executive officer of the Company has authority to bind the Company pursuant to the Act.

- 7.1.2 Subject to the provisions of any agreement entered into between the Company and its principal executive officer from time to time, the Company must pay its principal executive officer a reasonable and proper remuneration having regard to the following criteria:
- (a) the services the principal executive officer provides to the Company; and
  - (b) the performance of the principal executive officer in providing those services; and
  - (c) the current market levels of remuneration paid to chief executive officers of other companies of a similar size and/or complexity.
- 7.1.3 The principal executive officer shall receive support from the Chair, Deputy Chair and Secretary, but may also work with any other Director as he or she thinks fit, provided that the Board is informed and regularly apprised of any such dealings with individual Directors.
- 7.1.4 The titles, duties and salaries of other employees of the Company shall be determined by the principal executive officer in accordance with an annual Company budget.

## 8. Company Secretary

- 8.1.1 There must be at least one (1) Secretary of the Company who is to be appointed by the Directors. The Secretary holds office on the terms and conditions (including as to remuneration) that the Directors determine from time to time, and may be identified as 'Company Secretary' as appropriate. In circumstances where the appointed Secretary resigns or is unwilling or unable to act, the Directors may appoint a person as an acting Secretary or as a temporary substitute for a Secretary who for the purpose of this Constitution will be deemed to be a Secretary. The principal executive officer is ineligible for appointment as Secretary.
- 8.1.2 A person ceases to be a Secretary of the Company if the person becomes disqualified from managing corporations under the Act, unless ASIC or the Court allows them to take part in the management of the Company.
- 8.1.3 The Secretary or another officer nominated by the Board shall:
- (a) cause proper minutes to be kept of all general meetings, Board meetings and meetings of any committee; and
  - (b) ensure that a register of Members is maintained; and
  - (c) ensure that the elections for the positions of Directors are held in accordance with this Constitution and the Act.

## 9. Rules and Regulations

- 9.1.1 The Board may from time to time prescribe rules and regulations or resolutions of the Company on such matters considered necessary or expedient to carry out the purposes of the Company or for the regulation, management and control of the Company's affairs including in respect of its Members, Directors and Committees.
- 9.1.2 In the event of any inconsistency between this Constitution and any rule, regulation or resolution, this Constitution prevails. In the event of any inconsistency between the Act and this Constitution, the Act prevails.



- 9.1.3 The Board must publish rules, regulations and resolutions adopted or amended pursuant to this clause as soon as practicable.

## 10. Minutes

- 10.1.1 The Company must keep minute books in which it records within two months:
- (a) proceedings and resolutions of Members' and Board meetings including meetings of Committees;
  - (b) proceedings and resolutions of Board meetings, including meetings of Committees;
  - (c) resolutions passed by the Members and the Board without a face-to-face meeting.
- 10.1.2 The Company must ensure that minutes of a meeting are signed by the Chair of the meeting or the Chair of the next meeting within a reasonable time after the meeting.
- 10.1.3 The Company must publish the Minutes explaining all decisions and resolutions of all Board and Committee meetings within 14 days after each meeting. Publication is limited to members and those present at the meetings. Members are also entitled to gain access to the minute book of meetings of Members in accordance with the Act.

## 11. Accounts

- 11.1.1 The Directors must cause the Company to keep accounts of the business of the Company in accordance with the requirements of the Act.
- 11.1.2 Pursuant to the Act, the Company shall appoint a properly qualified and independent auditor who is not an Officer or employee of the Company and who is not entitled to vote at any meeting of the Board or general meeting of the members. The Directors must cause the accounts of the Company to be audited in accordance with the provisions of the Act.
- 11.1.3 If financial records are kept in electronic form, they must be convertible into hard copy. Hard copy must be made available within a reasonable time to a person who is entitled to inspect the records.
- 11.1.4 The financial report in respect of the Company and the Board report for the Financial Year must be sent to all persons entitled to receive notice of general meetings of the Company by the earlier of:
- (a) not less than 21 days before the next AGM after the end of the financial year;
  - (b) 5 months after the end of the financial year.
- 11.1.5 The financial records of the Company shall at all reasonable times be open to inspection by a Director and the Board shall from time to time determine at what times and places and under what conditions and regulations the financial records of the Company may be open to inspection by Members.

## 12. Validity of Appointments

- 12.1.1 All acts done by any meeting of the Board or any committee of or established by the Board or by any person acting as a Member of or an officer of the Board or of any committee shall (notwithstanding it being afterwards discovered that there was some defect in the appointment of any such person or body acting as aforesaid or that the person or body had been disqualified or had vacated office) be as valid as if every person or body had been duly appointed and was qualified to do such acts.

## 13. Indemnity

- 13.1.1 Every Officer of the Company, Director and committee member shall be indemnified, to the relevant extent, against any liabilities for costs and expenses incurred by that person in the pursuit of their duties to the Company, other than:
- (a) a liability owed to the Company or a related body corporate;
  - (b) a liability for a pecuniary penalty order under the Act or a compensation order under the Act; or
  - (c) a liability that is owed to a person other than the Company or a related body corporate and did not arise out of conduct in good faith.
- 13.1.2 Every Officer of the Company, Director and committee member may by resolution of the Board be indemnified out of the assets of the Company against a liability for legal costs incurred by that person in the pursuit of their duties to the Company, in defending an action for liability incurred in that capacity unless the costs arise:
- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under clause 13.1.1;
  - (b) in defending or resisting criminal proceedings in which the person is found guilty;
  - (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (other than costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
  - (d) in connection with proceedings for relief to the person under the Act in which the court denies the relief.
- 13.1.3 Unless the liability was incurred against the Company or through the dishonesty of the Officer of the Company, Director or committee member and subject to the provisions of the Act, an Officer of the Company, Director or committee member shall not be liable for:
- (a) the acts, receipts, neglect or defaults of any other Officer of the Company, Director or committee member of the Company;
  - (b) joining in any receipt or other act of conformity or for any loss happening to the Company through:
    - (i) an insufficiency or deficiency of title to any property acquired by order of the Directors, Auditor or other Officer of the Company for or on behalf of the Company; or
    - (ii) an insufficiency or deficiency of any security in or upon which any of the moneys of the Company shall be invested;
  - (c) any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any moneys, securities or effects shall be deposited;
  - (d) any loss occasioned by any error of judgment or oversight on the part of a Officer of the Company, Director or committee member of the Company; or
  - (e) any other loss, damage or misfortune which occurs in the execution of the duties of the office of Officer of the Company, Director or committee member of the Company.
- 13.1.4 The Company may by resolution of the Board pay, or agree to pay, either directly or indirectly through one or more interposed entities, a premium in respect of a contract insuring a person who is or has been an Officer of the Company, Director or committee member against:
- (a) a liability for legal costs; and

- (b) any other liability except a liability incurred by the person as an Officer of the Company, Director or committee member and arising out of conduct involving:
  - (i) conduct involving a willful breach of duty in relation to the Company; or
  - (ii) a contravention of the Act.

## **14. Notices**

- 14.1.1 Any notice required to be given under this Constitution or any rule or regulation of the Company must be given either personally, by post, by courier, facsimile, email or any other form of wire or wireless communication. A notice of meeting sent by post is taken to be delivered on the business day after it is posted. A notice of meeting sent by facsimile or other electronic or online means is taken to be received on the business day that it was sent.
- 14.1.2 The non-receipt of a notice of meeting of Members shall not invalidate any meeting of Members held pursuant to such notice.
- 14.1.3 Members who have no place of address registered with the Company shall notify the Company of an alternative address for the purposes of this clause otherwise clause 14.1.6 applies.
- 14.1.4 Unless it is otherwise provided, a given number of days' notice or notice extending over any period includes the day of service but does not include the day on which such notice is to expire. Where at least or not less than a given period is prescribed, then both the day of service and the day on which the period expires are excluded.
- 14.1.5 Subject to the Act, the signature to any notice given by the Company may be written, printed, typed, digitised or otherwise electronically conveyed.
- 14.1.6 If a Member fails to provide an address for notices, a notice published electronically or in print shall be sufficient notice to such Member.

## **15. Amending this Constitution**

- 15.1.1 This Constitution must be independently reviewed for effectiveness and relevance at least once every five years and the views of the Members must be sought by the Board in respect of this review.
- 15.1.2 This Constitution may only be amended by a Special Resolution at a general meeting of the Company, requiring not less than 75% of the Members present in person and by proxy, resolving in favour of the amendment(s).

## Appendix 1 – Application for Membership

### APPLICATION FOR MEMBERSHIP OF

buildingSMART Australasia (bSA)

(incorporated under the Australian Corporations Act 2001 (Cth))

I, .....

*(full name of applicant)*

of .....

*(address)*

OR

as representative of .....

*(name of organisation you will represent)*

of.....

*(address of organisation you will represent)*

hereby apply to become a member of the buildingSMART Australasia (bSA) a public company limited by guarantee. In the event of my admission as a member, I agree to be bound by the Constitution of the Company.

.....

*(Signature of applicant)*

Date .....

I, .....

*(full name)*

a member of the Company, nominate the applicant, who is personally known to me, for the membership of buildingSMART Australasia (bSA).

.....

*(Signature of proposer)*

Date .....

## Appendix 2 – Proxy Form

### buildingSMART Australasia (bSA)

(incorporated under the Australian Corporations Act 2001 (Cth))

#### FORM OF APPOINTMENT OF PROXY

I, .....

(full name)

of .....

(address)

being a member of buildingSMART Australasia (bSA)

hereby appoint .....

(full name of proxy)

of .....

(address)

being also a member buildingSMART Australasia (bSA), as my proxy to vote for me on my behalf at the general meeting of the Company (annual general meeting or other general meeting, as the case may be) to be held on ..... and at any adjournment of that meeting.

\*My proxy is authorised to vote in favour of/against (delete as appropriate) the resolution (insert details).

.....

(Signature of member appointing proxy)

(\*To be inserted if desired.)

Date .....

Note A proxy vote may not be given to a person who is not a member of buildingSMART Australasia (bSA).

## Appendix 3 – Nomination of Board Member

### buildingSMART Australasia (bSA)

(incorporated under the Australian Corporations Act 2001 (Cth))

#### NOMINATION OF BOARD MEMBER

I, .....

(full name of nominating member)

of .....

(address)

being a member of buildingSMART Australasia (bSA)

hereby nominate .....

(full name of Board nominee)

of .....

(address)

who is personally known to me, to become a board member of buildingSMART Australasia (bSA).

.....

(signature of nominating member)

Date: .....

I, .....

(full name of Board nominee)

agree to my name being placed in nomination for a position as Board member of buildingSMART Australasia (bSA).

.....

(signature of Board nominee)

Date: .....